



THE 3 R'S PROJECT FACTSHEET

Employment of a family member as a personal assistant

There are times when a supported person may want to employ a family member to be their personal assistant. This may be allowed in appropriate circumstances. This FACTSHEET looks at the issues to be considered in that situation.

Under the Self-directed Support (Direct Payments) (Scotland) Regulations 2014 (referred to as 'the Regulations'), the local authority can agree to a supported person employing a family member where *appropriate*. It provides the opportunity for this arrangement where it is the best or only solution to meeting the personal outcomes and assessed needs for the supported person. This is in line with the general principles of the Social Care (Self-directed Support)(Scotland) Act 2013, and the aims and intentions behind self-directed support to provide creative and effective solutions for supported people.

The Regulations provide a clear framework for such decisions, providing examples of appropriate and inappropriate circumstances for the employment of family members.



This framework involves the local authority as a party to any decisions. This means that the local authority retains the power to either agree or disagree to the employment of a family member. This should be on the basis of whether the arrangement will or will not meet the assessed needs of the supported person, and not on the basis of assumptions in opposition to employing family members.

The only way to employ a personal assistant (PA) is through the Direct Payment option.

Under the Regulations, **family member** means the spouse or civil partner of the direct payment user, a person who lives with the direct payment user as if 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 and a person who lives with any person listed above as if their spouse or civil partner. All other relationships fall outwith the scope of the Regulations.

All of the following requirements must apply in order for family members to be employed as personal assistants:

- ▶ the local authority, the family member (i.e. the prospective personal assistant) and the supported person must *all* agree to the family member providing support;
- ▶ the family member must be *capable* of meeting the supported person's needs via the employment arrangement (Note: the authority, with its legal duty of care, ultimately decides if the arrangement will meet the supported person's assessed needs), and;
- ▶ **any one of the following** additional appropriate circumstances must apply:
 - There is a limited choice of providers: 'limited choice' refers to instances where the person's choice is narrowed by specific circumstances, such as the person's location.
 - The supported person has specific communication needs which make it difficult for another provider to meet their assessed needs.
 - The family member will be available to provide support at times when other providers would not reasonably be available.
 - The intimate nature of the support makes it preferable to the supported person that the support is provided by the family member.
 - The supported person has religious or cultural beliefs that make the arrangement preferable to the supported person.

- The supported person requires palliative care.
- The supported person has an emergency or short-term necessity for the support.
- There are any other factors which make it appropriate, in the opinion of the local authority, that the family member provides the support.

The creation of an employment relationship results in a formal employer/employee relationship.

A family member is *not permitted* to provide support if the authority determines that either the family member or the supported person is under undue pressure to agree to the arrangement, or the family member is a **guardian, continuing attorney or welfare attorney** for the supported person with power to make decisions as regards the support to be provided through the direct payment. These two inappropriate circumstances can apply (and can prevent an employment arrangement) regardless of whether any, or all, of the appropriate circumstances apply.

Family members can only be employed to meet the *assessed needs* for the supported person. In other words, the paid employment arrangement relates only to the support that would otherwise be arranged by the local authority.

The key factor is that in all cases the local authority can only fund the formal support arrangement up to the level that they would ordinarily support, in accordance with the assessed needs for the supported person.



The local authority should approach each request to employ a family member on a case-by-case basis. If the local authority does not agree with the employment of a family member it should explain its reasoning to both the supported person and the prospective personal assistant. In accordance with the SDS legislation, it should inform both parties of the additional support and information services and, where appropriate, their right to advocacy

with respect to the decision. The local authority should give the supported person an opportunity to query their decision making with reference to the circumstances set out in the Regulations.

If you would like further clarification on any of the information contained in this FACTSHEET, please contact the 3 R's Project on 0131 467 2994 or email them at:

info@mecopp.org.uk

MECOPP
Maritime House
8 The Shore
Edinburgh
EH6 6QN

Tel: **0131 467 2994**

Email: info@mecopp.org.uk

Website: www.mecopp.org.uk

Charity Number: SC029700. Company Number: SC202715.

September 2019