

Covid-19: Guidance on Self-directed Support Option 1 and Option 2

V1 14 May 2020

Covid-19: Guidance on Self-directed Support Option 1 and Option 2

1. Context and background

This guidance is for Local Authority and Health and Social Care Partnership staff who assess, approve and administer social work and social care and support (including carer support), and approve Self-directed Support (SDS) budgets. It is for those working in adult and children's services, whether those services are managed by the Local Authority or delegated to the Integration Authority. It is also for care providers delivering Option 2 and organisations who help people to get the most from their social care support.

It assumes a good understanding of the Social Care (Self-directed Support) (Scotland) Act 2013: statutory guidance. It should be read in conjunction with the [statutory guidance](#) on emergency [legislation](#), especially in relation to easement of social work assessment duties during Coronavirus (COVID-19).

This guidance is relevant only for the duration of the COVID-19 pandemic period.

This guidance sets out a joint position from Scottish Government and COSLA relating to Self-directed Support Options 1 and 2 during Covid-19. It has been co-produced with nationally funded SDS partners and embodies and endorses the key messages articulated in the SDS Collective Call statement (See Appendix 1).

This guidance aims to support local social care systems and services to continue to respond appropriately and flexibly, and to deliver coherence in the spirit and expectations of the Social Care (Self-directed Support) (Scotland) Act 2013 during the COVID-19 period. It seeks to replicate the provision of the [COSLA Guidance for Commissioned Services during Covid-19 Response](#) for SDS Option 3 in the context of Options 1 and 2.

It is critical that social care support is maintained with minimal interruption during this period to ensure the safety, dignity and human rights of people who already have support in place and for those who will need it, taking into account their strengths, family and community assets at this time. Scottish Government and COSLA expect that local systems will act to do what is right to deal with the virus and to protect people's health and wellbeing, recognising that funding is available to meet both existing and new demand in social care during this period of unprecedented pressures.

This guidance does not include information on infection control for social care settings. This can be found at <https://www.gov.scot/policies/social-care/latest/>.

This document relates solely to social care funded by local authorities. The Independent Living Fund (ILF) is a separate national scheme and has produced its own guidance: <https://ilf.scot/ilf-scotland-coronavirus-update-2/>.

This guidance may be read in tandem with accompanying guidance aimed directly at people using Option 1 and Option 2, using an FAQ format to address many of these

points. This is being co-produced with partners and will be available on <https://socialworkscotland.org/latestupdatesoncovid19/> week commencing 18th May 2020.

2. Guiding principles

In addition to the statutory principles of the Social Care (Self-directed Support) (Scotland) Act 2013, the following principles underpin this guidance:

- To maintain existing arrangements for care and support
- To maximise flexibility and autonomy for the supported person in meeting agreed outcomes
- To minimise bureaucracy and administrative processes surrounding SDS option 1 and 2 as far as possible
- To ensure Fair Work principles are applied to the Personal Assistant (PA) workforce, PA employers and contracted services
- To maximise and support the capacity of the PA workforce during the pandemic period, retaining PA and provider capacity long term
- To ensure equality of access, choice and control across all Self-directed Support Options
- To support efficient and sustainable use of funding

3. Maintaining existing packages of care and support

As advised by Scottish Government and COSLA on 24 March 2020, the Scottish Government will meet additional costs to increase support and staff capacity in social care during the pandemic, subject to alignment with local mobilisation plans. Existing packages of support provided through Option 1, Option 2, Option 3 and Option 4 arrangements should continue to be fully funded.

Scottish Government has agreed with COSLA that any reasonable additional costs caused by COVID-19, including for sick pay or for those self-isolating, can be met and recorded through local Health and Social Care mobilisation plans. This should cover additional costs for all services delegated to Integration Joint Boards. That agreement was specifically to ensure that funding is available to meet both existing and new demand in social care, while recognising that there are unprecedented pressures on the system. Additional relevant costs within non-delegated services (eg Children's Services in some areas) should be recorded in the COSLA Financial Template. Similarly, the Scottish Government and COSLA have encouraged the expansion of carer support for unpaid carers due to the additional pressure carers are under, again through local mobilisation plans.

This would be costs incurred due to the COVID-19 response that are over and above those already agreed in budgets.

4. Maximising flexibility

Self-directed Support Option 1 (direct payment) and Option 2 offer the most flexible ways for people to meet their assessed needs and personal outcomes under the Social Care (Self-directed Support) (Scotland) Act 2013 or Carers (Scotland)

Act 2016. This flexibility should continue to operate during the period of the pandemic, and enable the exploration of creative solutions during this unprecedented period.

Supported people and unpaid carers should be able to use their budgets in new ways to meet their outcomes when workforce or other resources are affected due to sickness, self-isolation or shielding. This may include spend on transport to take the person to appointments, shopping delivery costs, laundrette costs and house cleaning where PA's or providers would have supported the person with daily living tasks but are not able to do so currently. Other examples could include the purchase of IT equipment or website memberships to facilitate social interaction while physical distancing applies, or gym equipment as an alternative to a gym membership while clubs are closed and not charging as usual.

There should remain a requirement to demonstrate a clear link between items and services purchased and the personal outcomes identified and agreed in the person's assessment/care and or support plan, adult carer support plan or young carer statement.

Local authorities should pro-actively communicate their approach to SDS Option 1 and 2 budgets during this period in a clear and transparent way to people using such support. This communication should also be shared with independent support organisations, disabled people's/older people's organisations, Carers Centres and other interested parties locally.

Where there are pre-existing concerns about the way a budget has been used or if there are questions raised around the person's capacity to make decisions, this flexibility may not be appropriate (in accordance with the [Self-directed Support \(Direct Payments\) \(Scotland\) Regulations 2014 Section 8.1](#)). The professional judgement of social workers and related professionals should inform all decision making in such cases.

The flexibility required during this period may result in employment of additional staff, payroll amendments and other associated bureaucracy for Direct Payment employers managing replacement care. Independent support organisations contracted by local authorities to support Direct Payment employers should be funded accordingly to meet this demand.

Individuals who use their budget to pay for employment support (payroll providers etc) and incur extra costs should be able to use their Direct Payment to cover these costs.

Processes should remain in place to agree budgets for new Option 1 and Option 2 arrangements for those who wish them.

5. Employing family members

The Social Care (Self-directed Support) (Scotland) Act 2013 outlines that PA employers may employ family members where this is deemed appropriate, under exceptional circumstances. Local authorities should consider the test of exceptional

circumstance to be met during the COVID-19 pandemic. During this period, there may be increased reliance on family members, particularly when PA employers or PA's themselves are shielding or self-isolating. Family members may be the only people available who can provide support on a temporary basis, and be a necessary adjunct to the social care workforce at this time.

Family members may be able and willing to provide care and supports in an unpaid capacity. However in other cases, consideration to employ family members on a temporary basis should be given, for example if family members lose income as a result of taking on a caring role during the pandemic period. Decisions should be taken on a case by case basis, taking account of the family member's health, their capacity to provide the required care, and other welfare and wellbeing factors.

Consideration should be given to all such requests during the pandemic period where safeguarding and undue influence is not a concern. The professional judgement of social workers and relevant professionals should inform all decision making in relation to appropriateness of employing a family member. Where there are current or historic Adult Support and Protection concerns involving the individuals or family members who have been identified as prospective PA's, then they should not be employed as a PA.

The PA employer should ensure that there is a clear procedure for the original PA to resume their role when self-isolation or shielding ends, and that the family member employed to provide backfill understands this arrangement is temporary.

If the family member is acting as Power of Attorney or Guardian and managing a direct payment, it is prohibited under the Direct Payment regulations for them to be employed as a PA. Further guidance on this can be found at <https://www.gov.scot/publications/managing-self-directed-support-for-adults-with-incapacity-guidance/> and FAQs at <https://www.gov.scot/publications/power-of-attorney-and-the-adults-with-incapacity-scotland-act-2000-guidance/>.

6. Reassuring supported people and unpaid carers that unavoidable changes to their care or support as a result of COVID-19 are temporary

While funding is in place to support both existing and new demand, it may not always be possible to continue to provide the same type or level of support during the pandemic. Such unavoidable changes may include:

- a reduction in workforce capacity as a result of workers being symptomatic/ testing positive for Covid-19, self-isolating, or shielding.
- many group-based supports will not be running at this time due to physical distancing measures.
- some supported people who require to shield or self-isolate may temporarily cease their normal carer/ PA provision due to heightened risk of infection, choosing to have household members take over some aspects of their direct care and/ or choosing to use their budget differently.

People should be reassured that any changes to their care and or supports as a result of the pandemic will be temporary. Even though supports may be curtailed in

the short term, all direct payment amounts should remain the same and full support provision (or alternatives) should be resumed as soon as is practicable. This may require thinking differently about support previously taken in group settings, as physical distancing is likely to be in place for some time.

People's needs may change due to COVID-19, in which case a reassessment with their full involvement will be required when it is practical to do so (in line with the [easement of social work assessment duties](#) within emergency legislation).

7. Minimising bureaucracy and administrative processes for SDS Options 1 and 2

Local authorities should consider increasing social worker autonomy in funding decisions for new or existing Option 1 and 2 arrangements. Proportionate oversight is advised at this time to streamline processes, reduce bureaucracy and speed up the time taken to get budgets, supports or care in place.

8. Ensuring fairness and equity for the PA workforce

PA's should have access to any entitlements and support that other social care workers have, including Fair Work practices and access to support as essential key workers. The letter [Coronavirus \(COVID-19\) - key workers definition and status](#) from Scottish Government and COSLA on 30th March 2020 confirms their key worker status.

Where proof of identity is perceived to be an issue, the employer, the local authority or an advice organisation can write a letter as proof of their employment. A template letter can be found in Appendix 2 and can be adapted to suit local circumstances.

Option 1 budgets must enable the PA employer to pay at least the Real Living Wage (£9.30 per hour) from 6th April 2020 as per the joint SG – COSLA letter [Fair Work and the Living Wage in Adult Social Care](#) 10th April 2020.

Option 2 budgets should also enable the commitments of the above letter.

9. Maximising the capacity of the PA workforce

The PA workforce is of critical importance to social care and is regarded to be a key part of the social care workforce. PA's currently make up around 5% of the social care workforce, and retaining them throughout and beyond this period is a priority.

Where a PA employer is shielding or self-isolating, tasks that do not involve entering the house such as shopping and collecting medication can still be undertaken. Local authority budgets should allow for PA employers to pay PA's in this position their normal rate, in line with the COSLA Commissioned Services guidance for Option 3.

Where a PA has been asked by their employer not to provide support during this period, it may be possible for the PA to work for another supported person or agency. This will require the employer's and potentially the insurance company's

consent, depending on their contract, and will entail clarity on where employer responsibilities such as health and safety are located.

Where there is agreement among relevant parties, the PA may be retained on full pay by their original employer, and:

- The PA may agree to work in a volunteer capacity for a new employer
- The PA may work for another PA employer for a temporary period
- PA's may take a temporary contract with a provider organisation which is commissioned by the local authority or privately funded
- The PA may undertake other work generally

Any changes at this time should be in line with the terms and conditions in the existing PA employer/employee contract.

10. When a PA is Shielding or in a high-risk group

Shielding refers to a specific group of people at very high risk of severe illness from COVID-19. More information can be found at <https://www.nhsinform.scot/illnesses-and-conditions/infections-and-poisoning/coronavirus-covid-19/coronavirus-covid-19-shielding>. People in this group will have received a letter from their GP which requires them to stay inside for 12 weeks and minimise all contact.

NHS Inform also recognises that there are groups of people at increased risk yet who do not fall within the criteria for shielding:

<https://www.nhs.uk/conditions/coronavirus-covid-19/advice-for-people-at-high-risk/>
This group may choose to voluntarily self-isolate during the pandemic period.

The UK Government's Social Care Covid action plan

<https://www.gov.uk/government/publications/coronavirus-covid-19-adult-social-care-action-plan/covid-19-our-action-plan-for-adult-social-care> reads, "Where social care workers are unable to work for a long period of time, because they are in a high-risk group, or because they are shielding during the outbreak, employers can furlough these workers, to ensure that they continue to receive 80% of their normal income." We expect in the first instance that employers will apply to the [Coronavirus Job Retention Scheme](#) (colloquially referred to as furlough) for relevant PA's.

Further detail has been published by the UK Government for workers employed by organisations. For the avoidance of doubt, and to ensure parity across the social care workforce, if it proves impossible for directly employed social care PAs to be furloughed, the Scottish Government will meet similar costs through the mobilisation plans/ COSLA Financial Template.

Self-employed workers should claim through the [Self-employment Income Support Scheme](#).

If a PA who does not fall into either the Shielding or the High Risk groups as defined on NHS Inform is concerned for their health and chooses not to work, then the PA Employer could consider the use of annual or unpaid leave. The furlough scheme or equivalent is unlikely to encompass this group.

PA employers should be made aware of the potential consequences for their support if they make a PA redundant.

11. When a PA is self-isolating

Where a PA self-isolates due to having symptoms of COVID-19 or because they are living with someone that has symptoms, the [Fair Work and the Living Wage letter](#) and the [COSLA Guidance for Commissioned Services during Covid-19 Response](#) set out our expectations.

UK government guidance applies to Statutory Sick Pay. This can be found at <https://www.gov.uk/government/publications/guidance-to-employers-and-businesses-about-covid-19/guidance-for-employers-and-businesses-on-coronavirus-covid-19#staying-at-home-if-you-or-someone-in-your-household-has-symptoms-of-coronavirus-covid-19-on-site>

Specific advice relating to PA's and Statutory Sick Pay can be found in the section *Statutory sick pay (SSP) for PA's* at <https://www.gov.uk/government/publications/coronavirus-covid-19-guidance-for-people-receiving-direct-payments/coronavirus-covid-19-qa-for-people-receiving-a-personal-budget-or-personal-health-budget>, although many of the other aspects covered will not necessarily apply in Scotland.

The PA employer may need to ask the local authority for additional funding for replacement care and supports for the duration of the PA's period of self-isolation where contingency arrangements are exhausted.

12. Coronavirus Job Retention Scheme

The UK Government is responsible for the development and administration of the [Coronavirus Job Retention Scheme](#) (colloquially referred to as furlough).

Information specific to PA's and furlough can be found in the section *What is the government's expectation on furloughing of PA's?* at <https://www.gov.uk/government/publications/coronavirus-covid-19-guidance-for-people-receiving-direct-payments/coronavirus-covid-19-qa-for-people-receiving-a-personal-budget-or-personal-health-budget>, although many of the other aspects covered will not necessarily apply in Scotland.

More recently, the UK Government published [Adult Social Care: how we expect the sector to interpret guidance on the Coronavirus Job Retention Scheme](#) (27th April) which offers a little more detail.

13. Contingency Planning

Contingency planning for support and use of budgets should be in place for all direct payment packages. In accordance with good practice ([UK Guidance on Contingency Planning – Covid-19](#)), these existing contingency plans should be reviewed for their relevance during the COVID-19 pandemic period. Consideration should be given to contingency planning for those with Option 2 packages.

Consideration of the person's and wider family's general welfare, health and wellbeing should also be taken into account in contingency planning. The supported person and carers' views are paramount in developing this plan.

14. Access to Personal Protective Equipment (PPE)

Information for social care providers, personal assistants, and unpaid/family carers on how to access personal protective equipment (PPE) can be found at <https://www.gov.scot/publications/ppe-access-for-social-care-providers-and-unpaid-carers/>.

Scottish Government has published [advice for personal assistants](#) supporting people with personal care such as washing or dressing. Employers should refer to it when determining what PPE is appropriate to wear and how it should be disposed of, in accordance with their duties to ensure a safe workplace.

There is similar [advice for unpaid carers](#) who visit or live with a friend or family member to provide help with personal care.

Where a PA Employer is unable to access PPE through their usual routes, they or a representative can contact the Social Care PPE Support Centre on 0300 303 3020. The Support Hub will provide information about where to access PPE locally.

Where an unpaid/family carer requires PPE due to the caring role, and the routes normally used to access it are unavailable, they should contact their local carers centre who will advise on how to access supplies locally. A [list of local carers centres and young carer services](#) is available on the Care Information Scotland website.

Local PPE Hubs have been set up all over Scotland by Health and Social Care Partnerships to provide PPE to those providing social care support who need it.

Local Hubs will be in touch with providers, personal assistants and unpaid carers to let them know how to contact them. It may take some time to do this as they increase their operations to be able to support the whole social care sector. In the meantime, the NHS National Services Scotland Social Care PPE Support Centre provides a point of contact.

If a PA collects PPE, they will need an identification document as discussed in Section 8 of this guidance.

15. Ensuring parity across all SDS Options

Commitment has been made to provide funding for additional costs incurred as a consequence of the COVID-19 pandemic via local mobilisation plans/ the COSLA Financial Template. This applies across all SDS Options, including where flexibility in the use of Option 1 and Option 2 budgets relating to COVID-19 incurs additional costs.

The recently updated [COSLA Guidance for Commissioned Services during Covid-19 Response](#) is clear that where services are contracted under SDS option 3, payments for support to providers should continue in line with requirements contained in all care and support plans, where possible, even where there is staff absence or the person's support hours or group activities are reduced, unless the authority is able to utilise the hours elsewhere. In the spirit of fairness and equity, this should also apply to those providers and agencies under Option 2. Payment for support should continue to the usual schedule, and banking of hours should be considered as an option (in discussion with the provider), taking into account projected capacity to do after the pandemic period.

The longer-term sustainability of the care sector is an important consideration when making alternative arrangements. Providers are experiencing exceptional financial pressures during this time. Where providers are not able to provide group supports, alternatives should be explored using technologies to bring people together or providing individual support.

Some providers may not expect payment at this time, for example, for gym membership or season tickets for sporting activities. In this circumstance, alternatives to achieving the person's original outcomes should be explored. Local authority funding for such activities should not stop unless this has been mutually agreed with the person being supported.

Where local authorities have concerns about overpayment, these should be reconciled in line with Section 8 of the [COSLA Guidance for Commissioned Services during Covid-19 Response](#). To ensure reconciliation is done accurately and transparently, providers and direct payment recipients should keep a record of decisions made, (e.g. deployment of staff, additional costs incurred) with a transparent and clear link to individual care plans. All unspent funds in Direct Payment accounts should be returned to the local authority in the usual way.

It is acknowledged that local authorities may have made local arrangements with providers with regards to reconciling funds, and this guidance is not intended to cut across those arrangements.

Due to demand pressures across the whole system, it may be proportionate for the supported person to consider the use of alternative SDS Options to best meet their needs for a temporary period. For example, where an Option 3 provider cannot meet the needs of a supported person, the person may be offered the opportunity to take a direct payment under Option 1 or to choose an alternative provider under Option 2. In line with the [easement of social work assessment duties](#) within emergency legislation during COVID-19, this will not necessarily require a full review.

There may be practical challenges at a local level with the implementation of an alternative option as Local Authorities continue to adapt to current circumstances. We expect that these will continue to be worked through.

A model contract for Option 2 has been developed by CCPS to meet all legal requirements and can be either used as it is or developed further to suit local circumstances. It is available [here](#).

Appendix 1 - Self-Directed Support Collective Call to Action during COVID-19

The Self-Directed Support (SDS) Collective consists of people using social care services, unpaid carers and SDS advocacy, support and campaigning organisations. Our aim is to work together to promote improved practice in the development of self-directed support throughout Scotland.

During these unprecedented times the SDS Collective acknowledges the challenges that we as a society face. We believe it is vital that we work collectively to find solutions that will help get us through these tough times.

Our key messages during COVID-19:

- ✓ The values and principles of self-directed support are embedded in human rights and these must be recognised.
- ✓ The fundamental starting point is that people must continue to access the support that they need to assist them in staying as safe and as well as possible.
- ✓ All people who are directing their own support must be given clear, consistent and appropriate information on the measures taken to ensure their health and well-being.
- ✓ Personal Assistant employers and unpaid carers must have equity of access to appropriate Personal Protective Equipment and the training to use it. Adequate, clear information on the process to access PPE must be made available to all who require it.
- ✓ A 'one size fits all' approach is not appropriate. Flexibility is crucial at this vital time and must be actively encouraged. Personal assistant employers must be trusted to manage their budgets and to take good and autonomous care of their direct payment.
- ✓ Health and social care partnerships and local authorities must give people, especially those managing direct payments, clear guidance, support and reassurance that they will support the necessary flexibility, choice, control and use of resources without fear of repercussion.
- ✓ Everyone has the right to be made aware of local and national SDS independent support and information services to access support in order to develop contingency plans.

This vision requires courage, leadership, consistency and collaboration between all parties and a significant shift away from a 'top-down' approach to one where power can truly be transferred to citizens.

How to get in touch (including access to independent support and information organisations).

Via email- sdscollectivescotland@gmail.com

Facebook and Twitter- #SDSCollective

Appendix 2. Model Letter Proving Personal Assistant Identification

To whom it may concern,

Re: Personal Assistant/Social Carer Identification

I certify that is a Personal Assistant who is employed by me to provide critical care and support.

Please accept this letter as confirmation of key worker status as notified by the UK Government as part of Coronavirus (COVID-19) Health and Social Care response*.

If you have any questions about the use of this letter please contact Personal Assistants Network Scotland on 01563 522551 or info@panetworkscotland.org.uk

Contact Details (address and contact number of employer):

Signed

Dated

Self-Directed Support Direct Payment Funded Employer

* Health and Social Care Critical Workers

This includes but is not limited to doctors, nurses, midwives, paramedics, social workers, care workers, and other frontline health and social care staff including volunteers. More information can be found here:

<https://www.gov.uk/government/publications/coronavirus-covid-19-maintaining-educational-provision/guidance-for-schools-colleges-and-local-authorities-on-maintaining-educational-provision>

Developed by In Control Scotland