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Scotland

Response to the consultation on the draft statutory guidance and regulations to accompany the Social Care (Self-Directed Support) (Scotland) Act 2013

Summary and general comments

In Control Scotland welcomes the opportunity to comment on the draft guidance and regulations and strongly endorses the aspirations and values that are articulated in them. Our feedback starts from the premise that the principal purpose of these documents is to provide useful and user friendly guidance and practical advice for practitioners and others with responsibility for ensuring that self-directed support becomes the reality for more of Scotland's citizens. We also understand that there is an opportunity to provide further good practice guidance to accompany the statutory guidance and regulations and that we should therefore consider the balance of what should go in the statutory guidance and regulations and what should be included in the good practice guidance. It is from this platform that the following general (and subsequent specific) comments are made:

- We think that there is scope to more strongly emphasise the opportunity for transformational cultural change that is offered by self-directed support throughout the guidance
- We think that the statutory guidance should be reduced in size. We would suggest this can be done by
  - Reducing some duplication of content
  - Simplifying content of some sections
  - Moving most of the case examples to the good practice guidance that will underpin the statutory guidance.
- We think that use of hyperlinks to signpost readers to additional supporting information is a helpful device. We would suggest, however, that this is also kept to a necessary minimum in the statutory guidance.
- There are certain parts of the guidance where the style of writing should be developed to provide a more coherent commentary, as in some sections, the guidance tends to read like a collation of different views rather than coherently

authored guidance. We will provide more feedback on this in our comment on specific sections.

We have decided to focus the majority of the In Control Scotland response to certain sections in the guidance – the sections on the **supported person's pathway**; **eligibility and assessment**; **support planning** and **further guidance**, though we have also made some less detailed comment on some of the other sections. Where we make some suggestions about particular wording for these sections, we have shown these suggestions in *italics.*

Feedback on specific sections:

Section 2: The Supported Person's pathway

In Control Scotland are generally comfortable with the steps described under The Supported Person's Pathway in Section 2

We would, however, suggest the following amendments to enhance this section:

- At step 2, (First Contact) there should be an additional sentence at the end like *' At this point, some people will simply be signposted to other sources of information and support'*
- At step 3, (Eligibility and assessment) we would suggest some amendment to improve the clarity of the paragraph after the description of the legal obligations e.g. *'Following the initial assessment of the person's eligibility for support, the person's needs will be explored in much greater detail. This will include a process where the two parties – the professional and the individual and/or their family – will explore and agree what the person wants to achieve in directing their own support – identifying their personal outcomes.* We are also aware that, whilst there is no requirement under the Act for individuals and families to be told the amount of financial resource at this stage, we think there should be a sentence in this section that indicates that this is possible, along the lines of: *The assessment may also include a process at this stage that leads to the supported person being given an indication of the available financial resource that they will be able to access and use for their support.*
- At step 4: (Support Planning) we think that the start of this section could be described more accurately and interestingly, like *This is where the supported person develops a plan (with appropriate support) which shows how the person will use the resources available to them to achieve their personal*

outcomes. The important thing about the plan is that it starts out from a focus on achieving outcomes. The support planning process will tend to involve a wide ranging discussion but should include;

- *Identification of what the person wants to achieve by accessing support (the personal outcomes)*
- *The choices available to the person, both in accessing, directing and managing their support*
- *The main risks and how the supported person and others can manage those risks*
- *The resources available that will help the supported person to achieve the agreed outcomes*
- *How the resources will be deployed and managed to achieve the outcomes*

- At step 7, (Monitoring and Review) – suggest adapting the start of this section to: *This is where there is a process to check what is working and not working in how a supported person is directing their own support. The main focus will in considering how well the agreed outcomes are being achieved but this may also include an update of the original assessment etc…*(back to existing content)

In Control Scotland considers that Table 2; Roles and Responsibilities is helpful in this section. We think it would be improved and made more user friendly if the responsibilities described in the right hand column were written as a series of bullet points under each role.

Additionally, in the row of responsibilities in Table 2

for The supported person, we suggest this should start: *The supported person should be able to access appropriate support so that they are able to play an active part at the centre etc….*

for The unpaid carer, we suggest adding to the end of the second sentence: *and contribute to the assessment and support planning process*

Section 3: Values and Principles

The main comments about this section are that we suggest that the statutory principles are described consistently here i.e. are there four or five statutory principles? The introductory section describes four general principles (as Participation and dignity are described together as one principle), whereas the later table separates out the statutory principle into 5 separate rows. If possible, we recommend that they are described consistently as five principles.

We think the use of a table here (Table 3) is helpful. We recommend, however, that the statutory principle are kept above the good practice principles in the table rather all placed alphabetically to emphasise the 'must do' nature of the statutory ones.

As to the good practice principles – we would question whether 'Innovation' is the best articulation of the principle that is being described here i.e. innovation on its own does not necessarily lead creatively meeting outcomes. We might describe the intention and principle here more as *'Flexibility – The professional and the supported person should ensure that a broad range of options and solutions to achieve the outcomes identified in the support plan are considered and that maximum flexibility is encouraged in the way that resources are used to achieve this.*

Section 4: Eligibility and Assessment

This is clearly an important section in the guidance but we think that in general this is also one of the sections of the guidance that would benefit from reducing, simplifying and making the information more consistent/coherent. We think that there may also be some parts of this section that would be better either referenced as a hyperlink or included in more detail in the underpinning guidance for professionals.

For example,
- under **The purpose of assessment,** at **point 18**, we consider that this could be described and introduced more clearly and succinctly whilst continuing to include the idea of the two distinct aspects of assessment – determining eligibility and identifying and agreeing outcomes
- clarity of **points 23, 24** and **25** could all be improved/reduced, particularly e.g. later part of **point 23**, and honing content of all these sections
- at the **points 26 – 30**, and **point 37**, we would recommend that these all simplified and reduced to shorter and more coherent sections

We think the tables in this section – Tables 4 and 5 – are useful, but are not sure if the Figure 1 :The exchange model of assessment is helpful here in the statutory guidance – perhaps better to be referenced and included in good practice guide?

We think that **point 38** - about self-assessment - should either be rewritten to give a broader context, or taken out completely, as in

its current form it is more likely to be distracting, rather than helpful.

Following on from this, (re-stating a comment also included in section 2) whilst understanding that there is no legal requirement under the Act, we think there should be some acknowledgement and description in this section that is possible as part of the assessment to provide an upfront indicative (or estimated) allocation of the 'relevant amount' of financial resource that is available to the supported person to use in their planning.

Section 5: Support Planning

This section covers a broad spectrum of guidance relating to support planning.

We would recommend adding two further ingredients to Table 6 – Support Plans: key ingredients
- *How I will use the available resources to achieve the outcomes I want*
- *What contingency or back up I will put in place*

At **point 42**, after the second sentence, we would suggest adding the following sentence: *The first question for a supported person in any support planning process should be – who do I want to help me to develop my plan?*

Section 5.2 about Risk should include more about risk enablement e.g. at the end of **point 44**, identifying that *risk is a natural part of all our lives and is often how we learn. The supported person should be encouraged to make informed choices about how best to manage risks they face in their life. In addition, it may be useful to add in point 45 that when thinking about describing and managing risk in a support plan it can be useful to consider both the things that are 'important to' a supported person and 'important for' the person.*

At section **5.3 Resources**, we would recommend adding the following sentence at the start of **point 47**:
Developing a useful support plan crucially involves the supported person(with whatever support they need) identifying how they will deploy all the resources at their disposal in a way that makes sense to them and enables them to achieve agreed personal outcomes. The resource question etc..
At the subsequent bullet points, we would recommend moving the current middle bullet point – the budget or funding etc – to the

bottom of the list, to emphasise that the funding is available to achieve outcomes that cannot be met from existing resources.

At **point 48**, we would recommend strengthening the start of this sentence to: Where the person is eligible for support, the authority *will need to utilise and/or develop* a fair and transparent means etc…We would then suggest that the first sentence of **point 49**; there is no single approach to resource allocation etc… is added in here, followed by the final sentence of **point 48**. The remainder of **point 49** can then be discarded as the principle has already been articulated and there is insufficient space (and commitment?) to helpfully or reasonably describe the merits and drawbacks of different tools in this guidance.

Point 50 would then become **point 49** and could be helpfully nuanced at the start to: *It is important to bear in mind that while systems and tools can helpfully be used as part of a process to indicate the relevant amount available to a supported person, they will always also rely on the skilled judgement of a social work or health professional.* The authority must etc..

Current **point 51** could be simplified a bit and include the word sufficient e.g. in the second sentence: *is sufficient to meet the person's eligible needs and personal outcomes.*

Recommend that **point 52** could perhaps be reduced and simplified as feels like it contains some repetition.

At **point 55**, when describing a so called 'third party' direct payment, the guidance describes this as a 'an organisation or individual ….who receives the sum of money into a bank account'. This is confusing and needs further explanation when managed by an organisation to differentiate it from money managed through an individual service fund.

At **point 57, we** think it would be helpful to have a short introduction about the background and purpose of an Individual Service Fund, after the first sentence, as follows: *The concept and practice of an Individual Service Fund was originally developed in Scotland in provider organisations (at first, in Inclusion Glasgow). It was a concept that was developed with the explicit purpose of trying to replicate the choice, control and flexibility of a direct payment for people who were either deemed to lack capacity to manage a direct payment, or who did not feel that a direct payment was right for them.*

We would also recommend adding a final sentence at **point 58**: *On the other hand, however, the supported person can negotiate with a provider organisation when directing their support so that staff are employed by the organisation to work directly with them.*

At the end of **point 59**, we would suggest adding; *As with all the options, however, it is still important that the supported person has knowledge of the relevant amount of resource that is available to them so that they have the necessary information to make choices about their support in the future should they so wish.*

At the start of **point 60**, a less contentious way to describe this might be: *Many people will continue to choose to have the support and services that meet their needs organised and arranged for them under Option 3.*

Under **points 62 -66**, (about professional discretion to limit choice), we would recommend that more is added (at **point 66**?) to emphasise that the starting point for a professional when there is disagreement, will be to negotiate a solution and suggest different types of support and services that can meet a need before refusing to fund a type of support or moving to a complaints process.

Final **general comment** under the Support planning section: there should be a statement emphasising the importance of a wide range of support being available in area that a supported person can easily access to help them develop a plan. This should specifically highlight the benefit of access to peer support and others in the area who have gone through the process.

Section 6: Monitoring and Review

We would recommend that this section is expanded slightly to start with a statement about the purpose of monitoring and review before the current statement at point 77. This should simply explain the difference aspects of monitoring and review and that review will not always involve a formal meeting but is often an on-going process. Point 78 should include a sentence to emphasise that the review will consider what is working and what is not working for the supported person in all aspects of how the support is delivered, organised, managed and directed.

Section 9: Further Guidance

We welcome the inclusion of some specific guidance relating to **section 9.1 children and young people** and particularly welcome:

- use of the hyperlink to other inter-related information in this section
- articulated focus on achieving outcomes
- reference to lead professionals, named person and a single child's plan
- recognition that self-directed support for children needs to support the family unit
- acknowledgement that many of the processes with children, young people and families are no different from other groups.

In commenting on the **draft regulations relating to children**, we do not favour the imposition a specific restriction on the duty to allow a direct payment with respect to children's support. Clearly, however, there will be circumstances when it is not appropriate to offer all of the options of self-directed support— most obviously when the professional judgement is that the child's safety will not be protected or their welfare enhanced by a particular option. It should also be recognised that support relating to safeguarding of children will be a targeted services that an authority will continue to need to provide and therefore offering the options of self-directed will not be appropriate or relevant, though the statutory and good practice principles should still apply where possible. However, to summarise, when any additional support through a self-directed support budget is available in an area, we do not favour the imposition of blanket restrictions through secondary legislation.

Section 9.4 Direct payments

We think that the first four introductory sentences to **point 124** read a little clumsily and should be simplified and rewritten to more state purpose and description of a direct payment.

Last part of **point 126** should be rewritten to make it clearer

The third sentence of **point 127** would read better as:
Stereotypically, a direct payment has been often been understood as simply a means to directly employ a personal assistant. Bearing in mind the focus on achieving outcomes described above, however, it is clear that a direct payment can be used much more flexibly than this, including purchasing: etc

At **point 128,** new suggested first sentence: *Of the four options available under the 2013 Act, the direct payment carries the greatest level of flexibility, choice and control for the supported person (with accompanying responsibilities). Professionals etc*

Section 9.5 Wider legal duties etc

Consultation issues response:

- **Point 145**: In Control Scotland does not consider that it is sensible, useful or beneficial to apply the duties of offering the four options of the 2013 Act to re-ablement and intermediate care services
- **Point 146**: In Control Scotland does not see the extension to allow direct payments to be used for the purchase of residential care as an issue that would that be likely to be of practical benefit for users of residential care. We are therefore equivocal in our response to this point. A consideration which is of more practical benefit here is the application of the statutory and good practice principles to the how, by whom and in what way support is provided in residential care. On balance, we consider it an unnecessary anomaly (and source of continuing grievance to some) to exclude residential care from the duty to offer all options, unless if it can be clearly identified (perhaps through an updated Business Regulatory Impact Assessment) that the unintended negative consequences of this would be likely to outweigh the benefits.
- **Point 153**: In Control Scotland considers that all four options should be available to the groups described (e.g. support to address homelessness, drug or alcohol addiction, fleeing domestic violence) but again there will be circumstances where it will not be appropriate that all four options are offered. In addition, some of the support to these groups will continue to be provided as targeted services which will not be available to be accessed through additional funds as self-directed support.

Question 14: comments on financial costs or benefits of requirements

We would want to emphasise the absolute importance of ensuring that planning and spending are focused (and measured) on their effectiveness in achieving agreed outcomes, as this is the only way we will develop a sustainable system of self-directed support that is both effective and efficient across Scotland. To re-state and describe another way, this means that we need to ensure that available funding (the relevant amount) can be used flexibly to meet outcomes. We would strongly argue against local authorities imposing blanket restrictions on spending for particular types of service, support or activity or prescriptions or lists of what funding can be spent on, as we believe that this will not lead to the transformational change we

aspire to or support that will work for people. This requires (most obviously) strong leadership at all levels and a commitment to, and plan for, cultural change

Question 15 (b)

We believe that the guidance has the potential to enhance the positive impact that self directed support can have for people exercising their human rights in independent living and citizenship and as such, the guidance should explicitly articulate and emphasise this aspiration.