

**A GUIDE ON THE INTRODUCTION OF
FREE PERSONAL CARE FOR
SUPPORTED PEOPLE UNDER
65YRS.**

MAKING IT FAIR

**A Guide for Supported
People and their
Carers
April 2019**



**SCOTLAND
AGAINST
THE CARE
TAX**

The logo consists of a dark blue heart shape with a white outline. Inside the heart, the text "SCOTLAND AGAINST THE CARE TAX" is written in white, bold, uppercase letters, arranged in four lines.

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The Policy and the Promise

The Scottish Government is introducing Free Personal Care for disabled adults under 65yrs, who receive help from local authorities. Since 2002 free personal care has been available to older people, only. Now younger adults are entitled to free personal care on the same basis.



This means that if you qualify for personal care from a local authority in Scotland you will not pay anything for the personal care you receive no matter whether you live in your own house or in a care home.

The Scottish Government has said that about 10,000 disabled people in Scotland will benefit from this

For most people this will happen automatically. For a few people they will have to apply to their local authority for help.



Start Date

This new policy will start on April 1st 2019. If you qualify you will no longer need to pay for your personal care from this date.

For people who first start getting a service after this date, free personal care will start from when it is first delivered to you



Definitions of Care in Scotland

For the purposes of this guidance note:

- A Supported Person is someone receiving personal care, either in their own home or a care home
- A Carer is someone who is giving that personal care to someone in their own home, but is not being paid to do so

Not all care that people get in Scotland will be covered by this policy. Personal Care is defined as both Personal Care and Personal Support. Other non-personal care such as Housing Support is specifically excluded

Local authorities will assess individuals for their care and identify the different types of care being delivered. They must tell you what sorts of care you get.

INCLUDED

- **Personal Care**

- Personal Hygiene
- Food Preparation and Feeding
- Dealing with problems of immobility
- Help with medication
- Help with general well being
- Behaviour management and psychological support



- **Personal Support**

- Counselling, or other help, provided as part of a planned programme of care



NOT INCLUDED

Non-Personal Care, or what has been generally called 'Social Care' is not legally defined in Scotland. Scottish Government guidance and existing practice can give some indication what might be included in this area.

- **Housing Support**

- help people to manage their home and can include
- help with claiming welfare benefits,
- completing forms,
- managing a household budget,
- keeping safe and secure
- getting help from other specialist services.

- **Domiciliary Support**

- Shopping
- House cleaning
- Producing kindling for coal fires



MAY BE INCLUDED

Grey Areas that are not easy to define might be included. Social Care in Scotland is highly personalised and it is not easy to define exactly where some areas of care fit in to the above definitions.

- Support to accompany the Supported Person when outside the house to do shopping
- Support required for the provision of Personal Care (inside or outside the home) when not actually delivering it
- Housing Support Style Services when you live in your own home and are not entitled to Housing Benefit.



Limitations to the Free Personal Care Policy

Free Personal Care is not available to everyone in Scotland

1. Only those who are assessed as needing services

Local Authorities must assess a person's needs before they can give someone personal care.

Only if a qualified social work professional agrees that there is a real need for care, does the local authority have to give you a service.



2. Only those with high needs on Eligibility Criteria

A local authority in Scotland may use eligibility criteria to determine if and when they will meet a person's social care needs.

Eligibility Criteria is a test of how serious they think your needs are and how quickly you need to get help

Currently five categories are used

1. Critical
2. Substantial
3. Moderate
4. Low
5. None



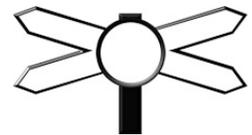
If a Supported Person is assessed as being either Critical or Substantial they may be offered a service. Those assessed as Critical may expect to get a service quickly. Supported People with Substantial Needs may have to wait longer.



Only when the needs of a Supported Person are judged to be Critical or Substantial needs of a Personal Care nature will such needs be supplied free of charge



Those with Moderate or Low needs are unlikely to be given social care from Scottish Local Authorities. They may be signposted to other voluntary and private services where they can arrange support privately or get other forms of help. They can reapply for help if their needs change.



Those assessed as “None” will be given no help or support

Anyone who is not given Personal Care by their council can choose to pay for it themselves. This will not be covered by the Free Personal Care Policy.



What Local Authorities need to do

There are certain legal duties that Scottish Local Authorities must follow

- **Duties to Assess** - When a person goes to the Local Authority, it must identify if there is a genuine need and if it is within their powers to provide the help sought.

If it is within its powers, then the Local Authority has a duty to carry out an assessment of the person's needs. This assessment must identify whether or not the person has genuine social care needs and where these needs meet the Local Authorities Eligibility Criteria



- **Offer support to those who qualify under local policies** – Where a person has genuine social care needs and qualifies on the local Eligibility Criteria, the local authority must provide a service to meet these needs. The Local Authority is allowed to take account of local available resources in deciding how to meet these needs but must also listen to the views of the Assessed Person.



- **Duties to Inform** – The Local Authority has a new duty to inform the Assessed Person about how much care they are proposing to offer them and how it splits into Personal Care and Non-Personal Care.



- **Duty to offer Choice of How Self-Directed Support (SDS) should be delivered** – The Local Authority has the duty to offer the Assessed Person, 4 options for how they would like their support to be organised
 1. A direct Payment
 2. A managed Budget
 3. Local Authority Arranged Service
 4. A combination of the first 3 options



In each of these options any Personal Care should be free and it should be clear how this has been managed.

How Charging Works

If you get social care in Scotland, councils have been able to ask you to pay something towards it. There are two parts to how they work out how much you should pay.

First is the **SERVICE COST**. Councils work out what the cost of the service you get is and this becomes the Service Cost. For Home Care, the SERVICE COST can be worked out from the number of hours of care each person gets per week or from the amount of money that the council gives you if you arrange your own support under Self Directed Support.



From April 1st 2019, there will be a zero cost for any Personal Care. Other Home Care may be included in the SERVICE COST in the normal way.

Second is the **CHARGE**. Councils carry out a financial assessment to see how much of a CHARGE someone can afford to pay according to a set of allowances. If the amount you can pay is less than the SERVICE COST, you must pay the full CHARGE you can afford. You are never asked to pay more than the full SERVICE COST.



Services which are still chargeable

Other social care services can be included in the SERVICE COST such as

- Day Care,
- Respite



Ways to Pay Your Charges in Scotland

1. Asked to pay directly to council

This is most common for those who get a service directly from the council, a voluntary sector or private provider (SDS Options 2, 3 and 4 – see page 8). The council will invoice you monthly, six monthly or twelve monthly for your charges.

They will ask you to pay them by Direct Debit or another way for your charges.

If you no longer have to pay because of the Free Personal Care Policy then the council will cancel the Direct Debit and repay any money you have paid since April 2019.



2. Asked to contribute to Individual Budget

This is most common for those on Direct Payment (SDS Option 1 – see page 8). Here you will have a separate bank account for the council to pay its contribution towards your care. You will be expected to pay your CHARGES into the same bank as your contribution.

You use this bank account to pay the support services you have chosen, or the people you directly employ to assist you. You are not allowed to take less service and not pay your contribution.

If you no longer have to pay because of the Free Personal Care Policy then the money for your support will be increased and you will no longer have to make a contribution.

If you have had to continue making a contribution since April 2019, then the Local Authority must refund this money to you directly.



Who Will Gain from the New Free Personal Care Policy?

Scotland Against the Care Tax thinks only one in three people who get home care in Scotland will be better off.

Most of those who benefit will pay no charges at all and the rest will see their charges reduce. This is due to the way councils plan to implement this policy



Of the two in three people who will not see any benefit from this policy, many will still get Personal Care

This is because, their SERVICE COST for the non-personal care (or social care) services they receive may still be higher than the maximum CHARGE they have been assessed to pay. In some cases this might be open to challenge as councils may not interpret the “Grey Areas” in the favour of the Supported Person.



Others will currently be defined by councils as getting only Non-Personal Care (or ‘social’ care) and not eligible for any reduction in charges. Again, in some cases this might be open to challenge as councils do not have a good grasp of the definition of “Personal Support”. This means that “Counselling, or other help, provided as part of a planned programme of care” should also be free.



What You Can Do If You Are Not Happy About Your Charges After April 2019

1. Ask For A Care Breakdown

From April 2019, councils must provide you with a breakdown of your care services into Personal Care and other services including any Non-Personal Care. You can ask for this to be in a range of formats, so that you can read it; e.g. easy read, audio, large print, braille and so on.



2. Carry Out Your Own Self-Assessment Of Your Care Needs Into Appropriate Categories

As there are no final definitions of what is included in Personal Care, then you can consider your own care support.

You may ask someone independent of the local authority to help you do this, e.g. a family member, friend, or someone more knowledgeable of the system, like someone from the disabled persons' independent living movement.



Make sure your own assessment splits your support into Personal Care and other forms of Non-Personal Care. And make sure you consider what might be "Personal Support" and how "Grey Areas" are covered

3. Challenge The Identification Of "Personal Support" And Allocation Of "Grey Area" Care

In the first case, you should raise this matter with any social work, occupational therapy and health staff involved in the assessment and allocation of your care.



This can resolve many issues quickly and easily.

4. **Ask for a waiver**

Several local authorities have 'waivers' in their policies. Here, if you fall into one of their categories, such as 'terminal illness', or 'extenuating financial difficulties' they may cancel the charge, either indefinitely, or for a set period of time

5. **Complain To Social Work And to the Local Authority (2 Separate Processes)**

If you cannot resolve your Free Personal Care issue with local staff, you should consider making a formal complaint. Many local authorities have a special Social Work complaint service as well as the main local authority one. You may need to complain through both of these systems. You will be expected to pay your CHARGES while the complaint is underway so make sure it is resolved as quickly as possible.



You should put your complaint in writing, making sure you say it is an OFFICIAL COMPLAINT. You need to do this to make sure it enters the proper process. There are strict timetables for local authorities to respond. Put these dates in your diary and follow up when these dates arrive.

You will be able to appeal at least twice if the decision goes ahead. First will be to the Head of the Social Work Department and the second is an appeals panel.

In some parts of Scotland, you may have to complain to the Health and Social Care Partnership or the NHS.

Official Complaint Letter Template

Insert your name and address here.

[Complaints Manager]
Followed by name and address of organisation:

6. **Seek Support And Help From Local Politicians**

It is council policy that sets your CHARGES and the Scottish Parliament that has the power to change this and to make sure that the definitions of Personal Care and Support that they passed into law are implemented. You can visit your councillors and MSPs with details of your complaint and ask them for your help.



7. Further Challenges

If you are still unhappy when you have finished the complaints process then you have 2 more options

If you are unhappy with the WAY the council carried out its policies and arrived at their decision, then this could be seen as 'maladministration' and you can complain to the Scottish Public Sector Ombudsman.



If you are unhappy with the DECISION the council has made then you seek legal remedy. If you have no or little savings you may be entitled to Legal Aid for this. The courts are unlikely to get involved until you been through all other options to resolve this which means you have to exhaust the Appeals Process and not to be able to complain through other channels.



References:

Scottish Government, Guidance For Local Authorities, The NHS Boards And Health And Social Care Partnerships (HSCPS) And Other Service Providers, December 2018

Community Care and Health (Scotland) Act 2002, Part 1 Community Care

The Community Care And Health (Scotland) Act 2002, Schedule 1

The Public Services Reform (Scotland) Act 2010, Schedule 12, Section 20

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