



**Draft statutory Guidance on care and support**

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

A joint response from The Coalition of Care and Support Providers in Scotland; Providers & Personalisation; and the Housing Support Enabling Unit

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## **About this response**

This response is based on consultation with voluntary sector providers who are:

- Part of the Providers& Personalisation network<sup>1</sup>. (The P&P network is a group of 500+ providers working to prepare for self- directed support.)  
[www.ccpScotland.org/providers-and-personalisation](http://www.ccpScotland.org/providers-and-personalisation)
- Members of the Coalition of Care and Support Providers in Scotland (CCPS.) CCPS represents the 70+ major care and support providers in Scotland.  
[www.ccpScotland.org](http://www.ccpScotland.org)
- Housing providers working with the Housing Support Enabling Unit (HSEU) HSEU offers support and assistance to organisations that provide housing and/or housing support. <http://www.ccpScotland.org/hseu>

## **Key**

- **Where we have suggested additional text or redrafting this is in bold and blue.**
- Where we have given examples of practice this is in a blue box
- Where we have given further sources of information or guidance this is in a purple box.
- Where we are giving provider views, background or argument to support our points this is in Arial point 12 black text.
- Where we are referencing research and other reports these are placed as footnotes in Times New Roman

## **Terminology and abbreviations**

Where we say 'Providers' we mean voluntary sector care and support providers.

DP- Direct Payments

LA- Local Authority

SDS- Self-directed Support

SPSO- Scottish Public Services Ombudsman

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<sup>1</sup> P&P is hosted by The Coalition of Care and Support Providers in Scotland and is funded by the Scottish Government.

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

### **Consultation Questions**

#### **Section 2: The person's support 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?**

The steps of the pathway are clearly explained and easy to understand.

Providers are, however, still concerned that there is no indication at which stage a financial allocation is made. The sequencing of this step is significant in ensuring that supported people are not financially penalised through the selection of one of the options.

#### **Procurement and commissioning still based on hourly rates**

Although SDS places a welcome focus on outcomes (and a move away from hourly rates) it is important to recognise that care and support services are still being commissioned and procured on an output (hourly rates) basis. Examples of this include re-tendering exercises based on a capped hourly rate (most recently the Care at Home service retender in Fife where Fife Council adopted tender of a maximum of £14.50 per hour.)

#### **Award of a different budget dependent on option selected**

There are currently significant differences between the hourly rates awarded/paid for support.<sup>2</sup> Direct Payment rates (set by the local authority) are usually low- in one local authority the rate range is £9 to £12.50. This is based on an assumption that those taking a DP will be employing a personal assistant. It is however, interesting to note that the majority of DPs are actually spent with a provider.<sup>3</sup>

<sup>2</sup> CCPS (2012) " Hourly Rates for Care and Support " [http://www.ccpscotland.org/assets/files/ccps/publications/FOImainreportCCPS2%20\(4\).pdf](http://www.ccpscotland.org/assets/files/ccps/publications/FOImainreportCCPS2%20(4).pdf)

<sup>3</sup> Self-directed Support (Direct Payments), Scotland, 2012 <http://www.scotland.gov.uk/Resource/0040/00402717.pdf>

Outsourced services (private and voluntary sector) are awarded a range of rates (usually above the DP rate). In-house service provision usually attracts the highest hourly rates. This is likely due to the costs of public sector staff terms and conditions, conditions which are no longer reflected in the voluntary sector due to ongoing downward pressure on budgets.<sup>4</sup>

### Why this is important

Supported people must be free to make their choice of option based on the degree of choice and control they want to have over their resource. Their choice must not be influenced by concerns that they will get a lower budget through selecting options 1 or 2 over option 3. Similarly their choice of type of provision must not be influenced by concerns that they may get a lower allocation if they choose outwith directly provided services.

**In sequence A** the person chooses their option before support planning occurs this means that the indicative budget can differ dependent on option chosen.



**In sequence B (preferred)** the indicative budget is set before option choice during support planning. The person's choice is therefore not influenced



### Suggested redraft

- Suggest this section uses the same person's pathway/cycle developed by the M&E subgroup. It has been proposed that this be used for the best practice guidance so for the avoidance of confusion it should be used in the statutory guidance as well.
- Suggest that allocation of budget is noted as part of the pathway and that this occurs (sequence B) before option choice to ensure choice is not influenced.

<sup>4</sup> Cunningham, I (2011) Employment Conditions in the Scottish Social Care Voluntary Sector :Impact of Public Funding Constraints in the Context of Economic Recession  
<http://www.ccpscotland.org/assets/files/Employment%20Conditions%20Report.pdf>

## **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?*

The view of providers is that the values and the three newly proposed best practice principles are well-chosen and helpful and the definitions of all eight principles are clear and understandable.

Some providers noted that the principles should inform discussions around the review of the National Care Standards.

#### **Further links and guidance**

This section could also include a link to SSSC codes of practice.

<http://www.sssc.uk.com/Codes-of-Practice/sssc-codes-of-practice-for-social-service-workers-and-employers.html>

## **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"/>	X	<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?*

#### **Eligibility**

It is welcome that the guidance states local authorities should ‘publish its eligibility criteria in a clear and transparent way’ as that will be one way to drive fairer application of the criteria. We also support what the guidance says in relation to local authorities taking a strategic approach to determining eligibility criteria, involving users, carers and key partners and doing this within the context of a broader framework of prevention, early intervention, and support to carers and universal services.

It is a general view among our members that current practice does not reflect what it says in the draft guidance and that the operation of narrow eligibility criteria which focuses on people with acute needs is widespread. This acts as one of the biggest barriers to people getting preventative support and seriously undermines the good intentions behind the legislation and guidance.

#### **Suggested redraft**

Another common concern among our members is that criteria are applied inconsistently at practitioner level. The guidance could help to promote greater consistency by saying something along the lines of: “**eligibility criteria must be applied consistently and it is necessary for local authorities to have in place**

**staff training in relation to this”** (this point is made in the Scottish Government’s existing guidance on eligibility criteria and waiting times for older people<sup>5</sup>).

**Para 25.** The guidance could usefully remind local authorities that:  
**they must conduct an Equality Impact Assessment when reviewing, or making changes to, their eligibility criteria.**  
and include a reminder to make the criteria transparent:  
**Eligibility criteria should be made publicly available in an accessible format.**

### **Further assessment**

We would like the guidance to state more strongly the importance of involving the right people in assessment, in other words the professional should involve anyone that the supported person wishes to be there (e.g. carer, support worker, advocate). While the inclusion of the exchange model of assessment is helpful here- wider involvement could be further highlighted.

Whilst the guidance acknowledges that providers may have an ‘important role in the assessment and support planning process’ when setting out the use of the term ‘provider’ on page 8 the actual sections dealing with assessment (section 4) and support planning (section 5) makes few references to the role of providers. **These sections would be improved by acknowledging the role providers may play – depending on the wishes of individuals – in supporting a person during assessment and working with them to identify outcomes and develop a support plan.**

The section on further assessment does not mention timing which is a major factor. While there would be clear negative consequences to suggesting waiting times, the statutory guidance could stress the importance of a timely assessment – that **an assessment should take place as soon as practicably possible while also giving the supported person sufficient notice of when it will take place.**

### **Sources of further guidance**

Penumbra’s Individual’s Recovery Outcomes Counter (IROC), and;  
Wellness Recovery Action Planning (WRAP).  
(<http://www.penumbra.org.uk/innovation/personalised-services/individual-recovery-outcomes-counter-i-roc/> and <http://www.mentalhealthrecovery.com/>)

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<sup>5</sup> Scottish Government (2009) National Standard Eligibility Criteria and Waiting Times for the Personal and Nursing Care of Older People – Guidance (p13)  
<http://www.scotland.gov.uk/Resource/Doc/924/0088325.doc>

## **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
X	<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
X	<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?*

It is welcome that the guidance refrains from being too prescriptive about support planning and instead outlines the 'key ingredients' and stresses that every support plan will be unique to the supported person's individual circumstances and linked to their assessed needs and agreed outcomes. The response of participants at our consultation event to the table of 'key ingredients' in the guidance was very positive.

As with assessment, we think it is important to emphasise that other people can and usually should be involved in support planning (providers, carers, advocates) as long as it is the informed wish of the supported person. We would like this section to build on the description of providers on page 8 by acknowledging the role providers may play – depending on the wishes of individuals – in developing support plans and adjusting elements of support plans as required between reviews.

Providers have reported that a common problem with support planning is that it is often completely disregarded when circumstances change. For example if a supported person is allocated a new social worker they are sometimes forced to

'start from scratch' by creating a new support plan. This is particularly a problem during transitions when a lot of good outcomes work is scrapped after a person enters adult services.

### **Suggested redraft**

#### **Para 43**

Add at the end "**A good support plan should be a living document. This means existing plans should not be disregarded without good reason. The support plan should function as a "passport" – going with the person through transitions; change of options or change of provider.**

### **Risk**

There is evidence that people receiving support often feel that risk management is imposed on them: '*risk is often perceived negatively by people using services (used as an excuse used for stopping them doing something) – but risk needs to be shared between the person taking the risk and the system that is trying to support them.*<sup>6</sup>

### **Risk enablement**

The section on risk correctly identifies the approach that professionals should take on managing risk. However there should be more of a focus on risk enablement than risk management. Risk assessments should be **personalised** and **co-produced** and between the person receiving support, the social worker and the provider where ever possible.

There is often inconsistency in how risk management is applied with differences approaches between different local authorities and between individual social workers. Organisations should promote a risk enabling culture and provide training for frontline workers who are providing support or carrying out risk assessments.

### **Balancing duty of Care and Risk**

There is often a tension between the local authority's Duty of Care responsibilities to meet assessed needs (support with eating, bathing, dressing, personal care tasks, 'life and limb support') and the supported person's expectation for support to live a full life. Providers would therefore **suggest an emphasis in the guidance on the risk to the supported person's human rights** (particularly those cited in Part 2(further general principles) of the Social Care (Self-directed Support) (Scotland) Act, 2013.<sup>7</sup>

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<sup>6</sup> Glasby (2011) 'Whose Risk is it Anyway? Risk and Regulation in an era of Personalisation' Joseph Rowntree Foundation <http://www.jrf.org.uk/sites/files/jrf/personalisation-service-users-risk-full.pdf>

<sup>7</sup> Part 2: Further general principles applicable to this Act " In carrying out its functions under this Act in relation to a person who is to choose (or has chosen) one of the options for self- directed support, a local authority must take reasonable steps to facilitate the following general principles- (a) that the right to dignity of the person is to be respected, (b) that the person's right to participate in the life of the community in which the person lives is to be respected.

Closely related to this is the link between risk enablement and having a sufficient budget. Enabling a supported person to take positive risks; and to minimise risk to their human rights requires a sufficient budget for quality support and care. Allocation of ‘life and limb only’ budgets lead to supported people having to withdraw from work or other meaningful activity and social activities.

### **Suggested redraft**

**Risk assessments should be about forward planning and putting in place support and help in advance of a crisis. Options 1 and 2 under the Act give the flexibility to identify and set aside resources for crisis. It is important that supported people have confidence that where this is agreed that the resource will be made available. Local authorities should take this resource into account during review to ensure that it is not inappropriately “clawed back”.**

It would be useful to have a fuller description of ‘proportionate response’. Frontline practitioner training and culture is often risk adverse so there will be conflicting ideas as to what constitutes a ‘proportionate response’ in practice.

### **Further guidance**

The Thistle Foundation have produced practical training and guides for people working in Adult Support and Protection around risk management: '[Working Together in Adult Support and Protection](#)' the Thistle Foundation

Other support providers have developed risk assessments as part of their outcomes based support plans or individual service agreements. For example, the Richmond Fellowship have produced an [accessible Individual Service Agreement with a built in risk assessment](#):

<http://www.thinklocalactpersonal.org.uk/Browse/safeguarding/>

### **Examples of good practice**

Providers of support for people with mental health support needs gave examples of how crisis support plans (either informal or formalised as an Advance Statement as set out in the Mental Health (Care and Treatment) (Scotland) Act, 2003 helped workers to know what to do when someone’s health deteriorated or reached crisis point.

### **Examples of good practice: LD Links (Key)**

This short video sets out how the people who used a day service in rural Scotland took more control of their support through a person- centred planning process.

### **Example of good practice: The Action Group**

This short video explains the story of Ivan. Ivan gets personalised support to find

and stay in employment.

### **Example of good practice: Inclusion**

A group of people who use Inclusion's services have done training to become Inclusion 'Ears'. This means they interview other supported people to check the quality of Inclusion's support and find out how the service could be better. The group know also talk about the added benefits of taking part in quality checker training and work for their own personal development.

All videos are available at: <http://www.ccpScotland.org/providers-and-personalisation/practice/bestpractice>

## **Resources**

Para 47 sets out a strengths based approach to resource allocation that is welcome in its focus on strengths rather than needs. However this approach must not be used as a cover for the cutting of individual budgets in the expectation that informal (i.e. free) support will cover shortfalls in the supported person's package.

### **Suggested redraft**

Para 48: **All allocation of funding (regardless of method) should be done in a fair and transparent manner.**

Suggest change to "**the authority should determine the supported person's funding by fair and transparent means.**" This still allows selection of method by the local authority but does require them to adhere to the core principles of ethical resource allocation (fairness and transparency.)

Para 50 Concern has been expressed as to how local authorities communicate their resource allocation methodology, Service users and carer evidence to the Health and Sport Committee, on the implementation of 'personalisation' by Glasgow City Council makes clear that funding decisions and the use of RAS were not transparent.<sup>8</sup> Experience from England<sup>9</sup> also supports the argument that there is a clear reluctance to share RAS methodology.

To avoid this we suggest the following addition:

<sup>8</sup> [http://www.scottish.parliament.uk/S4\\_HealthandSportCommittee/General%20Documents/Discussion\\_between\\_service\\_users\\_and\\_MSPs\\_from\\_Health\\_and\\_Sport\\_Committee.pdf](http://www.scottish.parliament.uk/S4_HealthandSportCommittee/General%20Documents/Discussion_between_service_users_and_MSPs_from_Health_and_Sport_Committee.pdf)

<sup>9</sup> Series, L (2012) FOI request report into RAS methooldogy <http://thesmallplaces.blogspot.co.uk/2012/04/rass-pointless-and-costly-ritual-which.html>

Slazberg, C (2013) "Making Personalisation Work in London" London Personalisation Forum

**"In the interests of fairness and transparency the local authority should publish their resource allocation methodology, and how this methodology was developed on the local authority website."**

Providers support the comments on para 66 from Self-directed Support Scotland (SDSS) where SDSS argue that an independent review system is the most effective, fair and transparent way for complaints about resource (and related care and support) decisions to be resolved. At our consultation event concern was expressed by several providers working in 'early implementer' areas that local complaints processes were inherently unsatisfactory due to their lack of independence and tendency to disproportionately uphold the disputed decision in favour of the local authority, even where that decision was not supported by the frontline social work practitioner.

### **The choices that must be made available to the supported person**

The descriptions of the four options are clear and easy to understand. We are grateful for the inclusion of the line '**the resource can remain with the local authority or it can be delegated to a provider to hold and distribute under the individuals direction**' in the description for option 2 given the Ministerial commitment given at stage 2 of the SDS Act parliamentary process.

Enabling the support provider to manage the budget for the person they are supporting could create a range of practical benefits:

- More flexibility- the supported person does not have to go back to social work to make changes to their package. (This is particularly relevant for people with fluctuating conditions, e.g. mental health issues, as the supported person can alter their hours of support on a weekly basis, as their needs change).
- Greater choice and control for the individual over their support and outcomes. Individuals can negotiate directly with the provider about how their budget is spent on a regular basis.

We support SDSS's point that this section could helpfully specifically identify Disabled People's Organisations (DPOs) as a relevant organisation to hold an option 2 budget on a person's behalf. The use of the term 'provider' differs across local authorities with some seeing a 'provider' as any provider of any type of support( i.e. inclusive of independent advice and support services) while others use it to mean organisations providing direct support which may cause unintended confusion about which organisations are eligible to hold option 2 budgets on an individual's behalf.

It is helpful to clarify that local authorities retain the discretion to refuse support and the guidance does well in emphasising that this discretion should be used with caution and that the supported person should be clearly informed of the reason their support choice is being refused and of their right to complain.

### **Further guidance**

Scottish Public Services Ombudsman <http://www.spso.org.uk/>

## **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
X	<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"/>	X	<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?*

Providers have no changes to propose to what the guidance says in relation to monitoring and agree that it should state clearly that the supported person may wish to change their choice of option.

As with the sections on assessment and support planning we would like the guidance to make clear that the professional may need to involve other people (family carers, support workers, independent advocates) in the review process – if that is the wish of the supported person.

## **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
X	<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"/>	X	<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?*

Providers noted some changes that would help support the implementation of this section.

#### **Suggested redraft**

Para 82 **it would be useful to strengthen “may wish to adopt” to “should adopt”**. Table 8 is a reworking of the analyse-plan-do-review cycle of strategic commissioning recommended in a number of existing commissioning guidance and guides therefore should be something that LAs are familiar with and, indeed, working towards.<sup>10</sup>

The discretionary nature of s.19 (“as far as is reasonably practicable”) seems to allow sufficient flexibility for the LA without the addition of further flexibility through the use of “may wish to adopt.”

**Before table 8- include a diagram making clear that commissioning for self-directed support is a cycle not a linear process.**

<sup>10</sup> Audit Scotland (2012) “Commissioning Social Care”

[http://www.audit-scotland.gov.uk/docs/health/2012/nr\\_120301\\_social\\_care.pdf](http://www.audit-scotland.gov.uk/docs/health/2012/nr_120301_social_care.pdf)

SWIA (2009) “Guide to strategic commissioning”

<http://www.scotland.gov.uk/Resource/Doc/284958/0086536.pdf>

<http://www.jitscotland.org.uk/action-areas/commissioning/>

Scottish Government ( 2010) Procurement of Care and Support Guidance

<http://www.scotland.gov.uk/Resource/Doc/324602/0104497.pdf>



In table 8 add the following text

#### **Under (1) Learn and understand what people need and want**

**Aggregated information from the assessment and review process is an important source of data on the choices people are making about their support.**

#### **Under (3) Try out different approaches add:**

**The authority/partnership should bring together the results of the analysis and planning stages into what they will actually do to facilitate choice. The actions taken at this stage will be different depending on the needs of the local area but should:**

- **Include clear information about the commissioning or de-commissioning of services.**
- **Include clear information about LA approach to ensuring sustainability of required services.**
- **Make clear links between strategic commissioning and procurement (how SDS will be purchased in practice.)**
- **Avoid procurement activities that militate against choice (such as approved provider lists and price controlled framework agreements.)**

**Other actions might include: allocating additional resources for specialist support services; providing specialist training; setting aside funding for innovation; and financial incentives to meet gaps in support.**

Further guidance and hyperlinks

<http://ipc.brookes.ac.uk/services/mac.html>

<http://ccpscotland.org/providers-and-personalisation/policy/sustainable-markets-and-sds>

## **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
X	<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"/>	X	<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?

We have no comments on this section.

## **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?*

#### **Children**

Children's providers are broadly of the view that the guidance and principles for Self-directed Support relating to children and young people should be embedded throughout the Statutory Guidance on Care and Support and not as a separate section. This would ensure that there is consistency between adults and children's support and ensure smooth transition from children's services to adult's services for individuals.

#### **Restrictions and exclusions**

The majority of support providers do not want to see any services or types of support to be restricted or excluded from Self-directed Support. Children's providers are supportive of the move towards providing outcomes focussed support and see that this fits with the wider policy agenda of Getting It Right For Every Child and the Children and Young People Bill.

#### **Support with managing budgets**

Providers are supportive of young people having experience of managing their own budgets. There is a concern that some families will not be able to cope with the additional responsibility of managing a budget and the option of managed third party budgets is seen as being a possible solution. Brokerage and support should be available to parents or families who may have additional difficulties such as alcohol or drug dependency and are unable to manage their own budgets. Similarly there should be adequate support for young people with a history of offending behaviour to manage their budgets.

## **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
X	<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"/>	X	<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?*

We have no comments on this section

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

**Question 10c: Do you have any further comments on this section of the guidance?**

We have no comments on this section.

## **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
X	<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
X	<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?*

We're pleased that the guidance clearly states that you can use a direct payment to purchase services from a provider organisation – the clear description of a third party direct payment is also welcome.

## **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
X	<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"/>	X	<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 have no comments on this section

## **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?*

In general providers felt the guidance was clear and accessible and easy to understand. A number of providers thought the focus on the values and principles of social work was also very helpful.

## 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.*

As we noted in our response to the Act- it is not possible to identify the costs of SDS to providers with any degree of accuracy. Likely areas of cost will include:

- Changing financial systems from block to individualised invoicing
- Potential increase in bad debt/ cost of handling non-payment.
- Increased costs associated with recovering local authority care charges (several areas have passed this to providers.)
- Business destabilisation (particularly during transition to SDS) leading to service closure.

## 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.*

We have no comments on this section

**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>

We have no comments on this section

**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 regulations allow a local authority to conduct a financial assessment **after** a person's direct payment has been set up. They allow a local authority to ask for repayment of part of any previous payment made. Local authorities can charge individuals for services under the 1968 Act and are urged in the guidance (p69) to decide how to apply charges to support packages under SDS. The guidance could usefully set out an **expectation that local authorities publicise how they intend to charge under SDS before SDS is implemented.**

The regulations could usefully urge local authorities to avoid such situations by **conducting financial assessments in a timely fashion** so that repayment requirements would be minimised. This would allow an individual to appraise their options more effectively before support is put in place and promote informed choice (a statutory principle underpinned by Section 1 of the 2013 Act). The guidance could highlight this in Section 4 and Section 5.

The guidance and regulations do not say who collects any charge the local authority makes. Some local authorities require providers to recover care charges from the people they support. This is confusing for supported people and may destabilise the relationship between the provider and the person. Where the provider is paid net of the care charge and the person defaults then the provider may wait up to 6 months to recoup the lost monies from the local authority.

While we understand that the general issue of charging is out of scope of this piece of guidance given this relates to s. 87(1) of the Social Work (Scotland) Act, 1968, SWSG1/97 and subsequent guidance we would like to highlight a current practice issue with charging and SDS:

Where a supported person has multiple care providers funded from an individual budget the 'primary provider' must take on the task of delegated charge collection. That fee paid to the care provider is net of the total charge for the support, even where the provider is not the one providing the majority of the support- a situation that will become increasingly

common through provider held option 2 budgets.

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

We have no comments on this section.

**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?

No comments

**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?**

We support the Scottish Government's intention to lift the restrictions – unless they receive clear evidence from the consultation process that this would have a negative impact on any of those groups.

The general view of providers is that anyone has the potential to benefit from a direct payment if (a) it is the best solution to their individual circumstances (2) have the ability to manage a direct payment and/or (3) they have access to the appropriate support.

Supported people seldom fit into neat service 'categories'. Many people have complex, multiple needs (e.g. both problematic alcohol use and a mental health problems.) This could lead to a situation where a person has a restriction on part of their budget; or are excluded from taking a DP where one of their needs relate to homelessness or problematic substance use.

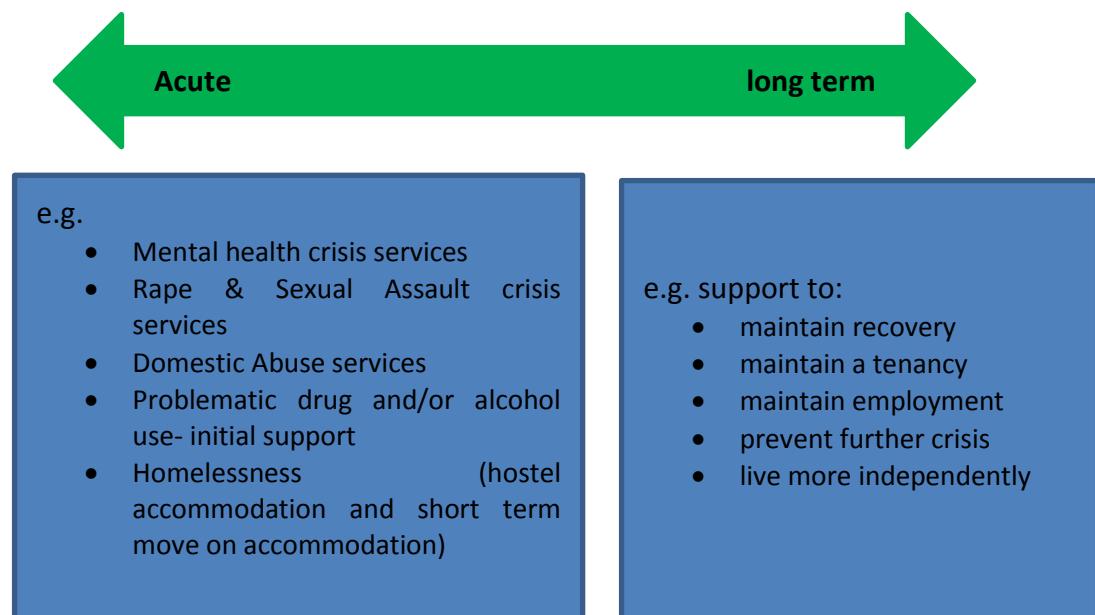
Some types of domestic violence services (e.g. refuges) and some support for homeless people (e.g. hostels) may not be suitable for direct payments. This is primarily to do with the stability of services designed to support people in a crisis where accommodation is a key part of that crisis support.

Overall providers thought that if there should be any 'split' between what was (in) eligible for a DP should be on the **grounds of the function of the service (e.g. crisis support) not the group of people supported**. This is for three reasons:

- (a) **The question of meaningful choice** – when people are in crisis resource level choice and control may not be meaningful and indeed might increase their sense of stress and overwhelm. Using the common analogy of choice in the

NHS- it isn't meaningful to give people a choice of A&E's when they have broken their leg; however it might be meaningful to award a direct payment for them to arrange their rehab support.

- (b) Crisis services could be significantly destabilised by the use of option 1 leading to a gap in services for supported people.
- (c) Crisis services are often the sole provider of a niche service (e.g. non-statutory mental health crisis support) there is a question of what alternatives are available to the person in crisis should they take the DP.



## **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.

Overall the provider view is that there are advantages to removing from the restriction on access to direct payments for long term residential care.

Providers delivering long term residential care have acknowledged the complex funding arrangements associated with such services involving the national care home contract, free personal care and NHS funding. If such services were to be offered under direct payment arrangements **further clarification about the interplay between these financial elements would need to be provided.**

There are various baseline costs associated with residential care which remain fixed regardless of the level of support required for individuals. Typically these costs relate to the accommodation, building maintenance and utilities and minimum staffing levels. If individuals are to be offered direct payments for residential care these baseline costs should remain out of the scope of the direct payment to ensure financial sustainability of the service. Activity related elements of the service as well as care and support associated with higher levels of need are more suited to disaggregation for direct payments.

### **Good practice example – Dimensions**

Dimensions is a large voluntary sector support provider for people with learning disabilities. They changed the way they provided support in their small group homes.

Through a person-centred planning process they developed a new model of group living. This included working out how much of each person's budget related to core services (accommodation, minimum staffing etc.) and identifying the remaining budget as "In My Control" money for the supported person to use in a flexible, personalised way to meet their outcomes. Dimensions have written an honest practical (and readable!) account of how they made these changes here: <http://www.dimensions-uk.org/about-us/leaflets-and-resources/making-it-personal-for-everyone/>

Implementing direct payments in long term residential care would require some re-modelling and re-development of services. A phased introduction could assist this process rather than a blanket approach being taken to all existing and prospective residents.

### **Good practice Example - Alzheimer Scotland**

Two individuals needed to move into residential care. Although both were in their 80's with Dementia, they were very physically active and particularly enjoyed long walks- something that the staffing in the residential home could not offer. With support from the provider the individuals were awarded a separate budget to get regular support to remain physically active and stay as well as possible.

This example doesn't involve direct payments being used for residential care specifically, but it illustrates that we are moving towards more personalised residential care where people use different parts of their budget to meet different outcomes – in this context it makes sense that people should be able to manage their budget in the way that best suits them, this including allowing people to manage their long term accommodation through a DP if that is the best solution for them.

Key reasons for lifting the exclusion:

- There will be wide variation in the personal outcomes of people in residential care and for some people taking a direct payment will be the best route to meeting those outcomes. The similarity in age and need to live in a residential setting does not mean that each older person wants to participate in the same activities.
- The potential to provide a route out of care homes and back into the wider community as people grow in confidence and experience.
- The potential to create a mixed support package of p/t residential care and care at home.
- Provide a driver for increased personalisation in residential care settings. Where a supported person is looking to a DP because they are unsatisfied with the support they get this opens up a conversation with the provider as to whether changes can be made to make their support more suitable for them.
- Direct Payments could be used to arrange personalised meaningful day activities and connect with friends, relatives and the wider community.
- Be an option for younger adults who may be placed in a care home (e.g. in an emergency) designed for older people to explore alternatives.
- A way for residential care to open up services to non-residents and integrate with the wider community.

#### **Good practice example: Opening up residential services at Camphill Newton Dee**

Camphill Aberdeen is a residential care service for people with learning disabilities. The service has opened up day opportunities for people interested in working in the bakery and farm. Please see the Camphill Scotland response for more detail

#### **Unintentional effects of retaining the restriction could include:**

- Temporary care home placements that run over 4 weeks leading to a person losing their direct payment and therefore finding entry to community life and

independent living very difficult.

- Some small group homes are registered as 'care homes' as staff prompt/handle medication. These settings would be excluded should the restriction be retained.

**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?

We are not aware of any services to children/families which should be restricted from being accessed by a direct payment.

Restricting children's services from direct payments might create a barrier to transition. There is value in a child / family gaining experience of managing a budget before entering adult services. Also having upfront conversations about resource availability and the need for creative solutions could actually ease the transition process at a time when children and families often feel powerless as services are withdrawn.

Many children have difficult family lives and handing over a direct payment with no safeguards in place would have negative consequences. However we think that with the right arrangements, such as a third party DP or a brokerage service, and a responsible approach to risk management a child from any background could benefit from a direct payment - if that was the best way for them to meet their outcomes.

**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?

We have no comments on this section.

**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.

We have no comments on this section.

### 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.

We have no comments on this section.

## **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>

We have no comments on this section.

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

## RESPONDENT INFORMATION FORM



**Please Note** this form **must** be returned with your response to ensure that we handle your response appropriately

### 1. Name/Organisation

#### Organisation Name

Joint response:

Providers & Personalisation,  
Coalition of Care and Support Providers in Scotland  
Housing Support Enabling Unit

Title Mr  Ms X Mrs  Miss  Dr  Please tick as appropriate

#### Surname

Fraser

#### Forename

Dee

### 2. Postal Address

Norton Park

57 Albion Road

Edinburgh

Postcode EH7 5QY

Phone 0131 475 2676

Email dee.fraser@ccpscotland.org

### 3. Permissions - I am responding as...

Individual

/ Group/Organisation

Please tick as appropriate

- (a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate  
 Yes  No

- (c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

**(b)** Where confidentiality is not requested, we will make your responses available to the public on the following basis

**Please tick ONE of the following boxes**

Are you content for your **response** to be made available?

**Please tick as appropriate**  
 Yes  No

Yes, make my response,   
name and address all available

**or**

Yes, make my response available, but not my name and address

**or**

Yes, make my response and name available, but not my address

**(d)** We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

**Please tick as appropriate**

Yes

No

#### 4. Additional information – I am responding as:

**Please tick as appropriate**

1. Member of the public	<input type="checkbox"/>
2. Individual health/social care professional	<input type="checkbox"/>
3. Central government	<input type="checkbox"/>
4. Local authority	<input type="checkbox"/>
5. Community Health Partnership	<input type="checkbox"/>
6. Health Board	<input type="checkbox"/>
7. Support & information or advocacy organisation	<input type="checkbox"/>
8. Voluntary sector organisation	<input checked="" type="checkbox"/> X
9. Private Sector organisation	<input type="checkbox"/>

(e.g. private social care and support provider)	
10. Professional or regulatory body	<input type="checkbox"/>
11. Academic institution	<input type="checkbox"/>
12. Other – please specify	