

## Consultation Questionnaire

### Draft Statutory Guidance on Care and Support

#### Consultation Questions

Section 2 : ~~Values and Principles~~ The supported person's pathway

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

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

**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?*

Comments The attempt to delineate the person's pathway through support is very helpful – perhaps a diagrammatic format could be used to make it even more user-friendly and easy to understand. However, there needs to be greater emphasis on the supports available to the individual at each stage of the process – for example, a commitment to advocacy support, or agencies, or how family members / existing workers etc may offer support and advice to the individual at each stage in their 'journey'. This is especially the case in relation to individuals with learning disabilities / mental health issues or even just lack of confidence in speaking out. Provision of support – whether formal or informal – through the processes would seem to be a key equalities issue which needs to be addressed explicitly.

### Draft Statutory Guidance on Care and Support

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

Comments The fundamental principles and values are accepted as appropriate. Consideration should be given to the consideration of 'empowerment' and 'risk taking' as key values under the act also. The definition of informed choice could be developed further in line with previous comments regarding the range and types of support some individuals may need to help them navigate the processes involved in referral and assessment. We would welcome a statement of commitment regarding how these supports might be developed and fostered by government (both national and local) – the 'how' of the requirement to ensure 'informed choice'.

**Draft Statutory Guidance on Care and Support**

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

Comments We welcome the commitment to involving individuals and their families / carers in assessment decisions and processes. It is hoped that this principle is upheld in a clear and consistent way across all local authorities. A further

clarification would be helpful on the role of existing provision / workers in this ‘co-produced’ model – ie where someone is being ‘reassessed’ or is perhaps known to workers through different contexts than formal, paid for support, how might the worker / professional contribute to the assessment processes and how might their views be considered as someone who may know the individual and their needs remarkably well. This needs clear guidance especially in the case of reassessments / changing needs, as sometimes the worker’s view is classed as creating a ‘conflict of interests’ (where it is part of existing provision) and therefore not taken into account. A way around this needs to be identified and clear guidance provided on the role of existing support staff to ensure important contributions are not missed.

## **Draft Statutory Guidance on Care and Support**

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

Comments It would seem important to separate out the processes of support planning (identifying outcomes / needs / risks etc), from resource allocation (the amount of money available) and making this a clearly distinct process from that of the decision around which of the 4 SDS options the individual may want to take. IE there should be absolute equity of resource provision WHICHEVER of the four

options are uptaken. A simple step diagram or flowchart would perhaps help make this more explicit and transparent – ie – 1) decide / plan support needs and outcomes, 2) consider how these may be best met 3) resource allocation processes 4) decision regarding range of SDS options for administering that resource. Separating out these stages would help with the issues around competence and intellectual capacity – someone may well be able to ‘direct’ and decide their needs and support plan but could require assistance to manage a financial budget – these are two separate matters but often get confused and conjoined in assessment and planning processes. Making the distinctions clear in the guidance would help resolve this in practice.

## **Draft Statutory Guidance on Care and Support**

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

Comments Statement 1 in paragraph 78 is unclear in terms of roles – is the ‘professional’ the contracted support provider or the social work / case manager? The responsibility for reviewing care packages falls into two camps – the social work / health professional and also the agency providing the support (where a provider agency is used). Perhaps one way to reduce pressure on social work / statutory services would be to consider how agency review processes could be ‘counted’ – even where there were no allocated social worker or similar. Again, this raises the question of how the ‘worker’s’ views can be taken into account, even where their support is being paid for and there could be a perceived ‘conflict of interests’. A protocol or statement referencing the SSSC code of conduct and professional expectati

## Draft Statutory Guidance on Care and Support

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

Comments Mainly covered in previous comments. It is important to recognise that some individuals will need support to make and express choices throughout every stage of the process and in an ongoing manner through their supported life. Commitment to a) the provision of this support / recognition where it already exists (in various forms, including paid support staff) and b) the principles of informed choice and capacity for decision making (perhaps similar to the Adults with Incapacity legislation principles) would seem relevant here.

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

Comments We support the commitment to joint and integrated provision, that is simple and straightforward for people to use and understand.

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

Comments We welcome plans to extend and promote uptake of SDS options for children, young people and families. Clarity needs to be sought around the flexibility of family members being paid to deliver support – it would seem that this needs to be assessed on a case by case basis rather than with a blanket ruling, as in many circumstances, if appropriately set up and monitored, it may be in the child's best interests for a family member to be part of their paid support provision. This may also be the case for adults still living at home with family also.

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

Comments The clarity on this subject is welcome, but greater detail is required regarding the perceived 'conflict of interest' for existing paid workers and, sometimes, family members, both of which may be part of an individual's 'circle of support'.

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

**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?*

Comments No further comments

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

Comments A further commitment to a range of methods of administering direct payments and facilitating their use would be welcome – for example, not a 'one size fits all' approach – but a range of payment methods, via a bank account, card system, use of standing orders, direct debits, cash etc would facilitate the maximum choice, control and flexibility. It would perhaps be good to see a statement indicating a commitment to developing a range of options and choice for individuals in the mechanics of the payment processes – both for them receiving the money and for them paying for services. This requires a commitment from both local authorities and from provider organisations to offer a range of options, but would seem to be within the spirit of the legislation and should be highlighted as best practice.

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

Comments It is felt that it would be beneficial to consider the use of direct payments and SDS as an option in residential care settings. Whilst the difficulties of implementing this change in large scale, block-funded residential establishments is significant and may require time and resource, it would seem discriminatory to deny this when individuals in smaller shared living / registered care home settings and group homes (eg for adults with learning disabilities) are able to access SDS. AT very least the principles of SDS can apply even in large establishments, even if the practicalities and mechanisms are complex and may take more time to unpick.

Furthermore we feel that any blanket exclusions of any groups would be at risk of being seen as discrimination. It is unclear why, for example, someone with a drug addictions issues may be less bale to manage funds than someone with a mental health problem or an (unrecognised) gambling addiction. It would be far better to allow social workers and other professionals to assess need, risk and capacity on a case by case basis for each individual, and again, this would seem to be more in line with the spirit of the Act. In addition, arbitrary exclusions on the basis of care need groupings are unlikely to work well in practice, due to the number of people who may fall into more than one category. Again, individual, personalised approaches would seem more practicable in reality.

## **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?*

Comments No

#### 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.*

Comments No
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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.*

Comments The guidance and consultation documents are not particularly accessible to individuals with intellectual impairments / learning disabilities. It might be wise to consider producing easy read versions to capture the views of these significant client groups who are directly impacted by this legislation and practice.
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**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>

Comments
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## **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)?**

Comments We welcome the flexibility of the options and range offered, in particular the payment of a DP to a third party for managing. There may need to be some further clarification around how this works in practice, as we have had previous experience of social workers stating that no-one else can administer the funds other than a relative. And the issue of conflict of interest for provider staff helping someone with payments and administration tasks, which we feel can be worked around creatively and in line with professional standards and accountability processes already in place. In addition, the question of how this may be paid for if someone requires support to manage funds and there is a charge of this service (through a support broker for example) then someone may well lose out on vital support due to having to pay a third party. This requires clarification.

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

Comments We welcome the ability to operate discretion and interpret individual circumstances in this issue, as a blanket ruling would be restrictive. Whilst aware of this issues and concerns, we also are aware of many instances where family members have been the most appropriate support to an individual and this has enhanced someone's life in ways other supports would not. Therefore judgements on individual circumstances would seem the best approach.

**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?

Comments Again, it can be difficult to judge individuals based on block categories and would seem to be a more flexible system if cases could each be judged on their own merits, rather than having block exclusions.

**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?**

Comments See previous comments –  
Furthermore we feel that any blanket exclusions of any groups would be at risk of being seen as discrimination. It is unclear why, for example, someone with a drug addictions issues may be less bale to manage funds than someone with a mental health problem or an (unrecognised) gambling addiction. It would be far better to allow social workers and other professionals to assess need, risk and capacity on a case by case basis for each individual, and again, this would seem to be more in line with the spirit of the Act. In addition, arbitrary exclusions on the basis of care

need groupings are unlikely to work well in practice, due to the number of people who may fall into more than one category. Again, individual, personalised approaches would seem more practicable in reality.

**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.

Comments It is felt that it would be beneficial to consider the use of direct payments and SDS as an option in residential care settings. Whilst the difficulties of implementing this change in large scale, block-funded residential establishments is significant and may require time and resource, it would seem discriminatory to deny this when individuals in smaller shared living / registered care home settings and group homes (eg for adults with learning disabilities) are able to access SDS. AT very least the principles of SDS can apply even in large establishments, even if the practicalities and mechanisms are complex and may take more time to unpick.

**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?**

Comments No – there should be no restrictions, but the full range of options on offer to families and children

**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?

Comments No

## **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.

Comments no
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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.

Comments See comments regarding exclusions

**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>

Comments See comments regarding exclusions