

# 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

Collaborative Inquiry Group – City of Edinburgh Council

Title Mr  Ms  Mrs  Miss  Dr  Please tick as appropriate

#### Surname

#### Forename

### 2. Postal Address

<input type="text"/>		
Postcode	Phone	Email

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

Individual	/	Group/Organisation
<input type="checkbox"/>		<input checked="" type="checkbox"/>
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

(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

(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).

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 checked="" 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 type="checkbox"/>
9. Private Sector organisation (e.g. private social care and support provider)	<input type="checkbox"/>
10. Professional or regulatory body	<input type="checkbox"/>
11. Academic institution	<input type="checkbox"/>
12. Other – please specify	Group of Health & Social Care Staff involved in supporting the implantation of SDS in City of Edinburgh

# Consultation Questionnaire

## Draft Statutory Guidance on Care and Support

### Consultation Questions

Section 2 : Person 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?*

*The clarity provided around the supported person's pathway, including roles and responsibilities of individuals and organisations that may be involved is quite useful. It would be helpful to show at what stage in the pathway the person could choose Option 1,2,3 or 4 (this could be included in Paragraph 7)*

*The reference to the Acts in "Step 3: Eligibility and Assessment" is particularly useful.*

*The Section could be clearer about where brokerage could/should fit in the supported person's pathway.*

*The following changes are suggested to improve the overall clarity of the section:*

- *Table 1 – "I need support" Not all contacts are made by the person themselves - This Statement needs to reference the other people that may contact social care services on behalf of the person supported.*
- *Table 2 – No mention of family/friends, that may also need to be included*
- *Sometimes the eligibility decision is made at Step 2 and does not proceed to Step 3*

## 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?*

*We believe that this section should have a different order and be placed as first section of the Guidance, therefore setting the tone for all sections of the guidance including the person's pathway.*

*Overall, we find it very helpful and it clearly defines and describes Principles and Values.*

*The definition of "innovation" is very useful, however we feel it is too concrete in wording as we cannot enforce creativity. Suggested change is "The Professional and supported person should have the flexibility for developing creative solutions..."*

*Statutory Principle :- Dignity*

- This section comments on Independent living: this may conflict with current eligibility criteria especially around areas such as personal care and meal preparation.*

## 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 type="checkbox"/> could be clearer	<input type="checkbox"/>

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

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

**Question 3c: Do you have any further comments on this section of the guidance?**

*Some advice to help you to answer this question – Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you'd like to make?*

*We find that this Section about Eligibility and Assessment could be clearer, specifically in Section 39 as we understand that support planning is a follow on from assessment and not part of the actual assessment.  
The Eligibility Criteria part is clear and useful.*

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

### **Consultation Questions**

Section 5 : Support Planning

This section of the guidance covered:

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

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

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

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

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

**Question 4c: Do you have any further comments on this section of the guidance?**

Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you'd like to make?

Overall this section is quite useful especially points 50 and 75 are particularly well explained.

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

### **Consultation Questions**

Section 6 : Monitoring and Review

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

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

**Question 5b: How useful did you find this section of the guidance? (please tick)**

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

**Question 5c: Do you have any further comments on this section of the guidance?**

Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you'd like to make?

This section of the Guidance is relatively brief which seems surprising given the importance of review and monitoring in ensuring that a person's needs and outcomes are being met.

The importance of Reviews seems lacking and we suggest using words like "required" rather than "recommended".

We believe it is very positive that the Guidance recognises that "reviews" can be instigated by the individual **or** professional.

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

### **Consultation Questions**

Section 7 : Facilitating genuine choice for individuals

**Question 6a: Was this section of the guidance clear and easy to understand?  
(please tick)**

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

**Question 6b: How useful did you find this section of the guidance?  
(please tick)**

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

**Question 6c: Do you have any further comments on this section of the guidance?**

*Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you'd like to make?*

*This section about facilitating genuine choice for individuals appears very similar to the current system.  
We recommend defining who is "You" in section 7 table 8 part 2.*

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

**Question 7b: How useful did you find this section of the guidance?  
(please tick)**

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

**Question 7c: Do you have any further comments on this section of the guidance?**

*Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you'd like to make?*

*We believe that this NHS section is a key part of the guidance and needs more detail*

to be accurate, reliable and useful to practitioners.

We suggest the following amendments:

- Paragraph 84 'Allied health professionals' e.g. Physiotherapy or Occupational Therapy.
- Paragraph 84 'May be provided in place of social care provision' we felt this was not factually accurate
- Paragraph 84. Language needs to be stronger ie 'take steps to collaborate' – MUST collaborate
- Paragraph 85. Case example does not explicitly illustrate a jointly funded package
- Paragraph 88. Impact on NHS particularly hospital Occupational Therapists needs to be considered in reality due to time constraints if all duties of this legislation are to be transferred to NHS employee
- Paragraph 89. Pooled budgets section glosses over the difficulties inherent in this process
- Paragraph 87. Implies NHS gives money for 'social care provision' but in paragraph 90, it says NHS transfers money to address "health needs"

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

### **Consultation Questions**

#### Section 9.1 : Children and Families

**Question 8a: Was this section of the guidance clear and easy to understand? (please tick)**

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

**Question 8b: How useful did you find this section of the guidance? (please tick)**

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

**Question 8c: Do you have any further comments on this section of the guidance?**

*Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you'd like to make?*

N/A

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

## Consultation Questions

### Section 9.2 : Supported decision-making and circles of support

**Question 9a: Was this section of the guidance clear and easy to understand?  
(please tick)**

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

**Question 9b: How useful did you find this section of the guidance?  
(please tick)**

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

**Question 9c: Do you have any further comments on this section of the guidance?**

*Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you'd like to make?*

N/A

## Draft Statutory Guidance on Care and Support

### Consultation Questions

#### Section 9.3: Carers

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

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

**Question 10b: How useful did you find this section of the guidance?  
(please tick)**

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

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

*Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you'd like to make?*

N/A

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

### **Consultation Questions**

#### **Section 9.4: Direct payments**

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

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

**Question 11b: How useful did you find this section of the guidance? (please tick)**

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

**Question 11c: Do you have any further comments on this section of the guidance?**

*Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you'd like to make?*

*It would be useful to clearly define and explain the role and responsibilities of 3<sup>rd</sup> Party in section 125.*

*It would also be helpful to have a summary of the main legal references at the beginning of the section.*

*Additionally we suggest the following amendments:*

- *Reference (eGuidance) required to be given to provision of services under 132A, AWIA or MH(CPT) 2003*
- *Capacity: Needs to emphasise capacity is not black or white – maybe include a paragraph to highlight this –*
- *Memory problems is not same as not having capacity*
- *Further consideration requires to be given to provision of SDS in situations where the supported person lacks capacity but no POA/Guardianship is in Place*
- *Assistance – Need to consider communication tools such as Talking Mats*

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

#### **Section 9.5: Wider legal duties and strategic responsibilities**

**Question 12a: Was this section of the guidance clear and easy to understand? (please tick)**

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

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

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

**Question 12c: Do you have any further comments on this section of the guidance?**

*Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you'd like to make?*

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?*

N/A

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.*

*We believe that the Guidance meets obligations in relation to equality*

**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>

N/A

# 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)?**

*Part 2 of the Draft Regulations is very clear and helpful.  
We believe that direct payments should be paid net due to the complexity and unnecessary bureaucracy of the gross payment option; however we agree that should the supported person elect to receive the payment gross then this should be an option. This promotes choice and control for the individual.*

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

*We feel that the employment of close relatives is a valuable addition which promotes flexibility and choice for the individual.  
However, we recommend that roles and responsibilities of paid & unpaid carers and the ones of family members & employees are clearly identified and distinguished.  
This will avoid confusion and risks for the supported person, carer and family dynamics.*

**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?

*This section is clear and adequate in the existing restrictions.*

**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 position that it is inappropriate to ask people to choose between the four options for self-directed support in a crisis.  
We believe that the definition of crisis needs to be more specific, clearer and include all types of circumstances.  
We suggest that restricting access to Direct Payment is in relation to specific crisis*

*circumstance rather than in relation to specific client groups. This is to avoid discrimination perceptions.*

**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.

*We feel that this section needs to be further considered and explained before being able to respond.*

*We are also uncertain on who is Funding Authority responsible should an individual choose to select a Care Home located outside Edinburgh.*

**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?

*We would like to highlight the importance of reviewing and monitoring in ensuring that a person's needs and outcomes are being met. We feel that this area is not fully covered by the draft Regulations.*

*An additional relevant topic which is not mentioned in the document is Equipment and Maintenance.*

*In general, we would like to comment that the Direct Payment option should be equal to the other Options stated in the Self directed Support Act.*

*Therefore we are not clear on the reason why these Draft Regulations deal specifically with Direct Payments and not also with the other options.*

**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.

N/A

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.

N/A

### **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>

N/A