

# Consultation Questionnaire

## Draft Statutory Guidance on Care and Support

### Consultation Questions

Section 2 : The supported persons 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?*

It was felt too often that the underlying principles of the SDS process have not been understood as about personalisation and it was encouraging to see these principles represented in such a clear to understand way. However, it was felt that the pathway was constructed as a too linear process, where as in reality the process of outcome led assessment is a circular one, with a very large emphasis on the review process. Based on models of embedding personalisation into the assessment processes (work carried out in England by Dr Simon Duffy and Kate Fulton) we have included a rewrite of the assessment pathway as an appendix to this document. It was felt without embedding the principles, as core to the assessment process; personalisation would become another complication on top of an already convoluted process and not sit at its very centre. This is especially pertinent in times of transition between services. Without embedding personalisation, choice and control as central to the process of outcome led assessment the actual values and principles behind the SDS process would be at risk of being lost.

It was also felt that the guidance differentiates between children and families and adult social care processes. It was felt that the guidance should look at the way that life is developmental and not separate them from one another with such a strict delineation. Also the pathway for a young person leaving children's services into adult services is a very different experience if the young person has been introduced to the ideas of choice and control as a from already existing SDS services. We have attached a rewritten pathway that would represent the values

and principles that should be at the heart of the process when moving between services. SDS can be used to help young people 'face the real world'. It can help young people take on new responsibilities when they are ready for them. This means they will need to get skills and information about independent living from a young age, including how to manage elements of their SDS. This can be slowly increased as people grow up and again needs to be represented within the guidance in a more detailed way than is currently shown.

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

It was felt that the inclusion of the values and principles here was really useful and helped to explain why the process of SDS has been introduced. It is felt that SDS is used to represent the thing i.e. people talk about SDS as the result where the result should be that the persons care has become personalised and more choice and control given to the young person/adult. Rather than just receiving self directed support option 1 for instance.

## **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 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?*

There is a debate around how personalised services can be fully utilised under a system that bases care on eligibility for services that are not the same across all local authorities and therefore different across Scotland (for instance see the work being carried out currently by the SCCYP (in draft 2103) or similar work carried out in England by the Commission of Social Care Inspectorate “Cutting the Cake Fairly; CSCI Review of Eligibility criteria for Social Care” (2008)). Outwith this debate, however it was felt for individuals to be empowered about their choices for support and care there needed to be an upfront indicative budget. This budget isn't the same as transparency within local authority RAS systems, even though that would be great, it is about letting young people and adults know at the start of the planning process how much money they would be entitled to be able to plan with in relation to their choices within the four options.

This is particularly pertinent when a young person is moving into adult services at the time of transition. This should also bring into the discussion how much of a health budget that the young person/adult would be entitled to event though there is very little guidance about how this may look and be approached as health aren't under a duty to provide this and personalisation of health care budgets is very much in its infancy within NHS Scotland.

The language of assessment seems to be very mix and match. The traditional language of assessment is used in places where it is felt that the language of outcome led assessment needs to be used consistently. Guidance should be offered offered to departments handling outcome led assessment, about what they are, and how they would be rolled out rather than what some people feel is a tick box exercise due to the constraints on time and resources from under staffed social work departments. It is recognised that the key to resources are held with the local authority and not the responsibility of social work departments. Eligibility and assessment need to be taken to commissioning level and the guidance needs to reflect this. There is genuine concern that the spectre of financial constraints could be used by local authorities to excuse not fulfilling their obligations and responsibilities. This will require a robust monitoring and audit process to ensure there is accountability, transparency and consistent implementation and delivery of SDS throughout local authorities in Scotland.

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

Assessments must (not 'should' i.e be a duty ) listen to what children and adults undergoing the SDS process want otherwise personalisation is already lost. It is important that children's and adult Social Workers and others who may carry out assessments understand this. There are separate outcomes systems for children and adults services, which isn't necessarily reflected within the SDS guidance. There has to be an understanding of how SDS process and the personalisation it represents links in with the child's plan and how the child's plan links to the SDS process as individuals move into Adult Services.

The guidance links well with children's frameworks, however more attention is needed to show how these interlink with adult services through the transition process. This will require staff from both sectors to understand both frameworks to make the move between them seamless, this equity of approach needs to be demonstrated through SDS outcome led assessment. The review process will also be an important part of this and should be recognised as a greater part of the process in the pathway than it is at present within the guidance as it currently

stands (see appendix attached documents).

Risk enablement is a very big area within the guidance and there should be an understanding that individuals, when starting to plan their support for the first time, will potentially make mistakes. It is felt that the review should be the time that these mistakes are explored and the young person or adult is enabled to correct them and make improvements. The guidance doesn't really emphasise this to any great degree and there is a worry that if budgets haven't been spent that at review time they will be removed by the social work services to please Local Authority led concerns around dwindling resources. The guidance needs to allow for slippage in areas of risk enablement and not make it an "all or nothing" approach.

Support planning is an area where a lot of work has already been undertaken to look into the best possible outcomes for people with additional support needs. It is felt that support planning is best carried out in a truly person centred way and that those who are carrying out the assessment should allow people to plan for themselves. This, however, brings into question the capacity of an individual to plan and this is where it was felt circles of support would come into the fore. However, circles of support were not felt to be recognised as what they are traditionally associated with in person centred planning but had become a vehicle for capacity discussions rather than a circle of support in its traditional sense. (See later section). There also needs to be more emphasis placed on someone planning for themselves (if capable) as it is the individual's outcomes that will be used to lead the support required to meet them. Again the guidance makes very little emphasis on self-assessment or planning for oneself. (See attached appendix for more information on this).

## **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 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 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?*

It was felt that the monitoring and review process for those undergoing an outcome led assessment process was the most vital in making sure that the person who has been subject to a SDS assessment is free to make mistakes and enable them to learn from these as their support continues onwards. Throughout other areas of this consultation response review has been mentioned as a vital part of the process. Rather than the last step of the process it should be viewed as a mechanism to make sure things are right for the person as they continue to learn and develop though the use of creative support options if that is what they have opted for.

We are concerned that local authorities will not be able to meet the pressures on resources to facilitate reviews in a timely and appropriate manner as many people already wait considerable lengths of time for reviews. This in turn again underlines their lesser status in comparison to the initial assessment stage. These entire processes should also feed into identifying gaps in services at an early stage and directly inform local authority's community planning and commissioning responsibilities, particularly in rural areas. Changing an option and how long that should take should be detailed in the guidance.

Risk enablement is a very big area within the guidance and there should be an understanding that individuals, when starting to plan their support for the first time, will potentially make mistakes. It is felt that the review should be the time that these mistakes are explored and the young person or adult is enabled to correct them and make improvements. The guidance doesn't really emphasise this to any great degree and there is a worry that if budgets haven't been spent that at review time they will be removed by the social work services to please Local Authority led concerns around dwindling resources. The guidance needs to allow for slippage in areas of risk enablement and not make it an "all or nothing" approach.

Please see an attached appendix demonstrating how if SDS principles are started early for Children and Young people the initial referral in adult services consist of a review rather than a full assessment all over again. The appendix document also looks to embed the principles and values within the process, which are currently missing from this part of the guidance. It is important we get this right for joined up services to support individuals across the transition between services seamlessly and smoothly with a continuation of equity.

## 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 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 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?*

There is a concern that young people, even though their rights are soon to be enshrined in the Children and Young People Bill (Act), and adults who have significant learning disabilities or may be at risk might not know they have rights. This could be felt most significantly in a situation when their outcomes aren't being met especially if they disagree with their parents/corporate parents. To remedy this the SDS guidance should discuss Children and Young People having access to a Children's Rights Officer and adults having access to advocacy. They should know their rights, particularly concerning risk management strategies and decisions about healthcare and navigating between children's and parent's/guardians rights. There should be more emphasis on peer support for Young People, other forms of self-advocacy or traditional advocacy with clear standards attached to the advocacy organisation to prevent misrepresentation of individual's views.

Informed choice is also very difficult to measure and conceptualise, It depends on how SDS is being represented to people undergoing the process. There is genuine concern that full choice and control options are being misrepresented by Local Authorities who misunderstand what is at the core of Personalisation or the amount of work involved and therefore is not really full-informed choice. More work needs to be present in the guidance around what informed choice looks like in practice and how it can be best supported.

## 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 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 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?

It was felt that the limited amount of information in the guidance for NHS professionals doesn't really add anything to the role that NHS should undertake within the SDS process and in terms of personalisation. Personalisation of Health Care budgets is still in its infancy within NHS Scotland. The Guidance needs to demonstrate positive outcomes from the integration of health and social care services within these areas. It is understood from the feedback we received that without further work in this area this will still be down to a postcode/professional lottery in terms of how much joined up working is undertaken. With the implementation of the Public (Joint Services) Bill that further inroads may be made in this area. It is felt that the guidance should be updated in this area as more work and exploration of what this approach means to SDS process, commissioning and budgets is fed forward.

**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 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 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?*

It was felt that the appearance of a children's and families section was particularly at odds with how SDS process applies across the lifespan of an individual. There were concerns due to its representation as a separate section that other sections might not directly apply. It was felt to be indicative of a lack of foresight as to how SDS processes apply equally across the lifespan. Again the appendix recommends some rewrites and takes into account of how it applies equally across both adult and children's services. The part (sections 100 – 103) around transitions was particularly lacking in terms of cross-references to the Education (additional Support for learning) (Scotland) (2004 -2009) Act. Which states there needs to be significant involvement from at least one external agency to allow for a Coordinated Support Plan (CSP) to be put in place. If a young person has a service predominately created from a direct payment/option one SDS enabled service how does this fit within this legislation? The young person utilising this form of support wouldn't have involvement from at least one external agency and it directly contradicts the legislative protection offered by a CSP in terms of taking a failure within the transitions process to tribunal.

More elucidation needs to be provided as to the positive difference that SDS can make to people undergoing a transfer across services, such as demonstrated in the "Principles of Good Transitions Practice" written by the Scottish Transitions Forum. (2013) (a copy of which can be found here <http://bit.ly/10l6cPU>). It is hoped that there can be a greater representation of these principles represented by the SDS process in this most complicated of times within the guidance.

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

As already mentioned it was felt that there was some confusion over the circles of support definition. This is used within person centred planning to mean a circle of interested parties who surround the young person or adult not necessarily with a focus solely on adult protection issues. The traditional term of circle of support is those also within the community that are there to help support the young person or adult outwith capacity concerns. This seems to have been lost within the guidance.

It is also important to note that this "circle of support" model is operationalised at times of transitions from services where outcomes are looked at. The Circle Of Support should be there to support young people through their journey, not just decision-making. The young person should, wherever possible if they want one, decide who is on it and what this circle looks like.

It may take some trial and error to get people who are trusted by the young person, especially if the young person is Looked after. Members are also likely to change as young person grows up. It should be the responsibility of the 'Named Person' to ensure a circle of support happens when needed all of this needs to be taken into consideration within the guidance as it could become so much more than it is represented to be. This will take a greater commitment from those who are members. The guidance should be clearer about decision-making responsibilities and the need to involve all young people in decisions in line with Adults with incapacity act and guardianship etc.

The guidance needs to be stronger on circles of support both in relation to what they are, how they operate, who is responsible for their facilitation and how they can support people with decision-making. A very prescriptive definition is not necessarily required but illustration and examples are needed as many of the key professionals in this situation may have limited or no knowledge or experience of circles of support or how in combination with person-centred planning tools they could support decision-making.

Paragraphs 112 - 113 on the supported person lacking capacity also require a significant rewrite. The guidance makes limited mention of the Adults with Incapacity (Scotland) Act (AWI) 2000 and no reference to the principles and responsibilities inherent in this for guardians and attorneys. The supported person is completely absent from the narrative and there appears to be no expectation or requirement for a proxy decision-maker to utilise circles of support as a way of involving the supported person or retaining them at the centre of the process. Indeed people lacking capacity appear to be completely excluded from the guidance in relation to circles of support, which causes us great concern.

If capacity is looked at the ability to enable someone to plan form themselves as a

sliding scale of fully able to not able at all it would represent a fulfilment of capacity legislation but also mean that the whole purpose of circles of support will differ depending on circumstances. (see appendix for how this may look in relation to the pathway in question).

Furthermore this section does not reflect the complexity of capacity and the fact that the capacity to make decisions is not “all or nothing”. A minimum requirement would be hyperlinks to the AWI 2000 and good practice guidelines. A significant level of knowledge has also been assumed in relation to Advanced Statements, the legal limits to whom they may apply and the role of the Mental Health Officer. Much more clarity and detail are required here, as is general cross-referencing with other relevant legislation. The guidance also needs to be clearer that the involvement of a Mental Health Officer in itself will not address the issue of capacity.

## **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 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 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?*

We support and agree in principle with the proposed lay regulations, which would waive all charges for support to carers. However, this may be complicated in reality as short breaks and holidays can benefit both the supported person and the carer. In addition we are concerned that it may result in unintended consequences, as there do not appear to be additional resources to meet this commitment. Therefore there is a real risk of a tightening of the eligibility criterion in response to this, which in turn will potentially lead to less preventative services and more focus solely on crisis responses, despite the guidance's discussion of the importance of preventative support. A further significant concern relates to the local authority's capacity to provide replacement care for the cared for person at the time it is

required for the carer to utilise their own personalised support option.

We are also concerned that this section of the guidance has an implicit expectation that family members will provide care without taking into account issues such as family dynamics, history and the sometimes competing needs of the cared for person and the carer. This is particularly true in the wording of the expectation that replacement care when the carer is having a short break or holiday will normally be provided by family or friends at the person's home in the draft Carers (Waiving of Charges for Support) (Scotland) Regulations 2014. However, family members may not have the necessary skills or there may be cultural, gender or vulnerability issues. There may be intimate care and complex needs that would be inappropriate for another family member or friend to address. Furthermore this does not allow the carer to have a short break in their own home as there may be essential equipment that could not be moved to another setting.

Finally in relation to the employment of relatives, the guidance is unclear on how 'capable' to meet the needs of the supported person will be determined or the vetting processes involved. Safeguards are required to ensure the person has the same opportunities, for example, regarding independence when a family member is employed. Clarity on what checks would be in place would be useful. This section would benefit from positive examples of when employing a relative has worked well, possibly with reference to language or cultural needs or in a rural setting.

# **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 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 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?*

There was some concern that if option one was taking over from Direct Payments why there was a dedicated section around Direct Payments with the guidance.

We feel this is a particularly positive option for people as it affords more choice and control and is less restrictive than the original direct payment (DP) scheme. However, there is potential for confusion between these and therefore, the guidance would benefit from detailing the mechanism for changing from the traditional DP to SDS option one. The guidance could do more to encourage people to try option one, especially considering the historically low uptake of DPs in Scotland. The following steps could encourage people to select option one:

- The security of trying option one and knowing they can switch to another if it is not working (being an employer can be stressful).
- A fixed review after three months to ensure it is the best option.
- Case studies of real life examples detailing creative and positive experiences.
- Clearer commitment to developing more support systems for those selecting option one, such as Centres for Inclusive Living and brokerage.

We are concerned that option one is not being made accessible enough for people. Social work staff require training and social work systems are not geared up for this option. A lack of understanding will directly impact on how each option is communicated to individuals, as will current frameworks such as preferred provider lists. Both of these will impact on the individual's level of choice. We feel third sector agencies should be involved in information provision, otherwise we are concerned that displayed leaflets will be considered an adequate measure. More information is required on support for using option one to clarify issues such as

whether people will be able to use their budget to cover brokerage costs, without jeopardising meeting support needs. Furthermore we feel the guidance lacks clarity on the third party issue and more discussion is required around words like 'capable'. We recognise that there are more risks associated with this option and that other options will be perceived as less risky. This highlights the need for close and robust monitoring systems.

## **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 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 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?*

N/a

## **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?*

Please see appendix for a suggested overview of how the supported persons pathway may look. The section on transitions also needs explored in more detail as this is far more complicated than is represented within the Guidance (see appendix and Question 8c for more details).

#### 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.*

n/a

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.*

There were concerns that those who may have parents/carers etc. who may be limited in terms of experience of LGBT issues or other minority issues may not allow for fully creative solutions to be found under the SDS process. Wishes of parents and children may be in conflict, particularly concerning risk aversion (for example a young disabled person accessing an LGBT service and the prejudices that parents may have around this especially if they are homophobic etc). This in particular is also something that felt may be raised within the Duty of Care waver for professionals with similar value bases.

Guidance should be clear that the Duty of Care Waver should not prevent natural risk-taking behaviour for young people and adults. It should also not be used as a way to prevent more creative approaches of SDS due to it seeming a little too outside the box for parents or professionals to consider. It was thought that SDS plans should be overseen by a panel/tribunal if they seemed to outside the box for professionals/parents who may be more traditional in delivery models. Any panel that oversees SDS assessments and support plans should include people from diverse backgrounds, including people who get support. This would allow

disagreements to be ironed out in a more transparent way if it ever came to this level of contention and protect the human rights and equality of the individual in question.

**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>

There was some concern that by excluding some individuals from the regulations (for direct payments for instance relating to the homeless) this may be a direct contravention of their human rights. For instance, by excluding the possibility of direct payments from re-enablement services you are excluding someone from potentially making a large difference in terms of their future enablement and the choice of options in the future. This needs to be looked into in greater detail as it may be a barrier to personalisation rather than add to it.

**Appendix mentioned attached as note sent to Scottish Transitions Forum in email response to consultation. (Please see other attached file)**



# Scottish Transitions Forum

The period of planning for young people with additional support needs (such as a disability, Autism, Deaf/blindness, mental health, emotional behavioural issues, bullying, exceptional health care needs amongst many others), who are making the transition to young adult life can be one that is characterised with disappointments, distress and disillusionment due to the many pitfalls this process is traditionally characterised by. Professionals and partner agencies refer to this process as 'transition planning' or the 'transitions process'.

Young people moving through transitions are not a homogenous group and come from a wide range of different circumstances. Some may live in families; others may live with foster carers, kinship carers or in residential or community settings.

No matter the circumstances, all young people with additional support needs have a right to individualised support, to express their views and be part of deciding their own future and the support and care they will need.

This document has been developed by the Scottish Transitions Forum (ARC Scotland) basing it on the work of the Centre for Welfare Reform and its Rescript for Social Work. The Rescript work directly addresses issues in the area of Person-

alisation and Social Care experienced in England and it is hoped that by emulating the thinking some of the pitfalls experienced in Self Directed Support and its associated planning may be avoided. It also highlights some areas that may be considered controversial but this is to generate discussion rather than dictate a final solution.

The aim of this document is to simplify this work and place it into the Self Directed Support Draft Guidance. Helping to facilitate our members thinking around the SDS Guidance Consultation ending on July the 10th 2013 to help ensure that Transitions are considered an important part of the Self Directed Support Guidance.

The over arching aim of the Scottish Transitions Forum is to inform policy and to fundamentally change the way we do things in Scotland in the area of youth transitions, from the top down and the bottom up. We need to help young people and their carers achieve positive outcomes through greater Personalisation, independence, choice and control of the transitions process.

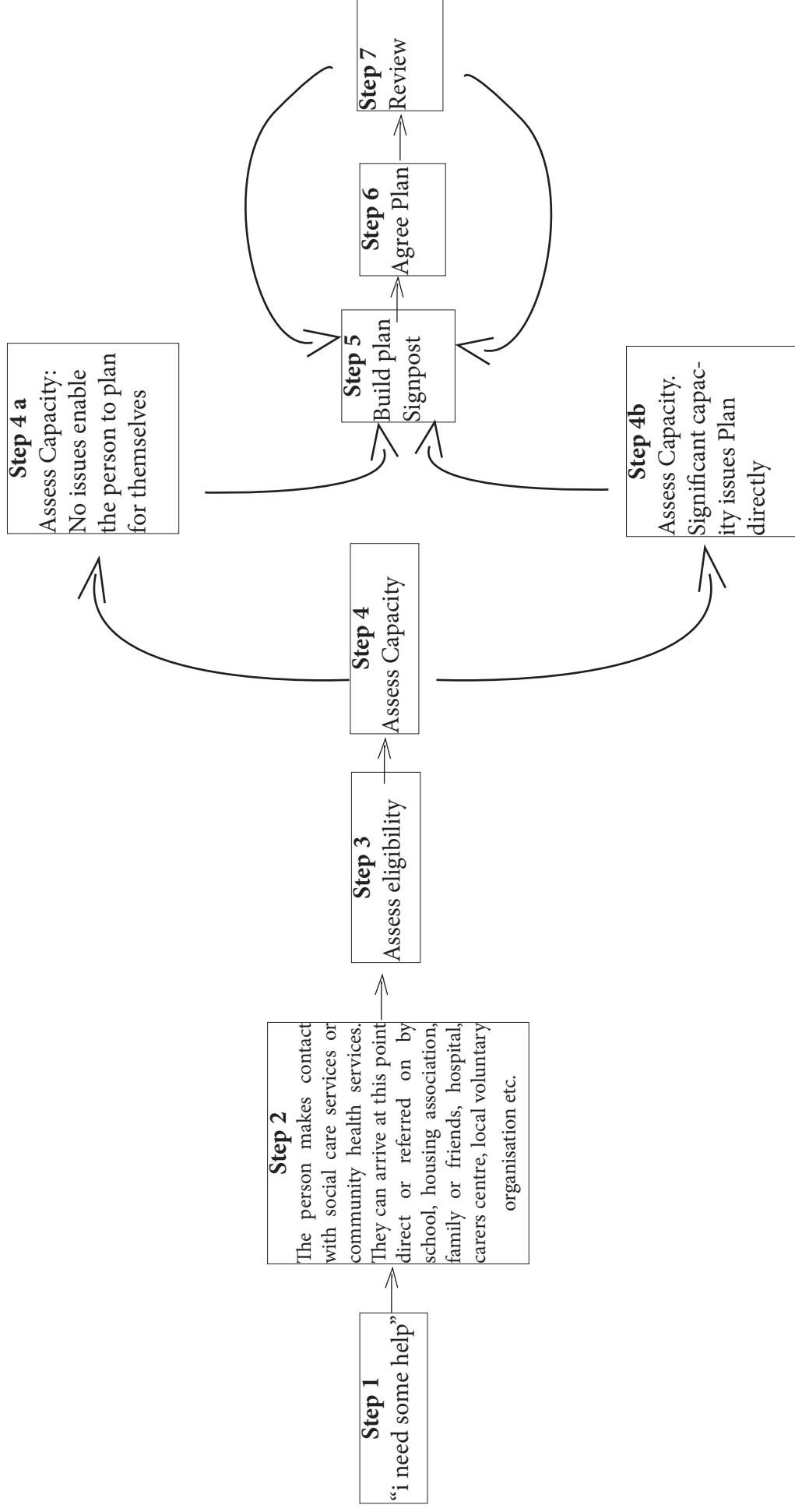
A new way of working needs to be embedded in legal frameworks, policy decisions, good practice guidelines, monitoring mechanisms, work culture and funding and investment policy. This then needs implemented at a local level.

**If you want to take part in the consultation you can find an online survey to contribute to the Self Directed Support Guidance at the following Scottish Transitions Forum Web page under the research Tab and then ongoing research:**

<http://scottishtransitions.org.uk/?p=11333>



## Rewrite SDS Section 2 - The Supported Persons Pathway



### Step Three: Eligibility .

Assess peoples eligibility for a budget, guidance, rehabilitation or other services. Developing a high quality outcome led assessment is central to the success of Self directed support and central to the role of professional assessment. It is important though to emphasise here that this is not something DONE to a person who needs support its is a conversation around the persons desired outcomes that is important: The initial assessment should include:

**Prevention** - is the person entitled to receive help to prevent need or make better use of natural support or access other community or public services ?

**Enablement:** - is the person also entitled to support to learn new skills adapt their environment or use alarms or equipment to stay safe and well?

**Individual budget** - does the person also need to purchase appropriate ongoing support to stay safe and well and if so are they entitled to support from the local authority?

This is the point where the initial decisions are made about the person's eligibility for support under the various legal obligations:

- Section 12A of the 1968 Act (the assessment duty relating to adults);
- Section 22 of the 1995 Act (the duty relating to children in need);
- Section 12AA of the 1968 Act (the assessment duty relating to carer's of adults), and;
- Section 24 of the 1995 Act (the assessment duty relating to carers of children).

### Step Four: Assess peoples capacity.

Assess whether or not leadership lies with an individual, a representative or a professional. This fundamental part of the assessment represents the professional judgement that must be made about the persons capacity to make decisions for themselves and to shape appropriate support solutions and other risk enablement processes. This relates directly to relevant Legislation and risk enablement in section 5.

Step 4a: The role of 'the professional' is in enabling other people to plan their support. This can vary depending on Capacity. And relates to section

Step 4b: The role of 'the professional' is to plan with people directly. Especially when its a critical situation, the solution is obvious or no one else can help.

In general this means if people are willing and able to make their own decisions about their lifestyle and support then they should be treated as having capacity unless their is evidence that they lack it.

- If the evidence suggests a lack of capacity then they should be helped to identify who, within their network of friends and family, is able to help them make decisions. This persons chosen representative should be respected and supported, unless their is good evidence that they will not act in the persons best interests.
- If there is good evidence that the person lacks capacity and they cant identify a willing and appropriate representative then it will be necessary to identify someone who will fulfil that role. This should be someone whom the professional deems to be able to act in that persons best interests and who is willing to do so (this could be anyone an advocate, a community member, a family member a service provider or another professional) and be subject to necessary checks.
- **Urgency** - if people are in urgent need then the onus is on the professional to help the person find an immediate solution to that need and this may mean the professional is more directive
- **Incapacity** - sometimes people are incapable of planning and have no one around them who can make suitable decisions in which case people need someone else to take control and put in place some support to give them time to readjust and take back control later
- **Obvious solutions**- sometimes it is reasonably obvious what people need to do and what they are entitled to. Such as access to telecare for example. In which case people should be supported to access this in a timely fashion.
- **Prevention** - sometimes people can avoid a need occurring or escalating by being directly supported or directed towards a suitable support or service.

## **Step Five: Build plans and signposting.**

Some people may already have carried out a self assessment which has helped them understand their desired outcomes and this can be used to guide the support planning process. People often expect help and support to plan - but this act of helping can sometimes get in the way of the person achieving the best outcomes for themselves and those they care about, it can create a dependency and a sense of incompetence. Knowing how and when to intervene in the planning and implementation process becomes central to good professional management.

To help provide informed choice 'The professional' should always ensure that they :

- Give useful information,
- Connect to other individuals and families,
- Refer to community organisations and
- Recommend appropriate providers.

**This approach ensures that the support plan is true to the values and principles in the SDS act as found in section 3 of this guidance and facilitating informed Choice as discussed in section 7 of this guidance..**

- Provide clear information and what a support plan is and what is needed for a support plan to be agreed at the next stage in the assessment process.
- A link to a least one peer supporter, someone who is willing to offer some guidance and advice from personal experience. One or more links to community and or voluntary organisations that support people with similar desired outcomes or needs. This relates directly to the idea of circles of support and advocacy mentioned in the guidance.
- Contact details of a number of service providers who seem most likely to be able to provide appropriate support to the person along with information about their rights under SDS options 1 - 4 and the right to change from any provider if they so wish.

## **Step six: Agree plan**

At this point the plan should be agreed. If people need help in setting things up direct them to the appropriate places where they can find help for the SDS options of support such as brokerage, Independent living options, SDS information provision organisations that can provide impartial advice and support etc.

## **Step Seven: Review**

It is the review that is crucial to the whole process. It is the learning experienced by people from being in control of their own life that will influence how they take their support forward.

When people are in charge of their own budget they are in a better place to review what is working, what is not working and what can be improved than when they've had no experience of being in control.

The review is the place to encourage people to develop and improve their support over time.

The responsibility to review support and promote change over time is actually an area that requires a lot of foresight and thoughtfulness. It is by exploring the OUTCOMES instead of focusing solely on RISK and SAFETY that the best outcomes for people can be achieved.

The review will also add to the body of knowledge for people, professionals and commissioner of services which, in turns, will add to the facilitation of choice section 7 of this guidance.

“Transition” from children’s support into adult’s support (Rewrite of the transitions section additional thoughts in red)

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. **If SDS principles have been used in children services the move to adult services should be a lot smoother for all involved. The child and young person should already be accustomed to being in control of their own budget. When planning for transitions, a simple early stage person centred review of what the move to adult services entails in terms of outcomes should be all that is required with issues of risk and capacity dealt with against existing criteria from legislation (Adults with incapacity and Adult support and protection) to enable an early indicative budget for transitions planning to operate under.**

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 and early indicative budget from an early review in line with the Education (Additional support for learning) Act and codes of practice early on in the transitions planning stage will provide the best possible start for children and young people to start exploring their reviewed outcomes with a realistic budget to plan under This also provides 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. **If a young person has more than one agency involved with the planning at this stage it must link into the child plan and the coordinated support plan as found under the Education (additional support for Learning) Act 2009 and must follow the duties as set out for the Named Person or Lead Professional in line with Getting it right for every child and the children and young people act.** Other support may include assistance from parents and carers, independent advice and support or, in some cases, advocacy services **amongst many others the young person may choose.** 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 **in line with the stages as discussed in stage 2.**

The Supported Persons Pathway  
 - Someone already with services  
 aka from CYP to adult services

