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Local Authority Chief Executives
Local Authority Directors of Social Work/Chief Social Workers
Local Authority Head of Children's Services
Local Authority Directors of Housing
Local Authority Directors of Finance
Health and Social Work Professional Bodies
Voluntary Sector Organisations
NHS Board Chief Executives

9 November 2007

Dear Colleague

CHANGE TO GUIDANCE ON EMPLOYING CLOSE RELATIVES UNDER SELF-DIRECTED SUPPORT SCHEMES

UPDATE TO PARAGRAPHS 110 TO 114 AND ANNEX B OF NATIONAL GUIDANCE ON SELF-DIRECTED SUPPORT

Purpose

1. This circular is for the attention of local authorities, voluntary sector organisations, relevant social work and health professional bodies and NHS Boards. It gives notice of an update to national guidance on self-directed support which takes account of a change in legislation concerning the employment of close relatives¹.
2. The Community Care (Direct Payments) (Scotland) Amendment Regulations 2007 (SSI 2007/458) (the '2007 regulations'), which come into force on 12 November 2007, amend the Community Care (Direct Payments) (Scotland) Regulations 2003 (SSI 2003/243 as also amended by SSI 2005/114). The 2007 regulations change the rules on employing close relatives. The regulations expand the list of close relatives of the beneficiary from which services may not normally be purchased. This is in order to reflect modern family set-ups and applies irrespective of where they live.
3. However, local authorities now have discretionary powers to allow the employment of a close relative who would otherwise be prohibited, where the local authority is satisfied that securing the service from such a person is necessary to meet the beneficiary's need

¹ Local authorities are advised that they should make themselves aware of the precise terms of the amended legislation http://www.opsi.gov.uk/legislation/scotland/ssi2007/ssi_20070458_en.pdf

for that service or, subject to an exception, is necessary to safeguard or promote the welfare of a child in need.

Background

4. The National guidance on self-directed support was published in July 2007². Paragraph 110 advised that the rules on employing close relatives were to be changed following the amendment of direct payments primary legislation within the Adult Support and Protection (Scotland) Act 2007, and the enactment of new regulations.
5. A public consultation³ invited views on proposals to adjust the rules which prevent people from using direct payments to employ close relatives to provide their care. The majority of respondents supported the general position that close relatives should not normally be employed under direct payments schemes. This general position remains important because of the very different relationships that a person would have with an employee and a family member and the conflicts of interest that can result from employing a close relative.
6. However, there was support for the proposal to allow local authorities discretionary powers to allow the employment of close relatives where they are satisfied that securing the service from such a person is necessary to meet the beneficiary's need for that service or, subject to an exception, is necessary to safeguard or promote the welfare of a child in need.
7. Respondents also called for expansion of the list of close relatives of the beneficiary in order to reflect modern family set-ups and that these apply irrespective of where they live.

Action

8. The Community Care (Direct Payments) (Scotland) Amendment Regulations 2007 come into force on 12 November 2007 and local authorities are asked to note the new rules on employment of close relatives provided in the attached guidance update.
9. A link to the November version of the National guidance on self-directed support will be made available with relevant amendments to paragraphs 110 to 114 and Annex B of the July 2007 guidance.

Yours sincerely



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² <http://www.scotland.gov.uk/181224>

³ Public consultation which closed in February 2005: [Direct Payments - Rules on Employing Relatives](#)