



# THE 3 R'S PROJECT FACTSHEET

The duties and powers given to the local authority by Self-directed Support legislation

This FACTSHEET provides a summary of the main duties (acts which require to be done) of local authorities set out in the Social Care (Self-directed Support)(Scotland) Act 2013 (referred to as 'the 2013 Act').

## Legal duty

There is a duty placed on the local authority 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** which the authority must have regard to in carrying out all of its functions under Part 2 of the Social Work (Scotland) 1968 Act (with some exceptions), all of sections 22 and 23 of the Children (Scotland) 1995 Act, Parts 2 or 3 of the Carers (Scotland) Act 2016 and all of the 2013 Act.

This means that:

- ▶ The local authority should **collaborate** with the supported person when they undertake the assessment and provide support. It supports an equal partnership between the professional and the adult, child or carer.



- ▶ The local authority should take steps to ensure that the person makes **informed choices** as part of their assessment and in selecting their support options. This may include the provision of any necessary assistance from other people, for example, interpreters or communication devices.
- ▶ The local authority should take steps to **involve** the supported person, if they wish to be involved, in their assessment and in selecting their support options.

## Legal duty

There is a duty on the local authority to take reasonable steps to facilitate the following general principles:

- ▶ Respect for the supported person's **dignity**, and;
- ▶ **Participation** in the life of their own community.

This duty applies with respect to adults, children/families, adult carers and young carers who are to chose (or have chosen) one of the options for self-directed support.

Participation and dignity are core aspects of the general principle related to **independent living**. This principle should guide and inform both the assessment of need stage *and* the support planning stage.



## Legal power

The 2013 Act also provided a new legal power for local authorities to provide support to carers (of adults) following a carers assessment. However, this power has now been replaced by new legal duties under the Carers (Scotland) Act 2016. If you would like to learn more about support for carers, see MECOPP's basic guide "An Introduction to the Carers (Scotland) Act 2016".

<https://www.mecopp.org.uk/mecopp-publications/2018/12/14/mecopp-carers-act-guide-english>

## Legal duty

The 2013 Act also introduced a duty to offer four options to the supported person for delivery of self-directed support. This applies with respect to adults, children/families, adult carers and young carers who the local authority have decided are eligible for self-directed support.

The options are intended to support the flexibility and creativity allowed under the duties relating to both adults and children.

The four options are:

- ▶ **Option 1:** A direct payment.
- ▶ **Option 2:** 'Directing the available support': this option should provide greater transparency and control for the supported person without the requirement to take this support as a direct payment. The authority should take steps to ensure that Option 2 differs in nature from both Option 1 (the direct payment) and Option 3 (arranged services).
- ▶ **Option 3:** 'Services arranged for the person by the local authority' – this is where the authority arranges any services on the person's behalf.
- ▶ **Option 4:** A mix of the first three options for different aspects of the person's support.

Please see MECOPP's own FACTSHEET "Guide to Self-directed Support"

<https://www.mecopp.org.uk/mecopp-publications/2019/1/8/guide-to-self-directed-support> for more details about the four options.

## Legal duty

The local authority is placed under a new duty to explain the **nature and effect of the four options** provided under the Act. This means that the authority should explain what each of the four options will mean for the supported person. This applies both in terms of the *general impact* of the options and the *specific impact* for the supported person, i.e. what the different options might mean for the individual given their own circumstances and support networks.

The authority is placed under a duty to provide information about other persons or organisations that are not part of the local authority, which can **provide assistance or information** about the options and how to manage the support.

The local authority is placed under a duty, where it is appropriate to do so, to provide information about organisations and individuals who can provide **independent advocacy services**, i.e. services that can advocate on the person's behalf in relation to the assessment and the selection of the various options provided under the 2013 Act. See the Scottish Independent Advocacy Alliance website ([www.siaa.org.uk](http://www.siaa.org.uk)) or the Self Directed Support Scotland website ([www.sdsscotland.org.uk](http://www.sdsscotland.org.uk)) for further information.

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:

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