

Consultation Questionnaire

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
<input type="checkbox"/>	<input checked="" type="checkbox"/> this section is the 'supported person's pathway'

**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
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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?

In response to this section, which should be titled the 'supported person's pathway', rather than Values and Principles (as this question is 2a). The pathway is open to interpretation in different areas and in different services. The role of the professional should ensure a 'comprehensive assessment' and should arrange 'additional assistance': what is comprehensive and additional – no clear definition.

The guidance is focused around the supported person playing a full part, what happens if the supported person chooses not to engage with the professional/assessment, little guidance in this area.

There is a role identified for both the unpaid carer and the provider, these are not clear enough as relates to their involvement in the pathway, e.g. where the unpaid carers view is in conflict to the supported person. Also the role of provider is very wide and it may not be feasible not advisable for them to be involved in assessment or planning processes.

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Consultation Questions

Section 3: Values and Principles

Question 2a: Was this section of the guidance clear and easy to understand? (please tick)

Yes	No
<input type="checkbox"/>	<input checked="" type="checkbox"/>

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
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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?

This section is not particularly clear or easy to understand. The table of principles (Table 3) could be set out better to show which are statutory principles and which are “further good practice principles”. To combine them all in the one table is potentially confusing. Also, why are “Participation” and “Dignity” not classed as two separate principles as opposed to one?

The professional must take reasonable steps to facilitate that the supported person’s right to dignity and participation in the community is respected. However what is reasonable? In addition the supported person must be provided with any assistance reasonably required to express views and make an informed choice. As *any* and *reasonable* can be interpreted it would seem practical for any tools or documents (in alternative styles, languages, media) to be shared on a national level. This would hopefully shorten the time that individuals may have to wait for individual Local Authorities to translate, create or source accessible information.

The principles noted are not always able to be applied, such as where collaboration or involvement is not desired by the supported person. Innovation may not be possible where this contravenes other legislation, guidance or practice (such as Adult Support and Protection). The principle of participation is that the supported person should be provided with help to participate in the life of the community and wider society, however where eligibility criteria and Social Care and Health budgets are constricting, it may not be possible for people’s wishes and desires around this principle to be funded or paid for. Clarity on what is meant by *help* in this area is required

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Consultation Questions

Section 4: Eligibility and Assessment

Question 3a: Was this section of the guidance clear and easy to understand? (please tick)

Yes	No
<input checked="" type="checkbox"/>	<input type="checkbox"/>

Question 3b: How useful did you find this section of the guidance? (please tick)

Very useful	Quite Useful	Not very useful	Not at all useful
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Question 3c: 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?

Section 31 details that Sections 12 and 22 of the 1968 Act allow for wide discretion for professionals to use their judgement in relation to the provision of certain types of support or service, however this discretion does not extend to the mechanism or option for support to be delivered. There are occasions when a person's choice of mechanism rather than support type will not be either in their best interests, or feasible. Professional discretion should be extended to the mechanism as well as the type of support.

Clarity on the role of the self-assessment is welcome.

Increased clarity on provision of support to those subject to immigration control is required, especially with regard to the options and how these would practically work for this group.

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Consultation Questions

Section 5 : Support Planning

This section of the guidance covered:

- general guidance on support planning
- risk
- resources
- the choices that must be made available to the supported person and
- information and support

**Question 4a: Was this section of the guidance clear and easy to understand?
(please tick)**

Yes	No
<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Question 4b: How useful did you find this section of the guidance?
(please tick)**

Very useful	Quite Useful	Not very useful	Not at all useful
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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?

The support plan is deemed a crucial aspect of the assessment process however clarity is required on how Local Authorities will integrate this into practice. Clarity is required on who will be responsible. Many supported people will opt to use a circle of support model to support plan, and although the professional will have involvement, they will not necessarily lead the process.

The focus of the support plan is on outcomes; however eligible needs are not mentioned and should be given greater prominence, as plans can not be agreed if the person's needs will not be met.

Not enough emphasis placed on parties other than the Local Authority and the supported person. It is not clear whether there is a duty for others, such as Health colleagues, to comply with the guidance, particularly in relation to Risk.

As there are no prescribed or even suggested technical methods of defining the budget, there will clearly be variation between Local Authorities. Although this is to be expected it will result in the supported person, should they move between authorities, having an experience which is not streamlined and consistent. In addition this relates to the support which people will plan to purchase, as one Local Authority may allow and the other may not. Also the support planning process and format may not easily translate from one area to another, particularly where someone is content with the supports they purchase/receive.

This very briefly covers the issue of resource allocation/RAS. It doesn't really say very much and certainly doesn't add anything new or particularly helpful. It would be helpful if it included details of, or links to, the English case-law (e.g. R (Savva) v Kensington and Chelsea (2010) or R (Application of KM) v Cambridgeshire (2011)). This is a major issue and it's very important that local authorities get their resource allocation right, but not much has been said about this in the draft Guidance.

Specific regulations are provided for Option 1 but not for Option 2, which is the least understood in terms of policy and practice. Regulations and further guidance

are required for Option 2, specifically in relation to Individual Service Funds.

Are there any restrictions on who can be the third party in a 'third party Direct Payment'? Clarity required on who this could be.

Relates to sections 63-66: the discretion available to professional re the option chosen is detailed as where the law does not allow (regulations prohibit) and for the type of support chosen is where the form of support does not meet assessed needs. These discretions are not wide enough, in that there may be circumstances where the mechanism chosen, although not prohibited by law, is not suitable given current circumstances, for example the supported person's ability to manage a Direct Payment where they choose not to have any support to do this.

Page 28, Paragraph 55 – the box underneath this paragraph says that: "Section 9 in this guidance provides further guidance on direct payments." Why is there not further detail on ISFs and how they should be set up, used, monitored, etc? E.g. paragraph 56 says that: - "The resource can remain with the local authority or it can be delegated to a provider to hold and distribute under the individual's direction." – Why is there not a separate section on what happens when the resource is delegated to a provider? It would be helpful if there was more detail on ISFs throughout the draft Guidance.

Page 29, Paragraph 61 – "Mix and Match" option – It might be helpful if this was expanded on in more detail. There's not much said about this option throughout the draft Guidance.

Page 30, Paragraph 65 – This paragraph is not particularly clear.

What classes as reasonably required assistance? Clarity is required to establish if the Local Authority must provide this directly or if they can signpost to other organisations or bodies, some of which may either be commissioned by the council or entirely separate. In order to make the options 'tangible and real' further examples of SDS in practice are required, as some service areas do not have a wide experience to relate to supported person's.

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Consultation Questions

Section 6 : Monitoring and Review

**Question 5a: Was this section of the guidance clear and easy to understand?
(please tick)**

Yes	No
<input checked="" type="checkbox"/>	<input type="checkbox"/>

**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
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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?

Clarity required to show that reviewing is not a once a year occurrence, rather this is an ongoing and crucial aspect intrinsically linked to assessment. A clear guide/timeline as to when people who are already supported in Local Authorities should be reviewed and go through the SDS pathway is required.

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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
<input type="checkbox"/>	<input checked="" type="checkbox"/>

**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
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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?

There is not enough information around commissioning practice in general and as it related to outcomes and SDS. This area does not reference existing regulations with regard to procurement and also does not take into account that the commissioner's role may be limited by local conditions.

A minor point, but this says that the authority is required "to take active steps", although the word "active" is not actually used in the legislation.

This section is completely lacking in detail on how to balance choice for the Supported Person with other requirements upon the Council to advertise and follow a procedure to select providers that is transparent and fair. I was hoping that this Section would cover this but it really makes no mention of it at all. The entire Section is very unhelpful - I certainly wasn't expecting the draft Guidance to have a definitive answer or opinion on this from the Scottish Government but it would be helpful to have some mention or even acceptance of the difficulty of balancing choice with all of our other duties and priorities. The draft Guidance does provide a link to the Scottish Government Guidance on "Procurement of Care and Support Services" of 2010 (although it states 2012 – this is a mistake!) but there is nothing in that Guidance particularly to do with SDS and choice. Paragraph 8.16 of the 2010 Guidance quotes the "Scottish Procurement Policy Handbook". This says that there must be effective competition/advertising unless there are convincing and justifiable reasons to the contrary. Would the Scottish Government consider SDS/the Supported Person's right to choose to be a convincing and justifiable reason not to advertise contract opportunities?

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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
<input type="checkbox"/>	<input checked="" type="checkbox"/>

**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
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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?
that are more appropriate for statutory guidance rather than Regulations?*

More clarity on the links with the integration agenda required. Where NHS professionals are performing assessment duties it is unclear whether there is an expectation on the Local Authority to provide training and information on SDS and the related Act and Guidance. In general there seems to be little emphasis on the requirement of the NHS to participate in joint funding or assessments, any more than is current practice, it seems an optional extra rather than an essential part of Self-Directed Support as a holistic approach.

If the health budget will be added to the virtual budget in the form of an ISF - Would the NHS be a joint party to the ISF Contract between the Council and the Provider? Or would the Council be contracting on behalf of the NHS?

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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
<input checked="" type="checkbox"/>	<input type="checkbox"/>

**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
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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?

Unclear whether all aspects and options of SDS will be available to all 'children in need', as safe guarding or other restrictions may technically exclude this group from certain options.

Children over 16 have the right to make decisions about their support, however it is not noted that young people may need intensive support to make such decisions, and may struggle to make appropriate decisions about the mechanism of the support without guidance.

Aspects of this guidance appear to contradict the proposed Children's Bill, and as such the guidance and legislation need to be looked at in conjunction.

If an 'appropriate person' for a child is a foster carer, can that person opt to receive a Direct Payment? This currently does not happen due to the nature of the foster care relationship. Can this aspect be clarified?

This states that it's fundamental to the concept of the 2013 Act that the choice is with the Supported Person "subject of course to any restrictions laid down in the Act or its regulations." – I think they should add: - "or in any other legislation." Presumably there will be limitations on choice which are laid down in other pieces of legislation and not just the 2013 Act itself or any Regulations made under it.

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
<input type="checkbox"/>	<input checked="" type="checkbox"/>

**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
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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?

What are reasonable steps as relates to facilitating involvement and collaboration in the assessment process and making relevant decisions? This requires to be clarified. Section 107 – what type of person/persons can provide extra assistance? Is this limited in any way? And if there is no agreement from the supported person, does that result in the professional not being able to source assistance which may be of great value?

No clarity on the construction of a circle of support, and if the professional will always be charged with the set up of these, even if they are not best placed to lead this.

If the supported person lacks capacity and no Guardian or Power of Attorney is appointed what provision is in place to support decision making, either by the supported person or another? Also is also unclear the practice, as relates to SDS, where the Local Authority has doubts in the Guardian or POA's ability in proxy decision making?

It is unclear how this guidance and the Adults with Incapacity Act link together, this must be clarified.

Section 6 and 17 of the 2013 Act require the Council to “take reasonable steps to facilitate assistance which will help the supported person...” What's meant by the term “facilitate assistance”? What is expected of the Council in this regard? Paragraph 107 says that the Council “must take reasonable steps to identify a person or persons who can provide some extra assistance to the supported person...” How should the local authority go about “facilitating assistance” and “identifying... persons to provide assistance”?

Draft Statutory Guidance on Care and Support

Consultation Questions

Section 9.3: Carers

**Question 10a: Was this section of the guidance clear and easy to understand?
(please tick)**

Yes	No
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<input checked="" type="checkbox"/>	<input type="checkbox"/>
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**Question 10b: How useful did you find this section of the guidance?
(please tick)**

Very useful	Quite Useful	Not very useful	Not at all useful
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Question 10c: 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?

The power to offer carer's support in their own right has been in place for a number of years, with various authorities supporting carers directly. The guidance does not make it clear that support to the carer is not an automatic entitlement and will be explicitly funded. Again there is no professional discretion with regard to the option chosen by the carer. There may be issues over the person's ability in respect of certain options.

Page 57, Paragraph 118 – Similar to my comments above, how should the local authority go about arranging support for carers, i.e. choosing which Carer's Centre or other organisation to provide support?

Page 59 – the bullet-point at the top of the page refers to "a local carer's centre which is grant funded or funded under contract with the authority." – If it is grant funded, how will this be transparent if they are providing services to the supported person on behalf of the Council? Also, what if there is more than one in a local area? How would you choose which one to use? Would it be up to the carer themselves to choose?

Draft Statutory Guidance on Care and Support

Consultation Questions

Section 9.4: Direct payments

Question 11a: Was this section of the guidance clear and easy to understand? (please tick)

Yes	No
<input checked="" type="checkbox"/>	<input type="checkbox"/>

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
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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?

The support plan for Direct Payments must also relate to assessed and eligible need, as well as outcomes, like all other options.

As before who can be the third party in a 'third party Direct Payment'. Section 125 states this can be a 'supported person, what is meant by this? Are there limitations on the person or organisation? Current Direct Payment practice allows third party payments however this is upon the signing of a financial mandate; this is not referred to in the guidance.

Section 127 is too limited in its listing of what can be purchased through a Direct Payment.

Not every area has an independent support organisation, and reference to support organisation being independent should be removed to reflect this.

Section 134 – has the CIPFA guidance been updated in line with SDS, if so this document should be referenced in the hyperlinks section

As mentioned previously there is no professional discretion for the options, where people would be unable to manage a Direct Payment (with support, or where support is refused) or where it just wouldn't practically work for a person to have a Direct Payment.

Page 61, Paragraph 125 – This paragraph says that a "third party" to which a Direct Payment can be made is a "supported person or an organisation". However, the draft Regulations define a "third party" as "a person other than the direct payment user." Either the draft Guidance should mirror the wording of the regulations or the draft regulations should be amended so that the definition

includes “organisation”.

Page 62, Paragraph 130 – This lists the responsibilities that come with receiving a Direct Payment. What about the responsibilities that come with holding an ISF?

Draft Statutory Guidance on Care and Support

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
<input checked="" type="checkbox"/>	<input type="checkbox"/>

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

Very useful	Quite Useful	Not very useful	Not at all useful
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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?

ADULT SUPPORT AND PROTECTION

Unclear how the NHS and health models link to protection and decisions on risk, especially whether health based decisions do not support risk enablement or innovation in support arrangements

RE-ABLEMENT/INTERMEDIATE CARE

The supported persons' pathway does not relate to crisis and intermediate care scenarios'. People's ability to take a full part in their assessment and support planning will be impinged if they are not in a stable position with regard to theirs or other's health and care needs. As such it is agreeable that Options 1 and 2 do not apply re-ablement and intermediate care. The statement must be made clear on the face of the law. In addition the requirements related to support planning should also be clarified. It is unclear if the issue of re-ablement links to people with Mental Health problems and Substance Addiction. The recovery model is not linked in to intermediate care/re-ablement, and as such the transient nature of addiction and mental health is not acknowledged.

CHARGING

This states that “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.” – Why is this? It would be helpful if the Guidance explained why not, especially where someone's choice of support may be as a menu or selection of services.

This states that “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.” – Why is this? It would be helpful if the Guidance explained why not.

EQUIPMENT AND ADAPTATIONS

Existing grant systems are not referred to, and therefore the guidance implies funding for equipment and adaptation will be delivered via one of the options in the Act. The issue of ownership of equipment is not mentioned, and as such it remains unclear where responsibility lies for replace of loss/stolen/damaged property.

DOMESTIC ABUSE/HOMELESSNESS/DRUG AND ALCOHOL ADDICTION

There may be circumstances where use of options 1 and 2 are ideal for any supported person in these groups; however this may be wholly inappropriate for others. This issue is not just relevant to these groups, but more widely in relation to any supported person. As such it is key that the use of professional discretion can be extended to the mechanism or option of SDS. This allows a professional to use their and other’s knowledge, of the supported person to work in a collaborative way to establish a sustainable and appropriate support system.

It is assumed the people in these groups will require long term support; however the nature of these groups means that their care and support needs are of a transient nature. In addition the remit of being able to exclude these groups is not clear, especially in relation to where the main reasoning for support is not being in one of these groups, but still be affected by perhaps addiction in some way.

Further guidance on each of these groups, in their own right, is required, rather than being grouped together.

Draft Statutory Guidance on Care and Support

Consultation Questions – General Questions

The Guidance document as a whole

Question 13: Do you have any further general comments on the guidance?

For example, are there any gaps in terms of the topics covered by the guidance? Are there any major changes that you would recommend? Do you have any comments on the style and layout of the guidance, or the language used in the guidance?

The guidance provides a good starting place to address the issues that SDS will present. However there are clear gaps as relates to the explanation of certain areas and topics, such as Circles of Support, Monitoring and Reviewing processes, Decision Making, and Support Planning processes.

The certain language used in the guidance, such as reasonable and acceptable is very open to interpretation and as such mean that there may be a disparity between people’s expectations and practice. Clearer language needs to be used to ensure the appropriate advancement of SDS.

Compared to other Statutory Guidance, this draft Guidance doesn't really seem to go into any detail on the main issues which would have benefitted from further guidance. There are numerous references to further guidance and hyperlinks throughout the document which is helpful – but the actual draft Guidance itself doesn't say very much. It just refers to lots and lots of other documents, so you'd have to read numerous things to get a definitive answer. This is disappointing.

There also seems to be a lack of guidance on Individual Service Funds. "Option 2" under the 2013 Act involves paying money into what's commonly referred to as an "Individual Service Fund" although it is accepted that that term is not actually used in the legislation. But it would have been helpful if this could have been expanded upon further in the draft Guidance. A lot is said about Direct Payments in the draft statutory Guidance and the draft Regulations specifically cover Direct Payments, but there are no corresponding Regulations regarding payment into an ISF. This seems to be an anomaly. Is it intended that there will be Regulations to cover payments into ISFs?

Also, as noted above, although Section 7 is entitled "Facilitating Choice" it doesn't cover how to balance up the statutory duty to provide choice with the other obligations on the Council, e.g. procurement obligations, obligations to ensure the Supported Person's needs are being met and that they are not being exploited. E.g. If Option 1 is utilised (i.e. Direct Payment by the local authority to the Supported Person) will the local authority be required to assess the suitability of providers being chosen and contracted directly by the Supported Person? Will we be required/entitled to vet them in any way? There really isn't very much said about how we actually facilitate choice in practice, just that we have to do it.

The costs and benefits arising from this guidance

Question 14: Do you have any comments on the financial costs or benefits of the requirements set out in the guidance?

Can you identify any financial costs or benefits to individuals, local authorities, health boards, providers or any other person or organisation affected by the guidance. In considering the costs and benefits you may wish to consult the Business Regulatory Impact Assessment published for the Social Care (Self-directed Support) (Scotland) Act available at the following hyperlink:

<http://www.scotland.gov.uk/Publications/2012/03/5525>

We plan to update the BRIA in light of the comments and information from this consultation.

These are hard to predict but appear to be related mainly to the provision of information and support, and the demands placed upon these services. Money already issued to organisations for information and support, as well as capacity building needs to be reported back on, in terms of effectiveness and the results of this funding. This shared learning will be key to ensure Local Authorities can provide clear and accessible support to advance SDS.

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.

No

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>

No

Consultation Questionnaire

Draft Regulations

Consultation Questions

Question 1: What are your views on Part 2 of the draft Regulations (calculation, payment and termination of direct payments)?

The gross payment of funds would occur additional charges within the Local Authority and would not seem to be of benefit when a net payment can be made, which would regularly be satisfactory to the Local Authority and the Supported Person.

Payment to a third party requires clarity as to who is eligible or permitted to take on such a role, in addition to the criteria of the Supported Person choosing this party.

A payment should be suspended where a person is suspected (upon good grounds) of breaching criminal or civil law, the regulations imply that the person

should have already been convicted of this.

Question 2: What are your views on Part 3 of the draft Regulations (appropriate/inappropriate circumstances for the employment of close relatives)?

The changing of the regulations around employment of relatives poses a variety of issues that have not been considered and are not clear:

- The needs of carers and those they provide care and support to are very different. It is difficult to establish eligible support, including short breaks/respite, within carers assessment for family members who are providing both paid and unpaid
- The proposals on waiving charges for carers will be difficult to apply where the carer is also being paid through direct payment
- The family dynamic is completely changed when family carers are paid to provide support, as is already evidenced where exceptional circumstances arrangements have broken down
- It is difficult to assess and monitor whether there is any undue pressure on either the supported person or the carer to agree to the employment arrangement
- There is evidence that some family carers don't access appropriate breaks from the paid support e.g. agree to provide support on an unpaid basis while on paid annual leave rather than accepting replacement care. This effectively means that family carers don't take the statutory breaks required under employment law which can impact on both the paid and unpaid support and places the employer in breach of employment regulations. It is very difficult to monitor this and, where substantial paid and unpaid support is provided by the same person, there are associated risks to the individual and the carer.
- Sickness cover, annual leave etc is often not planned appropriately and there is often over dependence on family carers without appropriate contingency/back up support built in to the support package
- There is concern that support from other family members may reduce because of the paid role.

The role of paid family members is appropriate at times, however it is a complex area. Professionals are best placed to assess the suitability of such arrangements, as they are currently doing. The use of the exceptional circumstances rule has been successfully applied, and therefore it is suggested that employment of family members is at the discretion of the local authority.

Question 3: What are your views on Regulation 11 which deems individuals who are placed under a variety of criminal justice orders to be ineligible to receive direct payments?

For example, is it appropriate to impose the exclusions listed in Regulation 11? Are there any persons not listed in regulation 11 to whom it would be inappropriate to offer the option of a direct payment?

The option of a direct payment should be discretionary where there are concerns around safeguarding both of the individual and of the person providing support. Adult Support and Protection, Adults with Incapacity and Child Protection regulations should take precedence over the duty to offer a direct payment. Otherwise the professional assessment could be significantly compromised in relation to duties associated with all of these Acts. There are significant concerns over the legal position for professionals and local authorities.

Question 4: What are your views on restricting access to direct payments for those who are homeless, those who are fleeing domestic abuse or those who require support in relation to drug or alcohol addiction?

There may be circumstances where use of options 1 is ideal for any supported person in these groups; however this may be wholly inappropriate for others. This issue is not just relevant to these groups, but more widely in relation to any supported person. As such it is key that the use of professional discretion can be extended to the mechanism or option of SDS. This allows a professional to use their and other's knowledge, of the supported person to work in a collaborative way to establish a sustainable and appropriate support system. Therefore there should be no automatic exclusions to this group; rather each person should be viewed individually.

Question 5: What are your views on restricting access to direct payments in relation to the provision of long-term residential care?

This question was raised during the initial consultations on a draft SDS Bill. The Scottish Government would like to invite detailed views before making a final decision prior to the laying of the Regulations before the Scottish Parliament. Should the restriction be removed from the final regulations, thereby allowing direct payments for residential care? Or should it be retained? Please provide reasons as to your support or opposition to requiring authorities to provide direct payments for residential care.

Using a Direct Payment for residential care may be construed as a Self-funding arrangement, which is often subject to top-up fees. As such a person may be disadvantaged by choosing to take a Direct Payment, which shouldn't be the case. There are already examples of individuals requesting to be placed at alternate residential care establishments that typically used by the Local Authority. As such this provides the same flexibility that would be given by having a Direct Payment. In addition councils can already provide people with the equivalent monies to residential care to purchase care in the community, if appropriate.

The residential care model is very different to the flexibility and choice desired through opting for a Direct Payment, and it could be seen that a person gets less chance to self-direct their support by using a Direct Payment, as the model of care is hard to shift.

It is felt this restriction should be retained and more emphasis placed on residential establishments to adapt their ways of working, perhaps in the form of an ISF model, to bring more flexibility into that aspect of the care sector.

Question 6: The draft Regulations do not specify circumstances where the direct payment option should be unavailable for care and support to children/families. *Should* there be specific restrictions on choice of support in relation to children/families support (i.e. support provided under Section 22 of the Children (Scotland) Act 1995) and should these restrictions apply to the direct payment only, or to other options as well?

It would be advisable to enable professional discretion in relation to when direct payments are appropriate. This would afford maximum flexibility to professionals to engage with families to secure support which best meets their outcomes at appropriate stages in the support.

Question 7: Do you have any further comments on the draft Regulations?

For example, are there any gaps in terms of the topics covered by the Regulations? Are there any major changes that you would recommend? Are there any topics that are more appropriate for statutory guidance rather than Regulations?

If the aspect of employing relatives remains uncharged from this version of regulation then it would be important to incorporate further information in the guidance as to how the regulations are applied, for clarity.

Draft Regulations

Consultation Questions – General Questions

The costs and benefits arising from these regulations

Question 8 : Do you have any comments on the financial costs or benefits of the Regulations?

Can you identify any financial costs or benefits to individuals, local authorities, health boards, providers or any other person or organisation affected by the Regulations. In considering the costs and benefits you may wish to consult the Business Regulatory Impact Assessment published for the Social Care (Self-directed Support) (Scotland) Act available at the following hyperlink:

<http://www.scotland.gov.uk/Publications/2012/03/5525>

We plan to update the BRIA in light of the comments and information from this consultation.

The cost of current unpaid care by relatives that may become paid care through the regulation around employment of family members is hard to calculate but will have an impact. This can be seen in relation to training, the increased funding of care and the importance of support systems, such as advocacy to ensure the decision to employ a family member is being made for the right reasons and willingly.

The equality and human rights impacts of the regulations

Question 9 (a): Do you have any views on the impact of the Regulations 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**

By “equality impacts” we mean whether or not, and in what ways, the Regulations will affect certain groups, and whether they will impact on those 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 2013, 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 this consultation.

No

Question 9 (b): Do you have any views on the impact of the Regulations 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>

No