



Self-directed support Legal duties module



Learning Objectives

- Gain a sound understanding of your legal duties in relation to Self-directed Support
- Explore links with existing legislative frameworks
- Reflect on the opportunities and challenges this may bring
- Gain a sound understanding of the 4 options and when they apply
- Gain awareness of the implications and opportunities for practitioners and organisations

Making connections



Paired conversations:

- What does choice and control mean to you in your day-to-day life?
- What decision about yourself do you make on a daily basis?
- What would you do if these choices were removed or restricted?



The Scottish Government have developed a 10 year Strategy for Self-directed Support and the Act aims to support their vision that:



“The quality of life for people who require care or support is improved through increased choice and control over the support they receive”

“Is this not what we would want for ourselves and our loved ones, if so there is no stronger affirmation of the value of this approach?”

Sandy Riddell (Past President of Social Work)



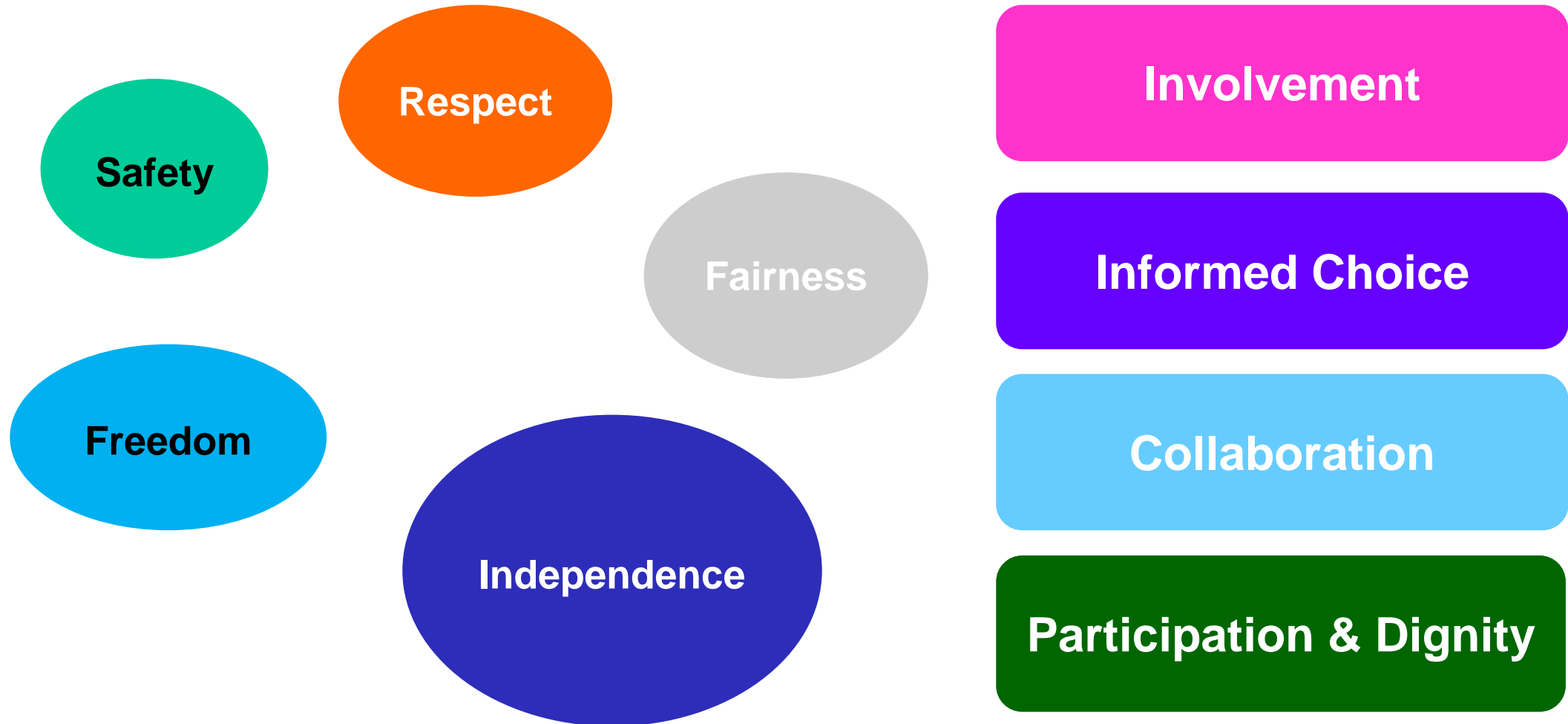
“It requires a change in the way we delivery services and support with much more focus on working in partnership with people to identify personal outcomes, exploring how these can be achieved through a combination of personal and community assets, use of self and formal support”.

Scottish Government



Self-directed Support

Values and principles which must underpin Practice





Involvement

What does this mean in practice?

The person must have as much involvement as they wish in the assessment and in the provision of support associated with that assessment

Section 1 SDS(Scotland) Act 2013



Collaboration

What does this mean in practice?

The practitioner and supported person should work together in the completion of the assessment, the support plan and in the provision of any support

Section 1 SDS(S)Act 2013



Informed Choice

What does this mean in practice?

The supported person should receive the assistance they need to help them to make an informed choice

Section 1 SDS(S)Act 2013



Participation & Dignity

What does this mean in practice?

- practitioners must take reasonable steps to facilitate the principles
- a) the persons right to dignity is respected and practitioners should facilitate this
- b) the supported person should be provided with the help they need to participate in and be part of the life of the community and wider society

Section 2 SDS(S)Act 2013



Additional good practice principles

- Responsibility
- Risk Enablement
- Innovation

Good assessments.....

- Involve having good conversations
- Encourages independence of formal support
- Supports capacity building at all levels
- Adopts a strengths based/solution focused approach

Assessment still remains core to our legal duties.

What the Act says - New Duties

- Have regard to the general principles set out in the Act during assessment and in the provision of support
- Duty to offer 4 choices to persons assessed as **eligible** for funded support to how that support is delivered

New Duties continued...

- Explain the 'nature and effect' of each option
- Provide information, assistance and support – to express any views (how to manage the support and where to get help)

New for organisations...

- Local authorities must take steps to promote the availability of the options for self-directed support (section 19(1))
- Local authorities must in so far as is reasonably practicable, promote a variety of providers of support and a variety of support (section 19(2))

New Power – Adult Carers

- authorities must consider the carers assessment and decide if they require support to continue in their caring role and if so have they have the power to provide this.



So what changes?

- Assessment and planning will be more outcome focused
- The person has greater choice and control in designing and directing their own support
- Transparency in the way budgets are calculated
- 4 options will be offered to how eligible support is made available
- Providers will need to be more flexible and responsive to individual needs
- Local authorities will need to change the way services are commissioned

Activity 1



Take a “New Duty Card”

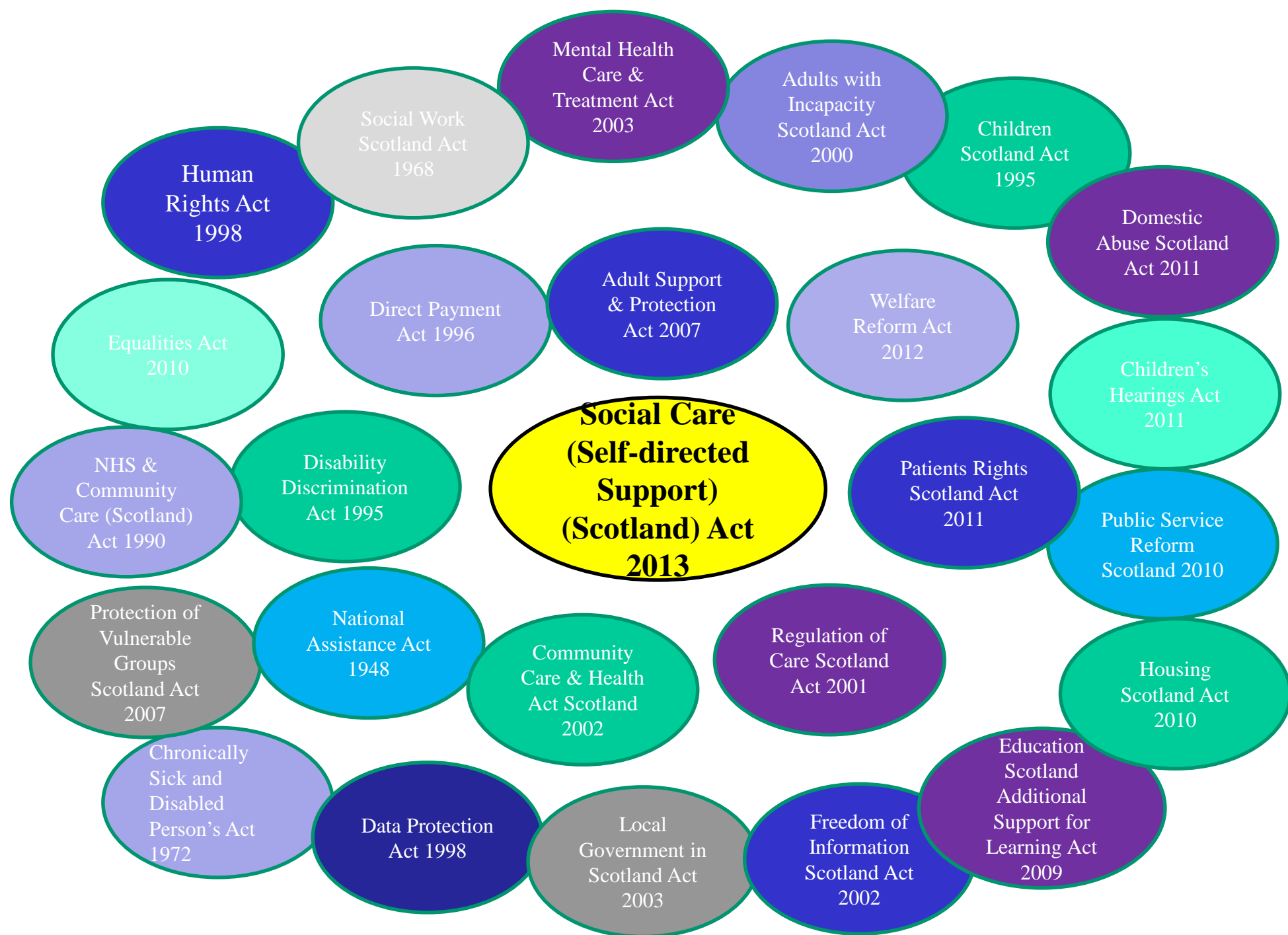
Discuss in small groups or pairs some of the challenges to this new duty being discharged?

Identify some of the benefits that this will bring for the people who require support



How does Self-directed Support fit with other legislation?

- The Self-directed Support Act does not replace any of our existing duties
- The Self-directed Support Act aims to compliment and support other legislation
- At times there may be conflict between duties within other legislation that will require to be negotiated
- Protective duties will continue to remain paramount
- Self-directed support resonates strongly with human rights and equalities legislation
- Statutory Guidance is available aims to support implementation and inform practice





The “4” Options

Only explored when person is assessment as eligible for funded support

- Direct Payment
- Directing the available support
- Council select and arrange appropriate support
- A combination of any of the 3 options above



Exemption/Discretion to access the 4 options

- Services in connection with Criminal Justice Orders
- When a particular form of support has been decided necessary but is incapable of being delivered through the 4 options (i.e. foster care)
- Residential Care (Direct Payment)
- Where there is significant risk to the supported person (Direct Payment)



Further requirements

- If the eligible person is not considered suitable to access any one of the 4 options this must be fully explained.
- If the authority considers that the supported person is ineligible to receive direct payments the authority must notify the supported person of the reason for refusal in writing and the circumstances when they must review the decision.
- The local authority must then support the person to access another option.



Activity 2 – Case studies

1. In small groups consider the case example, highlighting the risks and challenges
2. Consider which legislative frameworks would intervention be considered under?
3. Now from an “SDS” perspective explore how choice and control could be facilitated whilst managing the risks?



Activity 3

4 Options Debate



Key Messages

- Legal powers and duties will be the responsibility of local authorities or a health board may discharge social care duties on a delegated basis.
- Duties are legally binding and cannot be ignored.
- Self-directed support sits alongside many other policies and legislation intended to support, promote and protect human rights.
- Care and support should be designed and delivered in a way that promotes choice and control.
- Cultural and system changes will be required to support successful implementation.
- It's complicated but legislation is there to guide and inform practice

Any questions





Useful links & suggested reading

- Statutory Guidance & Regulations 'The Social Care (Self-Directed Support) (Scotland) Act 2013' – Scottish Government
- <http://www.scotland.gov.uk/Publications/2013/11/3923>
- Adults with Incapacity (Scotland) Act 2000: Communication and Assessing Capacity: A guide for social work and health care staff. Scottish Government
- <http://www.scotland.gov.uk/Publications/2008/02/01151101/0>
- Belinda Schwehr – Legal judgments for England that can support SDS delivery in Scotland
<http://www.careandhealthlaw.com/Public/LawDatabaseCasesDesc.aspx?IndexType=2&Id=171>