

# Consultation Questionnaire

## Draft Statutory Guidance on Care and Support

### Consultation Questions

#### Section 2: The Supported Person's Pathway

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

Yes	No
√	<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 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 would be helpful to include reference to the role of the Care Inspectorate (see section 9.5).

#### 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"/>

**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 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?*

We would suggest that the section on 'The values of care and support' should be reworded to include a short definition of what the core values within the context of self-directed support are, and make clear that these should underpin all decisions and the approach of every professional.

With regard to the principles of involvement, informed choice and collaboration, we do not think there is enough clarity or guidance on how these could and should be applied. As these are important issues, especially given the nature of the support, it would be helpful to see more examples of good practice and a signposting appendix would be helpful for this.

The description of 'informed choice' (paragraph 13) should be strengthened. We suggest that this be amended to emphasise that the supported person should be assisted to have as much control as they want over the support they choose.

The definition of 'participation' in Table 3 should be expanded to read: "The supported person should be provided with the help that they need to participate in **and be part of** the life of their community."

#### Section 4: Eligibility and Assessment

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

Yes	No
√	<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 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?*

Paragraph 22 of the guidance, in reference to the eligibility framework, includes inconsistent definitions between bandings and descriptions. The four bands are

described as ‘critical’, ‘substantial’, ‘medium’ and ‘low’, while the descriptions refer to ‘critical’, ‘substantial’, ‘moderate’ and ‘low’ risk. These should be consistent to avoid any confusion.

Although we are aware that the definitions are part of national guidance and that there has been wide consultation, we think further clarity would help to reduce the risk of different interpretation by authorities and practitioners.

Please see further comments at section 9.5.

## 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"/>

**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 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?*

We are currently developing internal and external guidance on which types of services are required by law to be registered. This guidance will make clear that ‘brokerage’ and ‘support and information services’ do not fall to be registered under the current Public Services Reform (Scotland) Act. This should help to provide clarity in an area that is causing some confusion.

While we cannot comment specifically on resource allocation we would suggest that it may be helpful to have agreed criteria on what is included as a resource in

money or kind. Lack of guidance may lead to inconsistent application and outcomes.

## 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"/>

**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"/>

**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?*

The role of the Care Inspectorate in scrutiny of local authorities should be noted and explained within this section. The Care Inspectorate assesses and monitors to ensure that local authorities are monitoring and reviewing support packages. This includes consideration of: how partners promote the implementation of self directed support; how partners provide information that is easily accessible in different formats and routinely used; and that there is a shared commitment and culture across partnerships which support the genuine involvement of people using services and their carers in directing their supports and services.

In addition to what is outlined in the guidance, local authorities should also be considering Standards or Codes of Practice in relation to self-directed support and opportunities for peer reviews across local authorities/partnerships, as already developed through the self-directed support networks.

This section of the guidance should also include information on where a supported person can go if they are unhappy with how their support plan has been developed and agreed, including information about accessing local authority complaints procedures.

## 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"/>

**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"/>

**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?*

See comments in response to question 5c.

It may also be helpful to include further information about commissioning as suggested below:

- Commissioning is a cross-cutting activity and not a sectional or specialist function that links strategic and financial planning with the range of outcomes identified through assessment and care management.
- Commissioning should be informed by national policies, including self-directed support.
- Partnerships should have identified and facilitated the market conditions for successful implementation of the joint commissioning strategy in consultation with current and potential providers. This will ensure a range of choice is available for delivering self-directed supports.
- There needs to be a clear approach to developing the market to deliver self-directed support to ensure that such services are sustainable.

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"/>

**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"/>

**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?*

n/a

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"/>

**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"/>

**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?*

See section 9.5 on the role of the Care Inspectorate.

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"/>

**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"/>
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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?*

n/a

Section 9.3: Carers

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

Yes	No
√	<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"/>

**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?*

See section 9.5 on the role of the Care Inspectorate.

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"/>

**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"/>

**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?*

n/a

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?*

We would recommend that the Care Inspectorate's role and responsibilities in regulating registered care services and scrutinising local authorities should be referenced at relevant sections throughout the guidance.

Our scrutiny role is to assess how local authorities approach and implement self-directed support across children's and adult services and in relation to carers. Our regulation of care services is likely to provide information about the impact of self-directed support on people who use services, carers and providers in respect of positive or improved outcomes for people receiving support. Where appropriate, we will use this information to evidence effective implementation, or otherwise, at local authority level.

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?*

As a resource for professionals, this guidance is comprehensive, easy to read and understand, with a detailed and clear step by step process for explaining entitlements. In particular, we found the case studies to be helpful in illustrating the outcomes the guidance is trying to achieve. However we do have some concerns around accessibility of the guidance for people who will be directing their own support needs. We have outlined these concerns further in our response to question 15.

In relation to gaps within the guidance, we would recommend that the role of the Care Inspectorate in scrutinising local authorities and regulating care services is made clear throughout the guidance (see section 9.5).

We would also recommend that the contract monitoring role of the local authority, in respect of the implementation of self-directed support is made clearer in the guidance.

#### 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.*

The Care Inspectorate cannot comment on financial matters.

#### 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.*

Previous research shows that older people are empowered and receive better outcomes when receiving the right support to self-direct their own services. This also applies to people with physical disabilities. This means that, as a result of the introduction of self-directed support, there should be a positive effect on these people, their independence and social participation. However, the suite of self-directed support documents are not as user friendly as they could be. The consultation itself is a barrier to these groups and would not be accessible or understandable for the majority of people affected by the documents.

We have a group of involved people who use care services or care informally/ provide unpaid care for someone who does. The consultations would be of interest to them but in their current format are not appropriate for these people to be involved in the process, which ultimately affects their life and choices.

We are aware that easy read versions of some of the documents have been produced. However, these have been published at a very late stage within the consultation process, which is not equitable for people who require this version and who will have less time to respond. In addition, while we appreciate that there is a lot of information to give, the easy read version is 35 pages long, which in itself is a barrier for some, the size of font is too small (not any larger than normal pt12) and there is still too much text, which is only in black. There needs to be a glossary with an explanation of terms which may not be familiar to people and more thought given to the presentation of the document. It would be interesting to know if this document was developed in a co-productive way with people who require easy read versions.

In response to the equality impact of the guidance, as per the comments above, the consultation and regulations appear to be restrictive to people with communication or learning disabilities and the easy read version requires some adjusting. We recommend that there is a full consultation with equality groups representing all the protected characteristics to assess whether or not they perceive any barriers to the regulations. However, the equality impact assessment for the Social Care (Self-directed Support) (Scotland) Act 2013 is a very comprehensive piece of work, with consideration given to the issues which may be encountered by the protected characteristic groups.

**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>

In relation to human rights, the regulations appear to be enabling people to have a better quality of life in terms of directing their own support needs. Again, both the regulations and the guidance need to be accessible and communicated in a way that is easy to understand for the people who will require them.

## 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 Care Inspectorate cannot comment on financial matters.

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

Although the Care Inspectorate does not have a locus for registering in these circumstances, we are very supportive of the implementation of self-directed support to give people more choice and control over their social care and support services to enable them to lead more independent and fulfilling lives. The substantial change to the way in which people can buy services will require a different approach – which fits with a person-centred approach and takes account of safeguarding.

The principles of personalisation - empowerment, autonomy and independence - will require local authorities to focus more on the person (as opposed to the process), ensuring that the wishes of the person using the service (and their carers and family, where appropriate) are respected. Frontline practitioners, such as social workers, should work in a 'risk-enabling' way with the person using the service – helping them to assess, manage and take the level of control over risk that they feel able to. Indeed, people may be at risk of losing their independence and choice if the processes become too 'risk managed'. Systems and processes which support very challenging or complex decisions to be made in an informed way, with transparent, shared responsibility are essential.

We would advise that the guidance is strengthened to ensure that service providers

are clear about their role and responsibilities in managing any risks that may be associated with the use of personal assistants.

As the national regulator of care we also recognise the need for further consideration of the potential risks to the most vulnerable people and would welcome further discussion with policy colleagues about the possibility of regulating some services in the future, dependent on emerging research findings and experiences of people using self-directed support.

**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 direct payment should depend on the local authority's assessment of need, service provision in that area and the most appropriate support available, rather than on the fact that individuals are placed under a criminal justice order.

**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?**

As above, this would depend on the local authority's effective assessment of need, monitoring and review.

**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.

Our understanding from the limited research available is that the use of self-directed support or other personal-type budgets for older people has been associated with improvements in quality of life and psychological well-being. However, younger adults and children also use residential care and restricting access to direct payments for people using these services does not fit well with the

principles of choice, greater independence and more fulfilling lives. Many people will still be active members of the community and as such would be disadvantaged on the basis of where they live.

Care homes are registered to provide “accommodation inextricably linked with care and support” and therefore should support individuals wishing to access self-directed support for specific reasons, for example to be supported to go out more often or take part in particular social activities. Financial restrictions would limit access to support which may enhance their life. By removing the restriction, those in receipt of direct payments in relation to the provision of long-term residential care, would have parity with self-funders and subsequently greater choice regarding which care home they lived in. This in turn should lead to greater empowerment in terms of choice and the ability to change provider if unhappy with the care being provided. It is hoped that such a move might also help to drive and improve standards of care.

It would also be important to identify and resolve obstacles faced by people living in residential care settings, for example access to suitable information and support with making choices. A lack of knowledge among social care professionals about how personal budgets can be made to work for people living in residential care may be resulting in an "over-cautious" approach to widening the criteria for access to self-directed support. It would also be helpful to identify and highlight any good practice examples where a different approach has worked.

We would suggest that people using residential services are consulted about their needs and wishes in respect of self-directed support before a final decision is made either way.

**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?**

n/a

**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?

The Care Inspectorate recognises that the regulations have a limited direct impact on the way in which we carry out our current regulatory function in Scotland. However we are always reviewing the way in which we inspect services to ensure we gather relevant information about the quality of service delivery, service user experience and improved outcomes for people. For example, Housing Support only

services, provided by Registered Social Landlords (RSL), have been regulated since 2007 at a minimum frequency of one inspection in every 3 years. In autumn 2012, the Care Inspectorate undertook a review of Housing Support only services and those combined with care at home. The findings, plus the fact that we had concerns about the nature of support provided by Housing Support services led to an increase in inspect frequency to once a year and a change in inspection methodology. This will give the Care Inspectorate an ideal opportunity to assess and report on the quality of service provision, including the impact of accessing and using self-directed support for individuals and their carers.

In addition to the information we gather during inspection of registered care services, we have a new approach to strategic integrated inspection for children's and adult services at community planning partnership area level. Our role includes:

- Monitoring the performance and quality of social work services to provide early identification of possible areas of risk and to identify good practice within social work services.
- Encouraging improvement in social work services through regular support and challenge and by building capacity for self-evaluation within social work services.
- Working with strategic partnerships (with a focus on Integrated Children's Services Planning and integrated working in Adult Health and Social Care services) to build capacity for joint self-evaluation and to provide reports on the implementation of key national policy drivers/strategies such as self-directed support.

We will be ideally placed to assess and monitor and report nationally, the level and impact of the implementation of self-directed support throughout CPP areas.

The Care Inspectorate is also mindful that throughout the development of the self-directed support legislation, questions were raised over the potential for personal assistants or other non-regulated staff to be in contact with people who use services, particularly within their own homes.

The over-arching legal issues for the Care Inspectorate as an organisation arising from the Social Care (Self-directed Support) (Scotland) Act 2013 will continue to be:

- Whether or not the specific arrangements made for self-directed support in individual cases will create registerable or potentially registerable care services.
- Whether such 'services' arising out of self-directed support ought to be registerable and if so what amendments, if any, require to be made to the care service definitions in Schedule 12 of the Public Services Reform (Scotland) Act to reflect that.
- If such 'services' are not registerable, does anything else need to be done to ensure the safety and well-being of those who engage individual carers on a

self-employed basis when these individuals may not be subject to any form of regulation.

## **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 Care Inspectorate cannot comment on financial matters.

#### 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.

See response to question 15 (a) in the draft statutory guidance on care and support consultation.

#### **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>

See response to question 15 (b) in the draft statutory guidance on care and support consultation.