



**THE LAW SOCIETY
of SCOTLAND**
www.lawscot.org.uk

Consultation Response

Draft Carers (Waiving of Charges for Support) (Scotland) Regulations 2014: a public consultation on draft regulations to accompany the Social Care (Self-directed Support) (Scotland) Act 2013

The Law Society of Scotland's response

July 2013

Introduction

The Law Society of Scotland aims to lead and support a successful and respected Scottish legal profession. Not only do we act in the interests of our solicitor members but we also have a clear responsibility to work in the public interest. That is why we actively engage and seek to assist in the legislative and public policy decision making processes.

The Mental Health and Disability sub-committee (the committee) welcomes the opportunity to consider and respond to the Scottish Government's consultation on the Draft Carers (Waiving of Charges for Support) (Scotland) Regulations 2014. The committee has the following comments to make:

General Comments

Although the committee believes that there will be additional costs for local authorities, the proposed legislation will provide increased support for carers, which the committee welcomes.

Consultation Questions

Question 1: What are your views on Part 2 of the draft Regulations (calculation, payment and termination of direct payments)?

- a) **Is paragraph 9 clear and easy to understand?**
- b) **Do you agree with the waiving of charging circumstances as set out in paragraph 9?**
- c) **If you do not agree with the waiving of charging circumstances as set out in paragraph 9, please state your reasons below:**

The committee agrees that the wording and intention of the Regulations are clear. However whether the charges are waived or not sometimes depends on whose needs are being assessed. If the supported person needs a break or goes to day care and this is seen as required for the supported person the normal charge will apply however if it is the carer that applies for it and is assessed as requiring it then there would be no charge. This could

mean that depending on who applies, different charges applying to families even where they are in the same situation.

Question 2

- a) **Are you content with the examples of support to carers and young carers, as set out in paragraph 10, where charges will be waived?**
- b) **If you are not content, please state your reasons below:**
- c) **Are there further examples that you would like to add?**
- d) **If there are further examples that you would like to include in the list, please state these below and also set out your reasons for suggesting their inclusion.**

The committee welcomes the inclusion of specific examples of direct support to carers and young carers which makes it clear what should be provided free of charge for them. However the examples of support with housework or gardening or other similar activity which indirectly helps the carer to provide support are not as clear. The committee considers it would be useful to have further guidance on when that should reasonably be granted, as at the moment that service would often be provided to the service user, for example if it is intended that a carer who does not live with a service user is to benefit from this provision, this should be clearly stated.

It would also be helpful to provide that the Local Authority has to be satisfied this will provide more care/preserve the care that is being given to the service user in the assessment of needs of the carer and any review of the direct payment.

Question 3

- a) **Do you agree with the exceptional circumstances set out in paragraphs 12 (with examples) and 13 about support to carers to help pay for driving lessons and taxi fares?**
- b) **If you do not agree, please state your reasons below:**

The committee can see why a carer who doesn't drive may wish to ask for help with taxi fares etc but this could penalise those who do drive and may lead to unequal treatment of carers.

Question 4

- a) **Do you agree with the waiving of charges as set out in paragraphs 14 and 15 with regard to short breaks?**
- b) **If you do not agree, please set out your reasons below:**

In relation to breaks, the committee agrees that this is clear and desirable, but suggests that this will increase costs to Local Authorities quite considerably.

Question 5

- a) **Do you agree with the position set out in paragraph 16 that when the carer and cared-for person take a break together, then as well as waiving the cost of the break for the carer, the additional costs of the break to enable the break to take place will also be met by the local authority?**
- b) **If you do not agree, please state your reasons below:**

The committee agrees this is reasonable and proportionate to allow the break to take place.

Question 6

- a) **Do you agree with the position set out in paragraphs 17 and 18 that local authorities will waive the cost of replacement care when they provide or commission replacement care in circumstances when others cannot provide replacement care free of charge?**
- b) **If you do not agree with the position, please set out your reasons below:**

The provision for waiving costs for replacement care is not clear. The guidance suggests this will be exceptional and that in most cases a friend or relative will be there but if there is now the suggestion that this will be provided free of charge then the need for family and friends to step in will not be there and they may no longer offer it. Instead they may legitimately ask that the Local Authority should meet this need.

However if the service user was to be provided with respite, for instance in a care home, because he/ she is assessed as needing this; and by default this means the carer is able to go on a holiday or have a break, then a charge can still be made to the service user. The committee suggests that this may produce anomalous situations.

Question 7: Do you have any additional comments? If so, please use the space below to provide these further comments. Local authorities may wish to comment on any financial consequences arising from the Regulations. If so, please set out estimates of anticipated support to be provided to carers and cost estimates.

The committee has no further comments to make.

For further information and alternative formats, please contact:

Brian Simpson

Law Reform

DD: 0131 476 8184

E: briansimpson@lawscot.org.uk

The Law Society of Scotland

26 Drumsheugh Gardens

Edinburgh

EH3 7YR

www.lawscot.org.uk