POLICY NOTE

THE SOCIAL SECURITY (ADVOCACY SERVICE STANDARDS) (SCOTLAND) REGULATIONS 2020

SSI 2020/115

The above instrument was made in exercise of the powers conferred by section 11(2) and (3) of the Social Security (Scotland) Act 2018 (the Act). The instrument is subject to affirmative procedure.

These Regulations set the service standards which must be met by any person who enters an agreement with the Scottish Ministers to provide independent advocacy services to support disabled people applying for social security benefits. The standards are published at https://www.gov.scot/isbn/9781839605024

Policy Objectives

To ensure that disabled people across Scotland will have access to an independent advocacy worker's help to make a claim to Social Security Scotland to receive benefits.

To further ensure that the advocacy support made available provides a high quality service and has consistent delivery across Scotland, by putting in place a set of standards for the provision of Scottish social security advocacy services.

Consultation

The Scottish Government undertook an open consultation between 11 July and 7 October 2019. Full details of the consultation responses, which included responses from campaigning / advocacy bodies, local authorities and charitable organisations, and the Scottish Government response to the consultation, can be found in the consultation report published on the Scottish Government website.

The consultation document sought views on draft service standards. These were structured around six over-arching principles:

Principle 1 - Definition of advocacy: This reiterates what is provided for by section 10(3) of the Act as to who is entitled to advocacy support, and sets out the role of the advocacy worker and how they are expected to perform that role. The importance of advocacy being independent was raised in the consultation so in response this has been emphasised in the standards. There were also concerns about the fact that some people who may be in need of advocacy support, when applying for assistance, might not regard themselves as disabled. To address this, the standards were revised to outline that Deaf people, and those with sensory disabilities and mental health conditions are included among those who may be expected to identify as being entitled to advocacy support. Additional reference to "rights" was also made throughout the standards to emphasise the human rights-based approach embedded within the Scottish social security system.

Principle 2 – Independence: The consultation document sought views on a definition of independence. Some concern was raised at consultation that the definition was too broad and

that provision of advocacy support should be through organisations solely providing advocacy services, to avoid potential conflicts of interest. However, the Scottish Government is not inclined to impose such a restriction. This means that welfare rights and advice organisations, for example, could provide advocacy support as long as they can ensure a separation of services and so avoid conflicts of interest. It enables the widest possible pool of providers to offer advocacy services, given the terms of the 2018 Act. Under the Act, services may be provided by any person other than the Scottish Ministers. Additional reference to the requirement for confidentiality has also been added.

Principle 3 - Person centred: There was concern during the consultation about the requirement for formal agreement to be received before the advocacy worker would work on a person's behalf. This was changed to require agreement but not necessarily *formal* agreement. It reflects that, though able to indicate they are content for an advocacy worker to work for them, a person may not always be able to give agreement formally, for example in writing. The standards were also revised to respond to comments seeking clarity around the outcomes being sought.

Principle 4 – Accessible: This focusses on respect and meeting the communication and access needs of people using the service. The standards were revised in response to feedback to emphasise that advocacy support is provided at a time and location which meets the needs of the service user.

Principle 5 – Trained: This covers requirements for the training and experience advocacy workers should have. Consultation responses sought clarification on how training would be provided, and suggested the need for standardised training. There was also a suggestion that advocacy workers should be trained in the benefit system as a whole, rather than just the mechanics of application. The Scottish Government has not defined training as there is no single advocacy qualification and it will be important not to exclude effective and experienced advocacy workers from any particular group. The standards include a requirement that advocacy workers are trained in using the social security system and in advocacy. How the training is provided is not a matter for the standards themselves but more for the wider approach to service provision. The key point is that advocacy workers have appropriate training to enable them to meet the standards, rather than the form which that training takes.

Principle 6 - Quality assured: This is focussed on ensuring a high quality service is delivered, that service users are able to provide feedback and make complaints and that these are responded to appropriately. To address the point that services should be more proactive in seeking feedback, the standards have been amended to include a reference to services having systems in place to actively seek feedback

Impact Assessments

The following summary assessments were produced at the time of the consultation on the advocacy service standards[1]:

Islands Communities Screening Assessment
Equality Impact Assessment

[1] https://www.gov.scot/publications/social-security-advocacy-service-standards-consultation/

Child Rights and Wellbeing Impact Assessment

No comments were made on these summary assessments which highlighted new and relevant considerations during the course of the consultation.

It is not considered necessary to undertake full assessments. The regulations simply set the standards from which every individual who has a right to the support of an independent advocacy worker are entitled to benefit in the service they receive. They do not determine how eligibility for that support arises. This is a direct result of the approach of the 2018 Act. It specifies that entitlement arises from having a disability which means that advocacy support is required when applying for social security assistance.

However, it is recognised that this is a new service so the demand for the service and its implications cannot be fully foreseen, and these assessments will be kept under review and will be re-assessed when the contract for the provision of advocacy services is being re-tendered to allow any unforeseen impact which may become apparent to be evaluated.

Financial Effects

A summary Business and Regulatory Impact Assessment (BRIA) was published at the time of the consultation. No comments were made on this assessment which highlighted new and relevant considerations during the course of the consultation. The standards are not expected to impose upon providers of advocacy services any significant requirements over and above those which they would ordinarily be expected to meet, in the delivery of advocacy support. Such providers would be expected to be adequately trained in the general principles of advocacy and how they operate in broad areas, including how to use the benefits system to apply for support. There is no requirement to be trained in the detailed operation of the Scottish social security system, such as in relation to eligibility for benefits. At most, the publication of the standards may increase the volume of requests for support to advocacy service providers and information and advice services, and produce the need for a minimal amount of training as new forms of social security assistance and with that new application forms etc, are introduced. The Scottish Government will look to identify and minimise any impacts on third sector organisations as a result of delivering the service standards. As regards expenditure for the Scottish Government, the key point is that the standards do not determine the extent of the right to advocacy but rather the quality of the service provided.

However, it is recognised that this is a new service so the demand for the service and its implications cannot be fully foreseen, and the financial effects will be re-assessed when the contract for the provisions of advocacy services is being re-tendered to allow any unforeseen impact which may become apparent to be evaluated.

Scottish Government
Social Security Directorate

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