

# Social Care (Self-directed Support) (Scotland) Bill

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## Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 27

Long Title

Amendments marked \* are new (including manuscript amendments) or have been altered.

### After section 1

#### Michael Matheson

1 After section 1, insert—

#### <Further general principles applicable to this Act

In carrying out its functions under this Act in relation to a person who is to choose (or has chosen) one of the options for self-directed support, a local authority must have regard to the following general principles—

- (a) that the dignity of the person is to be respected,
- (b) that the person's desire to participate in the life of the community in which the person lives is to be respected.>

### Section 3

#### Michael Matheson

2 In section 3, page 3, line 1, leave out <and>

#### Michael Matheson

3 In section 3, page 3, line 3, at end insert <and the payment by the local authority of the relevant amount in respect of the cost of that provision>

#### Dr Richard Simpson

21 In section 3, page 3, line 3, at end insert <, with the relevant amount in respect of the cost of that provision either being held by the local authority or transferred to a support provider to hold on the supported person's behalf.>

#### Michael Matheson

4 In section 3, page 3, line 4, leave out from <and> to end of line 5 and insert <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>

**Michael Matheson**

- 5 In section 3, page 3, line 7, at end insert <and the payment by the local authority of the relevant amount in respect of the cost of the support>

**Michael Matheson**

- 6 In section 3, page 3, line 13, leave out from third <the> to end of line 14 and insert <support for the supported person>

**Dr Richard Simpson**

- 22 In section 3, page 3, line 16, at end insert—  
<( ) In calculating relevant amounts, a local authority must not apply any automatic assumption that the provision of support under Option 1 or Option 2 will cost less than the provision of support under Option 3.>

**Section 4**

**Michael Matheson**

- 7 In section 4, page 3, line 34, at end insert—  
<( ) In carrying out the duties imposed by subsections (2) and (3)(b), the authority must inform the supported person of—  
(a) the amount that is the relevant amount for each of the options for self-directed support from which the authority is giving the person the opportunity to choose, and  
5 (b) the period to which the amount relates.>

**Dr Richard Simpson**

- 7A As an amendment to amendment 7, line 7, at end insert <, and  
( ) in any case where the relevant amount for one or more of the options for self-directed support from which the authority is giving the person the opportunity to choose is less than the relevant amount for one or more of the other such options, the reasons for the difference (in writing).>

**Section 5**

**Dr Richard Simpson**

- 23 In section 5, page 4, line 6, leave out from <, because> to <disability,> in line 7

**Michael Matheson**

- 8 In section 5, page 4, line 12, after <guardian> insert <, continuing attorney>

**Dr Richard Simpson**

- 24 In section 5, page 4, line 14, at end insert <, and

- ( ) the local authority is satisfied that the supported person is not incapable (within the meaning of the Adults with Incapacity (Scotland) Act 2000 (asp 4)) of—
  - (i) agreeing that another person should be involved under subsection (4) in order to assist the supported person in making decisions about relevant matters, and
  - (ii) making a choice in pursuance of section 4(2) or (3)(b).>

**Dr Richard Simpson**

- 25** In section 5, page 4, line 18, after <person> insert <who the authority considers are suitable to assist the supported person in making decisions about relevant matters,>

**Michael Matheson**

- 9** In section 5, page 4, line 19, at beginning insert <if the supported person agrees,>

**Dr Richard Simpson**

- 26** In section 5, page 4, line 20, at end insert—

<( ) In identifying a suitable person to involve in assisting the supported person under subsection (4), the local authority—

- (a) must be satisfied that—
  - (i) there is no reason to believe that the supported person will come under undue influence in—
    - (A) agreeing to the involvement of that person in the provision of assistance, and
    - (B) selecting an option for self-directed support under section 3, and
  - (ii) the person is sufficiently aware of the supported person’s circumstances and condition and the requirements for assistance arising from those circumstances and that condition, and
- (b) must have regard to—
  - (i) the accessibility of the person to the supported person,
  - (ii) the ability of the person to assist the supported person in the decision-making process,
  - (iii) any likely conflict of interest between the person and the supported person, and
  - (iv) any likely undue concentration in the person of power over the supported person.>

**Michael Matheson**

- 10** In section 5, page 4, line 22, at end insert—

<“continuing attorney”—

- (a) means a continuing attorney within the meaning of section 15 of the 2000 Act, and

- (b) includes a person granted, under a contract, grant or appointment governed by the law of any country, powers (however expressed), relating to the granter's property or financial affairs and having continuing effect despite the granter's incapacity.>

**Dr Richard Simpson**

- 27 In section 5, page 4, leave out lines 31 and 32

**Section 6**

**Michael Matheson**

- 11 In section 6, page 5, line 23, at end insert—

<( ) In carrying out the duties imposed by subsections (2) and (3)(b), the authority must inform the supported person of—

- 5 (a) the amount that is the relevant amount for each of the options for self-directed support from which the authority is giving the person the opportunity to choose, and
- (b) the period to which the amount relates.>

**Dr Richard Simpson**

- 11A As an amendment to amendment 11, line 7, at end insert <, and

( ) in any case where the relevant amount for one or more of the options for self-directed support from which the authority is giving the person the opportunity to choose is less than the relevant amount for one or more of the other such options, the reasons for the difference (in writing).>

**Section 7**

**Michael Matheson**

- 12 In section 7, page 6, line 4, at end insert—

<( ) In carrying out the duties imposed by subsections (2) and (3)(b), the authority must inform the supported person of—

- 5 (a) the amount that is the relevant amount for each of the options for self-directed support from which the authority is giving the person the opportunity to choose, and
- (b) the period to which the amount relates.>

**Dr Richard Simpson**

- 12A As an amendment to amendment 12, line 7, at end insert <, and

( ) in any case where the relevant amount for one or more of the options for self-directed support from which the authority is giving the person the opportunity to choose is less than the relevant amount for one or more of the other such options, the reasons for the difference (in writing).>

**Mark McDonald**

- 28 In section 7, page 6, line 8, leave out <age and>

**Mark McDonald**

- 29 In section 7, page 6, line 13, leave out subsection (6)

**Section 8**

**Alison McInnes**

- 30 In section 8, page 7, line 18, at end insert <(including an explanation of how each option might apply in the person’s particular circumstances)>

**Alison McInnes**

- 31 In section 8, page 7, line 24, at end insert <, and  
( ) assistance to the person in structuring and commissioning a package of support (including in relation to administration, budgeting and procurement of services).>

**After section 8**

**Drew Smith**

- 32 After section 8, insert—  
<Advocacy  
(1) Every person who has under section 4, 6 or 7 been given by a local authority an opportunity to choose one of the options for self-directed support has a right of access to independent advocacy.  
(2) Each local authority must—  
(a) secure the availability of independent advocacy services to those persons mentioned in subsection (1), and  
(b) take appropriate steps to ensure that those persons have the opportunity of making use of those services.  
(3) In this section “advocacy services” and “independent” have the meaning given in section 259 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13).>

**Section 11**

**Alison McInnes**

- 33 In section 11, page 8, line 17, after <made> insert—  
<( ) the person decides that the option chosen is inappropriate to the person’s circumstances and wishes to switch to a different option, or  
( )>

## Section 12

### Michael Matheson

- 13 In section 12, page 8, line 27, leave out <and 7> and insert <, 7, 13(2)(b) and 21(1A)>

## Section 13

### Jackie Baillie

- 34\* In section 13, page 9, line 16, at end insert—
- <( ) establishing a scheme for the regulation of the quality of support provided by persons who—
- (i) provide support to which a direct payment relates, and
  - (ii) by virtue of falling within the exception to the meaning of “support service” in paragraph 1(2)(c) of schedule 12 to the Public Services Reform (Scotland) Act 2010 (asp 8), are not otherwise subject to the registration requirement under section 59 of that Act.>

## Section 15

### Dr Richard Simpson

- 35 In section 15, page 9, line 36, leave out from <, because> to <disability,> in line 37

### Michael Matheson

- 14 In section 15, page 10, line 3, after <guardian> insert <, continuing attorney>

### Dr Richard Simpson

- 36 In section 15, page 10, line 7, at end insert <, and
- ( ) the local authority is satisfied that the supported person is not incapable (within the meaning of the 2000 Act) of agreeing that another person should be involved under subsection (3) in order to assist the supported person in relation to the carrying out of the assessment.>

### Dr Richard Simpson

- 37 In section 15, page 10, line 9, after <person> insert <who the authority considers are suitable to assist the supported person in making decisions in relation to the carrying out of the assessment,>

### Michael Matheson

- 15 In section 15, page 10, line 11, at beginning insert <if the supported person agrees,>

### Dr Richard Simpson

- 38 In section 15, page 10, line 12, at end insert—

- <( ) In identifying a suitable person to involve in assisting the supported person under subsection (3), the local authority—
- (a) must be satisfied that—
    - (i) there is no reason to believe that the supported person will come under undue influence in agreeing to the involvement of that person in the provision of such assistance, and
    - (ii) the person is sufficiently aware of the supported person’s circumstances and condition and the requirements for assistance arising from those circumstances and that condition,
  - (b) must have regard to—
    - (i) the accessibility of the assistant to the supported person,
    - (ii) the ability of the assistant to assist the supported person in the assessment process,
    - (iii) any likely conflict of interest between the person and the supported person, and
    - (iv) any likely undue concentration in the person of power over the supported person.>

**Michael Matheson**

- 16** In section 15, page 10, line 15, at end insert—
- <“continuing attorney”—
- (a) means a continuing attorney within the meaning of section 15 of the 2000 Act, and
  - (b) includes a person granted, under a contract, grant or appointment governed by the law of any country, powers (however expressed), relating to the granter’s property or financial affairs and having continuing effect despite the granter’s incapacity,>

**Dr Richard Simpson**

- 39** In section 15, page 10, leave out lines 24 and 25

**Section 16**

**Jackie Baillie**

- 40** Leave out section 16

**Section 17**

**Nanette Milne**

- 41** In section 17, page 11, line 3, at end insert <to, amongst others, persons upon their discharge from secondary health care services>

**Nanette Milne**

42 In section 17, page 11, line 3, at end insert—

<(2) A local authority must—

(a) from time to time, for the purpose of ensuring that supported persons are not prevented from choosing Option 1 or Option 2 by a lack of availability of suitable providers of support, consider whether there are any steps it could reasonably take to promote and sustain the availability of a range of such providers, and

(b) if any such steps are identified, take those steps.

(3) In subsection (2), “supported person” has the meaning given by section 3(2).>

**Section 20**

**Jackie Baillie**

43 In section 20, page 11, line 28, after <12> insert <, 13>

**Michael Matheson**

17 In section 20, page 11, line 29, at end insert—

<( ) Before laying a draft of a Scottish statutory instrument containing regulations under section 12 or 21 before the Scottish Parliament, the Scottish Ministers must consult such persons as they consider appropriate.>

**Jackie Baillie**

17A\* As an amendment to amendment 17, line 3, after <12> insert <, 13>

**Section 21**

**Michael Matheson**

18 In section 21, page 11, line 32, at end insert—

<(1A) Regulations under subsection (1) which disapply section 4(2) or 7(2) must include provision deeming a person to have chosen Option 3 of the options for self-directed support.>

**Michael Matheson**

19 In section 21, page 11, leave out line 34

**Section 22**

**Michael Matheson**

20 In section 22, page 12, line 13, at end insert—

<“relevant amount” has the meaning given by section 3(2),>

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