

[Draft] Statutory Guidance on care and support

A public consultation on draft statutory guidance to accompany the Social Care (Self-directed Support) (Scotland) Act 2013

This document contains draft statutory guidance on the values, principles legal duties and powers associated with social care assessment, support planning and review. The guidance covers adults, children, young carers and adult carers. It has been developed by Scottish Government with contributions from a joint working group of key partners which included the Association of Directors of Social Work, Self Directed Support Scotland, Independent Living in Scotland, the Coalition of Care and Support Providers in Scotland and the Carer's Trust.

The guidance is published for consultation. The Scottish Government would like to hear from those who receive care and support, carers, social work and health professionals, local authorities, Health Boards and the general public.

Following the consultation the guidance will be amended it will be issued before the planned commencement date for the Social Care (Self-directed Support) (Scotland) Act 2013.

Alongside the draft statutory guidance, the Scottish Government is inviting views on draft Regulations to accompany the Self-directed Support Act. Consultees are encouraged to provide their views on the draft Guidance and the draft Regulations which are being considered as one single consultation.

SECTION 1: INTRODUCTION

Background

1. This document contains statutory guidance issued by Scottish Ministers under Section 5 of the Social Work (Scotland) Act 1968. Under statutory guidance the professional must have regard to the guidance when discharging their role. They must follow both the letter and the spirit of the guidance. They must not depart from the guidance without good reason.
2. The guidance elaborates on a variety of powers and duties contained within the social care legislation. It attempts to translate those powers and duties into practical advice to professionals. The majority of legal powers and duties described within the guidance will fall to local authorities. However, a Health Board may discharge social care duties on a delegated basis. Where this is the case, the Health Board (and professionals acting on the Board's behalf) will be obliged to have regard to this guidance. In addition the guidance contains a section on the role of healthcare professionals, clarifying their contribution to social care assessment and support. This reflects the importance of healthcare and social care professionals working in partnership to conduct joint assessments and set up jointly funded packages of support.
3. Beyond health and social care professionals, the guidance should be of interest to a range of other groups and individuals. This will include those who use care and support or may use it in future, carers, providers, regulatory and inspection agencies – in short, any person or organisation involved in care and support now and in the future.

The topics covered in this guidance

4. The guidance deals with a variety of matters related to social care assessment and the provision of social care and support. There are four main legal reference points. The first is Section 12A of the Social Work (Scotland) Act 1968 which provides the duty on authorities to assess an adult's need for care and support. The second is Sections 22 and 23 of the Children (Scotland) Act 1995 ("the 1995 Act") – the legal basis for support to children. The third is the Social Care (Self-directed Support) (Scotland) Act 2013 ("the 2013 Act") - the legal basis for choice over care and support. The final reference point is Section 12AA of the 1968 Act, section 24 of the 1995 Act and the accompanying Section 3 of the 2013 Act – the basis for the assessment of and support to, carers.

Statement of intent

5. The guidance focuses on the duties and powers within the 2013 Act. However the scope of the guidance goes beyond the 2013 Act to cover a wide range of duties and powers in relation to assessment, support planning and review. This recognises that care and support provision - and choice and control over that provision - plays a key role in helping to deliver independent living for disabled people.

Institute for Research and Innovation in Social Services, *Self-directed support: preparing for delivery*

<http://www.iriss.org.uk/resources/self-directed-support-sds-preparing-delivery>

Institute for Research and Innovation in Social Services, *Legislation relevant to social services in Scotland*

<http://www.iriss.org.uk/resources/legislation-relevant-social-services-scotland>

Scottish Government (2010) *Self-directed support: A National Strategy for Scotland*

<http://www.scotland.gov.uk/Publications/2010/11/05120810/0>

Scottish Government (2012) *Charter of Patient Rights and Responsibilities*

<http://www.scotland.gov.uk/Publications/2012/04/6273>

Scottish Government, Independent Living in Scotland, COSLA and NHS Scotland (2013) *Our Shared Vision for Independent Living in Scotland*

<http://www.ilis.co.uk/uploads/VISION%20STATEMENT.pdf>

The Knowledge Network - Implementing Self-directed Support - Personalisation – Human Rights Issues

<http://www.knowledge.scot.nhs.uk/home/portals-and-topics/self-directed-support/implementing-self-directed-support/human-rights-issues.aspx>

Further links (including a guide to professionals, user's guide and carer's guide) to follow.

those risks, and;

- the resources that will help to deliver the person's support plan.

If the supported person is a child then the process should be part of a single plan for the child. It should capture the contribution that any support assessed or provided under Section 22 of the 1995 Act will make as part of the overall plan for the child.

See section 5 in this document for further guidance on support planning.

See section 9 in this document for further guidance in relation to support planning for children and families.

Step 5: Decision Time

This describes the stage where the supported person and the professional agree or "sign off" the support plan.

Step 6: Support

This is the actual provision of support, including any steps to adapt and change what is done.

Step 7: Monitoring and Review

The update of the original assessment along with any changes to the person's needs and any changes in circumstances etc.

See section 6 in this document for further guidance on monitoring and review.

The Person's Pathway: Roles and responsibilities

8. A number of individuals and organisations may be involved in the person's pathway or will help to influence it in one shape or form. Table 2 provides a summary of the main roles and responsibilities.

Table 2: Roles and Responsibilities

Role	Responsibilities
The professional	The social work or health professional should take steps to ensure that the assessment is conducted in line with social care law. They should consider any wider legal duties beyond the duties provided in social care legislation. They should ensure that the person's support plan is comprehensive and they should ensure that it meets the assessed needs for the individual. They may arrange for some additional assistance so that the supported person can play a full part in the assessment or support planning process. They may give voice to a supported person's wishes.

Role	Responsibilities
	<p>steps that are taken by the local authority and health board to work in partnership to put their plans in place. Joint commissioning is where these actions are undertaken by two or more agencies working together, typically health and local government, and often from a pooled or aligned budget. The organisations and individuals who commission services play a key role in ensuring a good range of support is made available in order to meet the needs and desires of a diverse population.</p> <p>See section 7 in this document for further guidance on facilitating a good range of choices for individuals.</p> <p>Further guidance on joint commissioning is available at: http://www.jitscotland.org.uk/action-areas/commissioning/</p>

Draft Statutory Guidance on Care and Support
Consultation Questions

Section 2: Values and Principles

Question 1a: Was this section of the guidance clear and easy to understand? (please tick)

Yes	No
	✓

Question 1b: How useful did you find this section of the guidance? (please tick)

Very useful	Quite Useful	Not very useful	Not at all useful
			✓

Question 1c: Do you have any further comments on this section of the guidance?

Some advice to help you to answer this question – Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you'd like to make?

It fails to make clear what happens when there is disagreement between decision-maker and user.

iii) Informed choice (Section 1 in the SDS Act)

13. This is the principle that the supported person must be provided with any assistance that is reasonably required to enable them to express views about the options available to them and to make an informed choice about their options for support.

iv) Collaboration (Section 1 in the SDS Act)

14. This is the principle that the professional must collaborate with the supported person in relation to the assessment of the supported person's needs and in the provision of support or services for the supported person.

The purpose of the general principles

15. The statutory principles are important because they carry legal weight. They articulate the underlying aims or "spirit" of the legislation and complement the detailed duties and powers provided elsewhere in the Act. Beyond the statutory principles the professional should consider further good practice principles. The following table brings together:

- the statutory principles within the 2013 Act (paragraph 10 above), and;
- further good practice principles which should help to underpin good quality assessment and support planning.

Table 3: The principles that should underpin a good assessment and support plan

The principle	What it means in practice
Collaboration - a statutory principle	The professional and the supported person should work together in the completion of the assessment, the support plan and in the provision of support. <i>Underpinned by Section 1 of the 2013 Act</i>
Dignity - a statutory principle and a key aspect of independent living	The professional should facilitate the supported person's right to dignity. <i>Underpinned by Section 2 of the 2013 Act</i>
Informed Choice - a statutory principle	The supported person should receive the assistance they need to help them to make an informed choice. <i>Underpinned by Section 1 of the 2013 Act</i>
Innovation	The professional and the supported person should develop creative solutions to meet the outcomes identified in the support plan.

**Question 2b: How useful did you find this section of the guidance?
(please tick)**

Very useful	Quite Useful	Not very useful	Not at all useful
			✓

Question 2c: Do you have any further comments on this section of the guidance?

Some advice to help you to answer this question – Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you'd like to make?

The theory and the practise are so very different. Professionals are very fond of saying "We would like to help you but the regulations do not allow this" or "We want to help but we have already over-spent our budget for this year"

Eligibility criteria

21. Local authorities apply local eligibility criteria in order to determine whether the person's needs call for the provision of services (i.e. to determine if the person's needs are eligible needs). Where the person is over 65 and eligible for personal care, or where the person is eligible for nursing care, the local authority must follow the relevant joint Scottish Government and COSLA guidance on eligibility criteria.

22. The eligibility framework for access to social care for adults prioritises risks into 4 bands: critical, substantial, medium and low:

- **Critical Risk:** Indicates that there are major risks to an individual's independent living or health and wellbeing likely to call for the immediate or imminent provision of social care services (high priority).
- **Substantial Risk:** Indicates that there are significant risks to an individual's independence or health and wellbeing likely to call for the immediate or imminent provision of social care services (high priority).
- **Moderate Risk:** Indicates that there are some risks to an individual's independence or health and wellbeing. These may call for the provision of some social care services managed and prioritised on an on-going basis or they may simply be manageable over the foreseeable future without service provision, with appropriate arrangements for review.
- **Low Risk:** Indicates that there may be some quality of life issues, but a low risk to an individual's independence or health and wellbeing with very limited, if any, requirement for the provision of social care services. There may be some need for alternative support or advice and appropriate arrangements for review over the foreseeable future or longer term.

Application of eligibility criteria via the assessment

The professional's role

23. In determining a person's eligibility, the professional should take full account of how the person's needs and risks might change over time. The professional should consider the impact of failure to intervene and whether this would lead to escalation of need in future. They should take a well-rounded approach, recognising that risks to participation in society (living an ordinary life, engaging with others) are valid alongside risks to dignity (personal care, "life and limb" support). They should be alive to potential "hidden" needs which may not be obvious or highlighted in generic guidance documents. Both parties – the professional and the individual – should be able to access information and advice about alternative sources of support out-with formal or "funded" social services.

which to meet the person's eligible needs. Crucially, the process should rest on a *conversation* between the professional and the supported person.

The importance of assessment

27. Assessment is important because it helps to set the tone for what is to come. If the assessment is conducted in the wrong way, for example as a tick-box and form-filling exercise, then the supported person can be left with the impression that social care is something that they receive rather than something they help to shape. If it is conducted in the right way – based around the person's assets and personal outcomes – then it can be an important and valuable intervention in its own right.

A "good" assessment

28. Assessment may act as the starting point for development and improvement in an individual's life. Alternatively, it may support a person to maintain the "status quo", to slow the rate of deterioration or to ensure that any decline in a person's situation is well managed. Individuals' needs can change over time, even over relatively short timescales. The assessment should respond to changing circumstances, changes to a supported person's needs and changes during the course of the person's life.

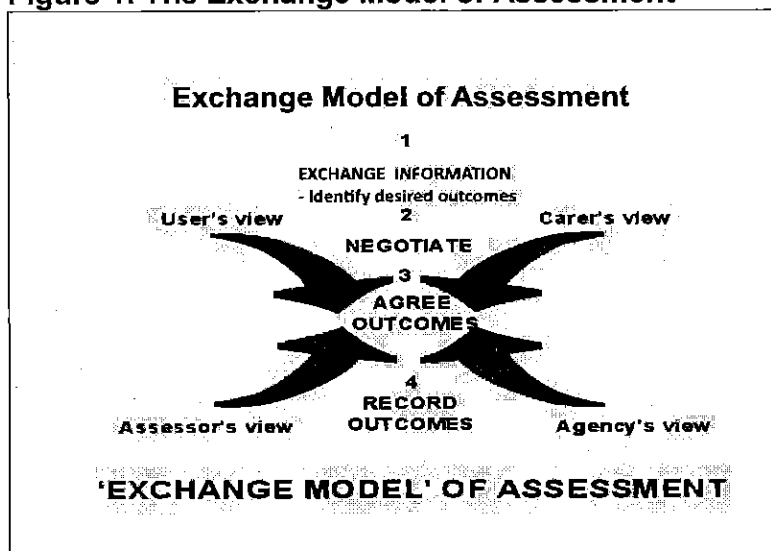
29. A good assessment rests on critical thinking and constructive challenge. It rests on the professional's ability to be open and honest with the person. It requires good judgement, awareness and significant "people" skills. The professional should be skilled in conversation and able to strike the right balance between advising the individual and supporting them to play an active part in the assessment process.

30. Some assessments will be conducted in quite challenging environments. For instance, they may take place after a fall or in a hospital environment. Crisis situations are rarely conducive to an effective assessment. However, the professional should ensure that the initial support to address any crisis situation does not become the *de facto* long-term arrangement for the individual. After the initial crisis has stabilised, and as soon as the supported person is ready to do so, the professional should seek to develop a comprehensive assessment.

The general principles that must inform the assessment

31. Section 12 of the 1968 Act requires the relevant authorities to "promote social welfare by making available advice, guidance and assistance on such a scale as may be appropriate for their area". Assessment is an important means by which to deliver this duty. Promoting social welfare means taking any steps that are necessary to improve the quality of life for individuals and the wider population. The equivalent duty in relation to children is the duty in Section 22 of the 1995 Act to "safeguard and promote the welfare of children who are in need". Sections 12 and 22 provide the relevant professional with a fairly wide discretion to use their judgement and to provide any type of support

Figure 1. The Exchange Model of Assessment¹



34. An outcome is a result or effect of an action. *Personal* outcomes are the things that matter to the supported person such as:

- being as well as possible
- improving confidence
- having friendships and relationships
- social contact
- being safe
- living independently
- being included

35. Personal outcomes are identified through good conversations with people during assessment and support planning. Often the conversations will involve unpaid carers. The outcomes should reflect what is important to the person, and why they are important. Table 5 provides an example of the main differences between an assessment led by the need for a particular service and an assessment based on personal outcomes:

Table 5: Service led assessment vs. assessment based on personal outcomes

An assessment led by the service...	An assessment informed by personal outcomes...
- sees the ultimate destination as the delivery of the service	- sees the ultimate destination as the impact of the supported person's plan
- is based on pre-determined question and answer formats	- is based on a semi structured conversation with open questions

¹ Smale et al 1993

Self-assessment

38. Self-assessment describes a process whereby the supported person, often with support from a provider, undertakes an assessment of their own needs prior to a full assessment. Self-assessment can be used as a starting point, but it should not replace the further assessment involving the judgement and input from the social care or health professional.

The main products from the assessment

39. There should be three main products from the assessment process:

- the assessment itself - this should include a decision about whether the person is eligible for support.
- the support plan (where the person is eligible for support) – this should articulate the eligible needs, outcomes and plans for the individual.
- the actual support provided to the individual.

40. It is important that the supported person's outcomes are later reviewed, to ensure the continued relevance of support.

Further guidance and hyperlinks:

Institute for Research and Innovation in Social Services, *Leading for Outcomes: A guide*

<http://www.iriss.org.uk/resources/leading-outcomes-guide>

Institute for Research and Innovation in Social Services, *Understanding and measuring outcomes*

<http://www.iriss.org.uk/resources/understanding-and-measuring-outcomes>

Joint Improvement Team – Talking Points: Personal Outcomes Approach (includes Talking Points: A Practical Guide)

<http://www.jitscotland.org.uk/action-areas/talking-points-user-and-carer-involvement/>

Scottish Community Development Centre – Co-production: useful resources

<http://www.scdc.org.uk/co-production-scotland/co-production-useful-resources/>

Further links (including a guide to professionals, user's guide and carer's guide) to follow.

SECTION 5: SUPPORT PLANNING

This section deals with support planning. It identifies the core requirements for a good support plan and it addresses the question of personal risk and resources. It clarifies the choices that should be made available to a person as part of the support planning process along with the additional information and support that should be provided as part of this process.

5.1 General guidance on support planning

41. The support plan should be developed in line with the statutory principles in Section 1 of the 2013 Act and in line with this guidance. The plan should cover certain key aspects such as the personal outcomes which help to shape the plan, the resources (both financial and non-financial) which will help to meet those outcomes, the choices available to the supported person to arrange their support and all associated information. Table 6 provides some “key ingredients”, developed from the point of view of the supported person.

The people and things that are important to me	The main <i>risks</i> and how we will manage them	The <i>people</i> who can help me to achieve my outcomes
Where I can go for <i>information</i> and support	My personal outcomes	The <i>things</i> (knowledge, funding etc.) that will help me to achieve my outcomes
The things that I can do	How I will arrange my support	

42. The support planning *process* - the act of considering the outcomes and pulling together a plan - can make a significant difference to the person’s life. In light of this the support plan should be developed in a collaborative way. A good support plan will demonstrate a link between the individual’s eligible needs, their outcomes and the support required to meet those needs and outcomes. It will be written in language that the supported person understands. It will be presented in a way that is engaging and helpful to the supported person as they embark on their pathway through support. It may include pictures alongside text.

43. The support plan may be developed in any type of format but it should be framed in such a way that it can be used as a living document. It should

<http://www.knowledge.scot.nhs.uk/home/portals-and-topics/self-directed-support/implementing-self-directed-support/risk-enablement.aspx>

Simon Duffy & John Gillespie (2010) *Personalisation and Safeguarding Discussion Paper*

<http://www.in-control.org.uk/media/52833/personalisation%20safeguarding%20discussion%20paper%20version%201.0.pdf>

5.3 Resources

47. The “resource question” should not be about financial resource – money – alone. The professional should consider all of the possible resources available. The main types of resources that the professional and user will wish to explore are:

- the person’s attributes and assets (their skills, knowledge, awareness, background, decision-making skills and contacts);
- the person’s well-being and inner strength;
- the person’s extended family, close friends, work colleagues and community;
- the budget or funding which the person can access to meet their eligible needs;
- the professional’s knowledge, expertise, background and contacts;
- the local resources, shops, health and education services, community facilities (libraries, sports centres, community “hubs” etc.), and;
- any other sources of information, advice and support available to the supported person.

48. Where the person is eligible for support, the authority will wish to consider a fair and transparent means by which to determine the appropriate level of funding. Section 4 of the 2013 Act refers to a “relevant amount” and defines this as the “amount that the local authority considers is a reasonable estimate of the cost of securing the provision of support for the supported person.”

49. There is no single approach to “resource allocation” prescribed in law, nor any single method recommended by Scottish Government. Some authorities may wish to adopt an equivalence model where they determine the cost of the service to be arranged and then provide the equivalent amount as a budget for the supported person to control. Others may wish to adopt a Resource Allocation System where they gather information about the person’s outcomes, allocate points to those outcomes and, on the back of this process, allocate a level of funding. Alternatively, decisions about budgets may be made by professional judgement alone or on a case-by-case basis.

50. The important point to bear in mind is that while systems and tools can be useful aids, they are no substitute for the skilled judgement of a social work or health professional. The authority must ensure that the approach taken to

people to enhance well-being... its purpose is to enable all people to develop their full potential and enrich their lives”.

It is helpful to think about self-directed support in the context of the profession it has evolved through. The early origins of this concept stem from disability rights activity through the 1960's to 1980's. However, since then the emerging legal duties and professional practice have been the responsibility of social workers.

Assessment focused on outcomes restores the therapeutic role of social work, the importance of relationships, and supporting people to find their own solutions. This therapeutic role for social workers is enabling real choice and control for people as well as common sense plans that are more effective than many of the services we have traditionally relied on.

Front line workers should embrace self-directed support – and the principle of choice to individuals - as a way to deliver good outcomes. Decision making devolved closer to workers will empower people and evolve and develop choice as the norm and not the exception.

The options

53. The 2013 Act contains 4 options that must be made available to the supported person as part of the assessment process. The options are:

- | | |
|-----------------|--|
| Option 1 | The making of a direct payment by the local authority to the supported person for the provision of support. |
| Option 2 | The selection of support by the supported person, the making of arrangements for the provision of it by the local authority on behalf of the supported person and, where it is provided by someone other than the authority, the payment by the local authority of the relevant amount in respect of the cost of that provision. |
| Option 3 | The selection of support for the supported person by the local authority, the making of arrangements for the provision of it by the authority and, where it is provided by someone other than the authority, the payment by the authority of the relevant amount in respect of the cost of that provision. |
| Option 4 | The selection by the supported person of Option 1, 2 or 3 for each type of support and, where it is provided by someone other than the authority, the payment by the local authority of the relevant amount in respect of the cost of the support. |

58. Arrangements under Option 2 should provide a further degree of choice, control and flexibility beyond what would otherwise be available under Option 3 (arranged support). The supported person should be firmly “in the driving seat” working alongside the professional to direct their support. The arrangements should be designed and operated in such a way as to give the supported person much greater control over their support and a practical means by which to exercise this control. The arrangements should make it straightforward for the supported person to exercise control over their support, to secure their preferred support and to make adjustments to their support quickly and efficiently. Though the authority is not obliged to make arrangements as set out in this guidance, there are very few limits to what can be done. The key limitation is that a person cannot use Option 2 in order to employ their own staff.

Option 3: the local authority arranges support for the supported person

59. Under option 3 the professional, in collaboration with the individual, selects the appropriate support and then makes arrangements on the supported person’s behalf. In contrast to option 2 the individual steps back somewhat. They choose to leave many of the detailed minutiae of decisions to the professional. This may be described as “arranged service provision” or “direct services”. In very basic terms, the local authority is providing or arranging services on the supported person’s behalf. The individual is not seeking direct, on-going or day-to-day responsibility for planning and controlling how the available resource is used.

60. Large numbers of individuals will continue to select their support under Option 3. However, the principles of choice and control, collaboration and involvement should continue to hold for individuals who make this choice. The relevant authority should seek to ensure that the services provided under Option 3 are as flexible as possible and ready to adapt to the desires of the individuals who use them. This should involve the necessary workforce education and development, ensuring that those who provide care and support do so in line with the values outlined in this guidance.

Option 4: “mix and match”

61. Option 4 - a combination of two or more of the options - recognises that some people will be happy to take on some control but perhaps not the full control that comes with a direct payment. This is a “mix and match approach”, ensuring maximum flexibility in the options available. This option may be attractive to people who would like to experiment with the direct payment or individual service fund approach for a small aspect of their support or for a small portion of their outcomes.

Professional discretion to limit the choices available to individuals

62. There are two circumstances where a supported person’s range of choices may be limited in some shape or form by the professional.

5.5 Information and support

67. Section 9 of the Self-directed Support Act 2013 requires the professional to ensure that information and appropriate “signposting” advice is provided to individuals to help them to make an *informed* choice. Section 9 accompanies the earlier Section 1 within the 2013 Act, which provides the general principle relating to information and support.

68. Section 1, sub-section 3 of the 2013 Act states:

- (3) A person must be provided with any assistance that is reasonably required to enable the person—
 - (a) to express any views the person may have about the options for self-directed support, and
 - (b) to make an informed choice when choosing an option for self-directed support.

69. Section 9, sub-section 2 of the 2013 Act states that:

- (2) The authority must give the person—
 - (a) an explanation of the nature and effect of each of the options for self-directed support,
 - (b) information about how to manage support,
 - (c) information about persons (including persons who are not employed by the authority) who can provide—
 - (i) assistance or information to the person to assist the person in making decisions about the options,
 - (ii) information about how to manage support, and
 - (d) in any case where the authority considers it appropriate to do so, information about persons who provide independent advocacy services (within the meaning of section 259(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)).

70. Section 9 also requires the authority to give the explanation and information required by subsection (2) in writing and, if necessary, in such other form as is appropriate to the needs of the supported person to whom they are given.

What should this mean in practice?

71. Sections 1 and 9 mean that the professional must provide any assistance that is reasonably required to enable the supported person to express a view on the choices available to them, and to make an informed choice in terms of the four options. The advice to the supported person should be impartial, balanced and well informed. The emphasis throughout should be on supporting an individual to make an informed choice.

72. The professional should explain the options in a clear and accessible way. They should tailor any communication to the communication needs of

	Contact details for mentoring networks
Support and information services	Organisations that are independent or semi-independent from the authority. This may include "in house" support and information services or it may include user-led or peer support organisations.
Brokerage	Specialist support to people to plan, procure and manage their own support arrangements under the direct payment option.
Independent advocacy	Advocacy services to make sure that people's voices are heard (individually or collectively) during all stages of the care and support pathway
Training	Training to individuals or voluntary or independent sector organisations in: * care and support pathways and key stages such as assessment, support planning, managing your support and review * disability, diversity and equality * confidence and assertiveness

Sources of information and support out-with the authority/health board

75. The professional should point the supported person towards other sources of information out with the authority. This may include independent organisations or user-led organisations such as centres for independent living, specialist support organisations with an expertise in the individual's particular support needs or disability, or organisations with expertise in supporting specific client groups. In addition, it may include organisations with a general role in support and assistance to citizens.

The role of user-led support and information organisations

User-led support and information organisations operate on a peer support model. They offer a unique contribution, helping disabled people to understand their options to relate to the needs of others in the same situation. Their staff and volunteers may have personal experience of care and support services. It is this experience which helps to inform the design and delivery of support services, leading to high quality, relevant and appropriate information and support.

Further information is available from the Self Directed Support Scotland (SDSS) website www.sdsscotland.org.uk

Advocacy and advocacy services

76. In addition the professional, where they consider it appropriate to do so, must provide the supported person with information about independent advocacy services. Advocacy services provide a unique role in terms of helping people to navigate and make their choices. The professional should

Question 4c: Do you have any further comments on this section of the guidance?

Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you'd like to make?

It totally fails to come to grips with reality. The objectives are incompatible with severe limitations on the amount of finance that is actually available.

**Question 5b: How useful did you find this section of the guidance?
(please tick)**

Very useful	Quite Useful	Not very useful	Not at all useful
			✓

Question 5c: Do you have any further comments on this section of the guidance?

Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you'd like to make?

It is absolutely no use at all giving extra that involve extra expenditure while at the same time reducing the available funding.

The actions taken at this stage will be different depending on the needs of the local area but may include: allocating additional resources for specialist support services, providing specialist training; setting aside funding for innovation; financial incentives to meet gaps in support; or simply being clear about the commissioning or de-commissioning of services.

4. Review - ask if it worked and make changes

This final stage is an opportunity to assess whether the process has worked. By reviewing the information gathered during the earlier stages this assessment should shape what the local authority intends to do to facilitate a variety of choices in future.

Further guidance and hyperlinks:

Joint Improvement Team – Joint Strategic Commissioning
<http://www.jitscotland.org.uk/action-areas/commissioning/>

Scottish Government (2012), *Guidance on the procurement of care and support services by public bodies in Scotland*
<http://www.scotland.gov.uk/Publications/2010/09/21100130/0>

Further links (including a guide to professionals, user's guide and carer's guide) to follow.

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Consultation Questions

Section 7: Facilitating genuine choice for individuals

Question 6a: Was this section of the guidance clear and easy to understand? (please tick)

Yes	No
	✓

Question 6b: How useful did you find this section of the guidance? (please tick)

Very useful	Quite Useful	Not very useful	Not at all useful
			✓

Question 6c: Do you have any further comments on this section of the guidance?

Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you'd like to make?

SECTION 8: THE ROLE OF THE NHS AND THE NHS PROFESSIONAL

This section considers the role of the NHS professional. It clarifies what is possible under the respective legal frameworks and it provides some case study examples of combined packages of support for individuals. It encourages the respective professionals and organisations to work together, to conduct assessments based on personal outcomes and to pool budgets at the level of the individual.

83. Social care and healthcare, particularly community healthcare, are closely related. It is not uncommon for a supported person to receive on-going healthcare – care that is funded by the NHS – and to receive social care and support at the same time. Moreover, a supported person's needs and outcomes – indeed their life as a whole - will not always respect traditional boundaries between healthcare services and social care services. The relevant professionals and organisations should consider their respective roles, contributions, expertise and resources.

What is meant by NHS or "health" support?

84. This section of the guidance uses the shorthand term "healthcare" or "NHS support". This is referring not to acute healthcare (hospital based healthcare, treatments or operations) but to community based healthcare - the range of NHS-funded support provided by district nurses and allied health professionals such as occupational therapists. Support funded or arranged by the NHS may be provided to a person *alongside* social care provision or it may be provided in place of social care provision. It is important that the relevant health and social care professionals are alive to this reality and take steps to collaborate and work together in the interests of the supported person/patient.

What is meant by a joint approach?

85. A joint approach is not simply about the pooling or transfer of budgets. At its core it is about a joint "person-centred" approach to assessment and support planning. It is about recognising all available opportunities to pool expertise, share common approaches and combine resources at every stage in supported person's pathway. This requires ingenuity, a "solution focused" or "problem-solving" approach and a determination on the part of the health and social care professionals (and senior managers) to take full advantage of the broad powers afforded them in legislation.

Case study 1:

Lisa's story: a package of support jointly funded and supported by health and social care

Lisa is 21, she was involved in a road traffic accident 4 years ago resulting in an acquired brain injury, significant physical disability and communication impairment.

What is “allowed”?

87. What can be done under social care and healthcare legislation? The relevant professionals can do the following:

- They can contribute their professional healthcare expertise to a single assessment and support plan.
- They can arrange for the transfer of funding from the NHS to the local authority in order to pay for aspects of social care provision. The funding can then be directed by the supported person under the 2013 Act. The jointly funded package can be arranged by the relevant professionals on the supported person’s behalf, it can be directed by an individual in the form of an individual service fund or it can be released direct to the individual in the form of a direct payment.

Joint assessment and delegated assessment

88. Where the social care assessment function is delegated to the NHS all of the legal powers and duties associated with that assessment will transfer to the NHS professional. The NHS professional must comply with this duty to assess and to meet the person’s assessed needs under Section 12A of the 1958 Act or Section 22 of the 1995 Act. In addition they must provide choices over the person’s support as defined by the 2013 Act. They must offer the various choices to the supported person and they must “give effect” to the supported person’s choice. In addition, the healthcare professional should discharge the relevant duties in line with this guidance.

Joint Funding

89. Under the framework provided by the Community Care (Joint Working etc.) (Scotland) Regulations 2002 (SSI 2002 No. 533) (“the 2002 Regulations”) the local authority and the health board can transfer funding between themselves and they can combine their funding at the level of the individual. This flexibility, which applies to “high level” strategic budgets *and* funding at the “micro level” of the individual, will be retained and enhanced by the forthcoming legislation on the integration of health and social care.

Budgets are pooled: what happens next?

90. Once a decision has been taken to pool budgets the combined funding pot can be released in a variety of ways. Some example scenarios are provided below:

- “Health funding” (funding to address health needs) is added to funding from the local authority. It is then released to the individual as a direct payment. The payment is used to employ a personal assistant with the requisite health training and skills. The assistant is provided with the necessary training. Alternatively, a portion of health funding is used to increase the number of hours funded so that a second personal

myself, choosing my menus; inviting my own friends and family to visit, organising social events and going out with my family and friends, privacy in my home; able to continue to work as a quantity surveyor, until 2011 when I had to retire because of ill health; choosing and employing my own staff, which allowed continuity in my care.'

Monitoring and review

91. The professionals involved in jointly funded packages of support should put in place the appropriate *joint* arrangements for the on-going monitoring and review of the supported person's needs. It is important that the NHS professional continues to bring their professional expertise to bear. They will want to be reassured that the supported person's health needs are being met in an effective way and by someone who is competent and trained to deliver those interventions. At the organisational level the local authority should liaise with the Health Board to develop effective arrangements around the corporate policies for the assessment and monitoring of all self-directed support packages where there is a health care component.

Draft Statutory Guidance on Care and Support Consultation Questions

Section 8 : The role of the NHS professional

Question 7a: Was this section of the guidance clear and easy to understand? (please tick)

Yes	No
	✓

Question 7b: How useful did you find this section of the guidance? (please tick)

Very useful	Quite Useful	Not very useful	Not at all useful
			✓

Question 7c: Do you have any further comments on this section of the guidance?

Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you'd like to make?

What it does not say is that providing extra support for Steven meant there was less funding available for others in need.

professionals should be aware of the duties and powers under social care legislation, in particular the duties to offer choices in relation to the child's care and support.

Further guidance and hyperlinks:

Further information about the roles of the Named Person and Lead Professional can be found at: www.scotland.gov.uk/girfec

Care and support: the main legal duties and powers

95. Section 22 of the Children (Scotland) Act 1995 places a duty on the responsible authority to safeguard and promote the welfare of children in need and, where consistent with that, to promote the upbringing of children within their families. In each case, the local authority must provide a range and level of services appropriate to the child's needs. The accompanying Section 23 provides additional prescription in relation to any support related to disability. For instance, it requires any support to minimise the effect of disability on the child and to give the child the opportunity to live as normal a life as possible.

96. The professional should bear in mind that the definition of a "child in need", as provided in Section 22, is a broad definition. It includes children under the age of 18 who have a disability, children affected adversely by the disability of any other person in the family and children whose health or development may be impaired or may fall below a reasonable standard without services from the local authority. While the focus of support provided under section 22 is to support the child, the support may be provided to the wider family if/when it will help to safeguard or promote the welfare of the child.

The assessment and support planning process

97. Under the Getting it Right approach each child who requires support, whether from a single universal service or from several services or agencies, will have this support co-ordinated and recorded within a single plan. This should mean that the "social care" assessment and support planning process – i.e. the process described in this guidance - should feed into a single plan for the child. The professional should seek to ensure the assessment process is fully co-ordinated between adult and children's services, including any other relevant departments such as education. An approach based on personal outcomes will help to draw out the child and their family's views on the things they want to achieve, the things they'd like to do and how they'd like to do them. An approach based on personal outcomes will also help to ensure that the social care assessment can easily contribute to the Single Plan for the child. In undertaking the assessment, the professional should consider the SHANARRI framework.²

² SHANARRI: safe, healthy, achieving, nurtured, active, respected, responsible and included.

100. The child's opinions need to be actively sought and their behaviour observed with the adults who will be supporting them. A few trial or observation visits may be needed to get their views. The child should be given appropriate help to express their views and wishes, and should have access to independent advocacy when appropriate. The professional will need to handle such issues sensitively in terms of the family situation where there may be parental conflict with the views of the child. It is important to recognise the views of parents who have been managing the delivery of support for their child in setting in place any new arrangements once the young supported person reaches age 16.

"Transition" from children's support into adult's support

101. For any young person the process of growing up involves the gradual taking on of responsibility for themselves. Parents can face challenges in supporting and preparing young people for an independent adult life. The transition to greater independence is rarely a single event, nor does it happen quickly. However families with disabled children often face additional challenges that may delay or limit the young person's "transition" towards independence. The greater flexibility offered by options 1 and 2 in the 2013 Act may offer advantages to the young person and their family. A direct payment or the opportunity to take control of their support may help them to take on greater responsibility right across their life, to be more independent and to have greater control over their future. Alternatively, the "mix and match" approach (where the young supported person takes direct control over a portion of their package or to meet a small collection of outcomes) may offer an opportunity to build the young supported person's confidence in managing their own support. The professional may want to facilitate transitional arrangements whereby initially the young person manages only a small proportion of their support but takes on greater responsibility over time.

102. Throughout the assessment and support planning process the young person should receive the practical support that they need in order to help them to make the relevant decisions and manage their support. This may include assistance from parents and carers, independent advice and support or, in some cases, advocacy services. The young person's ability to manage may change as they gain experience. Where the young person or family decides to take *greater* control – for instance, to take a direct payment and employ their own staff then additional local support services – the professional should ensure that they direct the young person and their family to agencies that assist with employment advice and payroll support.

Incapacity

103. Where the child or young person lacks capacity or may lack capacity in future the professional should make the child and their family aware of the Adults with Incapacity (Scotland) 2000 Act ("the AWI Act"). They should inform the child and their family about the opportunity to apply for power of attorney and guardianship.

Draft Statutory Guidance on Care and Support
Consultation Questions

Section 9.1 : Children and Families

Question 8a: Was this section of the guidance clear and easy to understand? (please tick)

Yes	✓	No

Question 8b: How useful did you find this section of the guidance? (please tick)

Very useful	Quite Useful	Not very useful	Not at all useful
	✓		

Question 8c: Do you have any further comments on this section of the guidance?

Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you'd like to make?

I particularly like the bit that says "encourage a culture of positive risk taking." All too often Social Workers assess children's needs by treating them like commodities on a production line instead of as individuals.

only with the supported person's agreement, they should then involve the relevant individuals.

108. Where a supported decision-making arrangement or a "circle of support" is being considered the *agreement* of the supported person is paramount. The supported person must be invited to agree to any arrangement whereby another individual or group of individuals are being invited to provide them with assistance. The supported person's agreement must be secured before the individual(s) can provide any assistance.

109. It is important that the person(s) providing any assistance are *able* to provide that assistance. While there is no requirement for the individual(s) providing the assistance to have professional qualifications in supported decision-making, they should have an understanding of the type of assistance required and the limits and boundaries of what is meant by "assistance". In other words, they should be aware:

- of their role and the limits of their role, and;
- the fact that their role is to help *the supported person* to make decisions and not to *make* decisions on the supported person's behalf.

110. Only guardians or attorneys appointed under the "AWI Act" have the power to make decisions on another supported person's behalf. On certain occasions it would be reasonable to predict that the supported person's condition will deteriorate over time such that they will lack capacity to make decisions. The professional should therefore take steps to make the supported person and their family aware of the option to apply for power of attorney. Alternatively, a person's capacity to make or understand decisions may fluctuate. Where this is the case the professional should consider the benefits of an Advanced Statement under the Mental Health (Care and Treatment) Act 2003.³

Assistance with communicating decisions

111. As stated, assistance to make decisions and assistance to communicate decisions are two distinct forms of assistance, and they are treated as such on the face of the 2013 Act. The supported person may require some additional support from, for example, an interpreter or a speech and language therapist, or from a family member or friend. If so, the professional must take reasonable steps to identify other people who can help the supported person to communicate their decisions. The professional should take steps to get the supported person's agreement before they arrange any assistance for the supported person.

What to do when the supported person lacks capacity

112. Where the supported person has a guardian or attorney, and where that "proxy" has the necessary powers, the guardian or attorney should be supported to make the relevant decisions in relation to the person's

³ <http://www.scotland.gov.uk/Publications/2004/10/20017/44081>

Draft Statutory Guidance on Care and Support
Consultation Questions

Section 9.2 : Supported decision-making and circles of support

Question 9a: Was this section of the guidance clear and easy to understand? (please tick)

Yes	No
	✓

Question 9b: How useful did you find this section of the guidance? (please tick)

Very useful	Quite Useful	Not very useful	Not at all useful
			✓

Question 9c: Do you have any further comments on this section of the guidance?

Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you'd like to make?

112 is very dangerous. It does not deal with a situation where the objective of the guardian or attorney is to benefit themselves and not the supported person.

Support to the carer

116. The 2013 Act contains additional requirements on the professional in relation to the outcome or end result from the initial assessment.⁴ First, it places a duty on the professional to consider the conclusions from the assessment. In considering this aspect the professional must consider whether the carer would benefit from some form of support to enable them to continue in their caring role. If the answer is “yes” then Section 3 of the 2013 Act provides the legal basis for the professional to work with an adult carer in order to arrange some support. For young carers the basis is section 22 of the Children (Scotland) Act 1995.

117. Support to a carer can mean a wide variety of things. It can mean access to universal services available in the community, referral to a known source of information and advice (for example, to a condition-specific organisation or to a carers centre) or the provision of further information in the form of booklets, websites, advice or guidance on coping with their caring role.

118. It can also mean arranging some form of “funded” services or support. Funded support to the carer can be of significant benefit to the carer and to the supported person. It can also lead to significant benefits to the statutory agencies responsible for care and support. Carers do not tend to “down tools” but without the contribution of the carer or other friends and relatives, it would be the statutory agency which would otherwise have to step in with higher levels of support to the supported person in need. Senior managers should encourage professionals to exercise their own judgement, consider the outcomes alongside carers and put in place the right support at the right time.

The choices that must be made available to the carer

119. If, as a result of the assessment, the professional decides to provide funded support, they must offer the carer choices as to how they wish to receive that support. They must provide the carer with the various options within the 2013 Act and they must give effect to the carer's choice. As with support to the disabled or older person, they must inform the carer of the amount of support available under each of the options. If the carer does not wish to make their own decision about how they will receive any support (and assuming that they still wish to receive support) then the professional should continue to arrange support on their behalf.

Information and additional advice and support to carers

120. The professional must collaborate with the carer in relation to their assessment. They must take steps to ensure the carer can exercise informed choice; involve the carer in the assessment and in the decisions around any

⁴ Section 3 of the 2013 Act requires the professional to consider the carer's assessment and allows local authorities to provide support. Section 7 imposes the duty to offer choice in relation to the support to be delivered in consequence of adult carers' assessments. Section 8 imposes the same duty in relation to young carers.

	<ul style="list-style-type: none">• The professional refers the carer to their local carer's centre which is grant funded or funded under contract with the authority.
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Case Study 3: Support to carers: Isobel and John's story

Isobel cares for her husband who needs a lot of help with personal care. John doesn't want anyone other than his wife to help but she is exhausted trying to care for her husband and run the house. It's difficult to get time to do laundry, shopping etc. Following a carer's assessment the local authority provides Isobel with a budget of £40 per week to help with tasks that will enable her to concentrate on providing support to John, which is what she wants to do. The couple also receive support to have short breaks together of up to two weeks per year in accessible accommodation.⁵ This has helped relieve the stress felt by Isobel and has improved their relationship.

Charging for support to carers

Consultation issue: Separate to this consultation the Scottish Government is consulting on draft regulations and guidance in relation to charging for carers support provided under Section 3 of the Social Care (Self-directed Support) (Scotland) Act 2013. The Scottish Government proposes to lay regulations which would waive all such charges and some charges for related services or support to cared-for persons which enable the carer's support to be delivered in practice. *This* guidance document will be updated to reflect the final version of the Carer's Charging Regulations along with any accompanying guidance.

Support to carers out-with the formal carer's assessment

122. Early preventative support helps to lessen any negative impact of a caring role. Working together, the carer and the professional can ensure better emotional and physical wellbeing for the carer by putting preventative support in place. The aim is to support the carer in circumstances such as the early stages of a caring role knowing that the caring will become more intensive in due course (for example, caring for a supported person just diagnosed with dementia) or whilst caring for someone whose condition is known to remain stable and low-level.

123. It is important to remember that the characteristics of the individual carer are relevant when deciding whether that individual is providing a substantial amount of care on a regular basis. For example, they might be very old themselves and in poor health. Preventative support is more cost-effective than support provided in a crisis or emergency. Carers who do not meet the threshold for a carer's assessment (in other words they are not providing a substantial amount of care on a regular basis) can still benefit

⁵ The short break funding is made partly under section 3(4) of the 2013 Act (as regards Isobel's break) and partly under section 12 of the 1968 Act (as regards John's).

9.4 Direct Payments

Direct payments have their own distinct characteristics - aspects which set them apart from the other options that a person may choose. This section provides further guidance on direct payments.

The fundamental characteristics of a direct payment

124. A direct payment is not a benefit and nor is it a gift. It is a means by which to meet eligible needs. Its ultimate purpose is to meet the eligible needs for the individual. As such, it should relate to the person's support plan. The direct payment funding should be used in flexible ways, but it must relate in some way to the outcomes set out in the supported person's support plan. The professional should take care to ensure that the supported person understands what a direct payment is and how it might be used. The professional should take steps to learn about the nature and effect of a direct payment, the purpose behind a direct payment and the flexibility and responsibilities that come with direct payments. They should engage with the philosophy behind direct payments and their potential application for a wide range of individuals and circumstances.

Third party direct payments

125. Under the Self-directed Support (Direct Payments)(Scotland) Regulations ('the Direct Payments Regulations') which are consulted on in draft alongside this guidance, the supported person can ask for their direct payment to be paid to a third party – a supported person or an organisation – and administered on the supported person's behalf. Under a third party direct payment, the person remains in control of the payment and the person remains responsible for the direct payment. The supported person should be made aware of this.

Circumstances where the professional cannot offer a direct payment

126. There are certain circumstances where social care legislation prevents the professional from offering the direct payment option. The relevant circumstances are contained in the draft Direct Payments Regulations. Where a person is deemed to be ineligible for the direct payment, it is not sufficient for the professional to simply inform the supported person that they cannot have a direct payment and leave matters there. They must notify the supported person as to the reason why they cannot have a direct payment. They must explain the circumstances in which the authority must review the question of whether the supported person is ineligible. Finally, they must give the supported person the option of choosing the other options available. Where there is a subsequent material change in the supported person's circumstance and the supported person asks for a review of their ineligibility for the direct payment, the professional must provide the supported person with an opportunity to choose from the four options in the 2013 Act.

131. The professional should take steps to provide this information to the supported person and they should point the supported person towards further sources of information which can help them to understand their responsibilities.

Further guidance and hyperlinks:

For further guidance on direct payments and the Protecting Vulnerable Groups scheme, consult the Scottish Government's "Guidance on the interaction between Self-Directed Support and Protecting Vulnerable Groups Scheme":

<http://www.scotland.gov.uk/Publications/2011/08/04111811/0>

Monitoring and administration of direct payments

132. A direct payment is a cash payment in order to meet assessed needs. As such, it requires a proportionate level of financial and welfare monitoring. It is essential that monitoring is co-ordinated in an effective and efficient way. Honest mistakes should not be penalised. When an administrative error is made, the local authority should ensure support is provided to address any gaps in knowledge or expertise.

"Welfare" monitoring

133. The professional should not rely on the support person asking for help, particularly when that person is embarking on a direct payment for the first time. A local independent support organisation or independent advocacy service may help the person raise any issues which are giving concern. Packages which include health services will require to be monitored by health professionals who will have the necessary expertise to judge whether the person's health needs are being met.

Financial monitoring

134. The authority should consider the national Chartered Institute of Public Finance and Accountancy (CIPFA) good practice guidance which recommends proportionate monitoring, focused on outcomes, and with as light a touch as possible.

Terminating and recovering direct payments

135. The professional may have to consider using the powers available to them under the Direct Payments Regulations to terminate the direct payment.

136. Any decision to terminate a direct payment should follow a thorough discussion with the supported person, carer(s) and circle(s) of support. If the person chooses to receive the support by means of a direct payment, and the person is eligible to do so in terms of the 2013 Act and Direct Payments Regulations, the local authority must provide the direct payment. The local

**Question 11b: How useful did you find this section of the guidance?
(please tick)**

Very useful	Quite Useful	Not very useful	Not at all useful
	✓		

Question 11c: Do you have any further comments on this section of the guidance?

Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you'd like to make?

Financial monitoring is necessary only where the direct payment is not made to the beneficiary. This is necessary to ensure that the money is spent on the beneficiary and not on the guardian or attorney. No monitoring is necessary where the beneficial handles his own payments. There is a danger otherwise, that the administrative cost of the monitoring will leave less money available for front-line caring.

142. There will be occasions where the professional will have to consider and/or use their safeguarding powers. See section 9.1 for guidance on child safeguarding/protection and the links to care and support duties.

Re-ablement

143. Re-ablement services involve a short term package of support provided over a 6 week period. Re-ablement may be provided following a fall or following discharge from hospital though it may be provided in other circumstances. The unique characteristic of re-ablement support is that it is *short-term* intensive support designed to help the supported person regain independence. There will tend to be two possible outcomes when the re-ablement support comes to an end: a) the supported person may be eligible for long-term support, or b) the re-ablement service will address the initial need and, as such, there will be no further “stable” or long-term support. It would be sensible for the professional to view re-ablement as a part of the assessment process – an early intervention which may or may not lead to more stable forms of on-going support. However, where it is decided that the supported person will be provided with that stable on-going support, the professional must offer the person the various choices set out in the 2013 Act.

Intermediate Care

144. Intermediate Care is an ‘umbrella’ term describing a collection of services working to common, shared objectives and principles. It provides a set of ‘bridges’ at key points of transition in a person’s life, in particular from hospital to home (and vice versa) and from illness or injury to recovery and independence. The purpose of Intermediate Care is to provide time-limited interventions at points of crisis in a person’s life where this will restore or avoid a loss of independence and confidence, or reduce the risk of hospital admission (or a longer stay in hospital).

Further guidance and hyperlinks:

Further guidance on Intermediate Care can be found in Maximising Recovery, Promoting Independent: An Intermediate Care Framework for Scotland

<http://www.scotland.gov.uk/Publications/2012/07/1181>

145. The “gateway” into intermediate care is a multi-disciplinary assessment of one form or another. In light of the short-term intensive nature of the intervention, intermediate care should be viewed as an initial step or staging post which can help to determine a supported person’s need and inform any subsequent long-term support plan. Where it is decided that the supported person will be provided with stable on-going support, the professional must offer the supported person the choices set out in the 2013 Act.

context of residential care. In particular, the two parties should consider the flexibility that may be offered by Option 2 in the 2013 Act (i.e. where a support or service fund is directed by the individual). A care home fee, paid under the National Care Home Contract, is a good example of a virtual budget arrangement. However, there may be further opportunities to develop the concept and to explore the flexibility that may be offered by an individual fund for residential care.

148. Regardless of the particular mechanism by which the supported person arranges their care the initial choice of residential establishment and any subsequent change must be made in line with the Choice of Accommodation Directions and the accompanying guidance issued by Scottish Ministers.

Further guidance and hyperlinks:

Scottish Government guidance on Choice of Accommodation; Discharge from Hospital (2004)
http://www.sehd.scot.nhs.uk/publications/CC2003_08.pdf

Charging

149. Under Section 87 of the 1968 Act the authority can require the supported person to pay a charge towards the cost of any services which meet the supported person's assessed needs. Historically, charges have tended to be based on established "service" charges, with some services exempted from charging. However, where a supported person's package is predicated on flexible use of an identified budget rather than a menu of services, the authority is no longer able to charge on the basis of service types. Authorities should consider new approaches to charging – approaches which enable them to charge on the basis of a proportion of the supported person's budget as opposed to one form of service or another. Personal and nursing care support to people aged 65 and over must be provided free from any charge. Where this is the case, the authority should refer to Executive circular CCD 4/2002: Free personal and Nursing Care 19, particularly Section 5: Payment Mechanisms.

Personal and nursing care

150. Personal and nursing care is a form of social care and support. As such, it falls within the scope of the assessment and support planning processes described in this guidance. If the supported person has personal care needs then they should be provided with the full range of choices under the 2013 Act.

Housing support services

151. Housing support is support other than care or housing management services that will enable a person to establish or maintain occupancy of a dwelling. Housing support services are provided to help people live as

**Draft Statutory Guidance on Care and Support
Consultation Questions**

Section 9.5: Wider legal duties and strategic responsibilities

Question 12a: Was this section of the guidance clear and easy to understand? (please tick)

Yes	No
	✓

Question 12b: How useful did you find this section of the guidance? (please tick)

Very useful	Quite Useful	Not very useful	Not at all useful
			✓

Question 12c: Do you have any further comments on this section of the guidance?

Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you'd like to make?

No changes should ever be made to any person in receipt of means-tested state benefits.

The equality and human rights impacts of the guidance

Question 15 (a): Do you have any views on the impact of the guidance on any or all of the following equality categories:

- i) age;**
- ii) disability**
- iii) gender;**
- iv) lesbian, gay, bisexual and transgender;**
- v) race, and;**
- vi) religion and belief**

Some advice to help you to answer this question - By "equality impacts" we mean whether or not the guidance will affect certain groups in a positive or a negative way. In considering the impacts you may wish to consult the Equality Impact Assessment published for the Social Care (Self-directed Support) (Scotland) Act available at the following hyperlink:

<http://www.scotland.gov.uk/Publications/2012/03/9876>

We plan to update the Equality Impact Assessment in light of the comments and information from this consultation.

With regard to religion, there should be a requirement that religious diets must be adhered to. Where someone whose religion forbids eating pork, they should have the right to go to a care/nursing home that does not serve pork.

Question 15 (b): Do you have any views on the impact of the guidance on human rights?

For more information about human rights please see the Scottish Human Rights Commission's website at:

<http://www.scottishhumanrights.com/abouthumanrights/whatarehumanrights>

The lack of any formal appeal amounts to violation of Article 6(1) of Schedule 1 of Human Rights Act 1998.

Assessment duties in relation to children

Section 22, Children (Scotland) Act 1995

Promotion of welfare of children in need

- (1) A local authority shall—
- (a) safeguard and promote the welfare of children in their area who are in need; and
 - (b) so far as is consistent with that duty, promote the upbringing of such children by their families
- by providing a range and level of services appropriate to the children's needs.

Section 23, Children (Scotland) Act 1995:

Children affected by disability

- (1) Without prejudice to the generality of subsection (1) of section 22 of this Act, services provided by a local authority under that subsection shall be designed—
- (a) to minimise the effect on any—
 - (i) disabled child who is within the authority's area, of his disability; and
 - (ii) child who is within that area and is affected adversely by the disability of any other person in his family, of that other person's disability; and
 - (b) to give those children the opportunity to lead lives which are as normal as possible.
- (2) For the purposes of this Chapter of this Part a person is disabled if he is chronically sick or disabled or suffers from mental disorder (as defined in section 328(1) of the Mental Health (Care and Treatment)(Scotland) Act 2003).
- (3) Where requested to do so by-
- (a) a child's parent or guardian; or
 - (b) a mental health officer (as defined in section 329 of the Mental Health (Care and Treatment)(Scotland) Act 2003) who –
 - (i) has responsibility under that Act or the Criminal Procedure (Scotland) Act 1995 for a child's case; and
 - (ii) makes a request for the purposes of either of those Acts,
- a local authority shall, for the purpose of facilitating the discharge of such duties as the authority may have under section 22(1) of this Act (whether or not by virtue of subsection (1) above) as respects the child, carry out an assessment of the child, or of any other person in the child's family, to determine the needs of the child in so far as attributable to his disability or to that of the other person.

(b) as a volunteer for a voluntary organisation.

Carers of children

Section 24, Children (Scotland) Act 1995:

Assessment of ability of carers to provide care for disabled children

(1) Subject to subsection (2) below, a person ("the carer") who provides, or intends to provide, a substantial amount of care on a regular basis for a disabled child may, whether or not the carer is a child, request a local authority to make an assessment ("the carer's assessment") of the carer's ability to provide or to continue to provide such care for the child.

(1A) The local authority to whom the request is made shall—

(a) comply with the request where it appears to them that the child, or another person in the child's family, is a person for whom they must or may provide services under section 22(1) of this Act; and

(b) if they then or subsequently make an assessment under section 23(3) of this Act to determine the needs of the child, have regard to the results of the carer's assessment—

(i) in the assessment of the child; and

(ii) in making a decision as to the discharge by them of any duty they may have as respects the child under section 2(1) of the Chronically Sick and Disabled Persons Act 1970 or under section 22(1) of this Act.

(2) No request may be made under subsection (1) above by a person who provides or will provide the care in question—

(a) under or by virtue of a contract of employment or other contract; or

(b) as a volunteer for a voluntary organisation.

If you would like to attach a case study please attach it as a separate word document alongside your main consultation response.

Please use the following template when providing your case study/studies:

Social Care (Self-directed Support) (Scotland) Act 2013 Consultation on draft statutory guidance for care and support <u>GUIDANCE STORIES</u>	
The following is a template for the submission of illustrative case studies for consideration in the final version of statutory guidance or additional best practice guides.	
Name of the organisation/s submitting the case study	} confidential
Contact name for the organisation submitting the case study	
Contact telephone number	
Contact e-mail address	
Provide your case study in the following space (maximum 350 words)	
<p>Mr G cannot cut his toenails due to being disabled. He was previously sent to Podiatrist funded by NHS. But NHS now refuse to allow their podiatrists to cut toe-nails and say it should be funded by local authorities from care budget. Social Workers refuse to allow their carers to cut toe-nails. Mr G suffers from ingrowing toe-nails as a direct result of the row between NHS and Social Workers.</p>	