

Consultation Questionnaire

Draft Statutory Guidance on Care and Support

Consultation Questions

Section 2 : Values and Principles

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

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

**Question 1b: How useful did you find this section of the guidance?
(please tick)**

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

Question 1c: Do you have any further comments on this section of the guidance?

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

It was confusing that it is called section 2: Values and Principles when it is actually 'The Supported Person's Pathway'.

Under Table 1: Step 3, there needs to be explicit reference to finance, particularly the indicative budget, as part of the pathway. It is not clear currently when or if an indicative budget will be discussed and made known to the supported person. This could be included as follows: 'Following the initial assessment of eligibility, needs will be explored in greater detail, and an indicative or estimated budget generated by the Local Authority based on these needs. This must be made known to the supported person before they begin the process of support planning, in order that they have full knowledge of the potential financial resources available, alongside all their other available resources, in order to make their plan.' There needs to be transparency around the available financial resource to which an eligible person is entitled.

Step 3 in the Pathway should also include the legal obligations relating to children and young people e.g. section 22 and 23 of the 1995 Act.

The person's pathway should take account of GIRFEC multi-agency planning around the child at all stages, rather than just within 'Step 4: Support Planning'.

The pathway should include reference to the 4 options for directing support, making this an understood part of the system from the outset.

The roles & responsibilities section is helpful but does not include advocacy or circles of support. Inclusion in this section would have supported the idea that the pathway is more about the individual and informal supports and networks. It currently seems to be led by professionals and statutory bodies. Further to this, the first role described should be 'The supported person' with 'The professional' described second. This would help mirror the shift in balance of power.

The role of Lead Professional and Named person, as per GIRFEC and the Children's and Young Person's Bill, should be included in the described roles and responsibilities (as well as in the specific section 9). There should also be a clear definition of the appropriate person who could act on behalf of a child or young person. This should cover capacity issues including the age of the child.

The language relating to the supported person in Table 2: Roles and Responsibilities needs further consideration to ensure it reflects what is required. Under 'The supported person' role, the language could be strengthened from 'The supported person SHOULD be supported to play an active part...they SHOULD be supported to take an active role in all of the key decisions' to 'The supported person MUST be supported to play an active part...they MUST be supported to take an active role in all of the key decisions'.

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

There should be clearer links to the values and principles that underpin GIRFEC. GIRFEC principles should not only be listed but also embedded throughout the whole guidance document.

There are a number of references to disabled people and this is not helpful as the values and principles apply to all client groups. These references should be removed. For instance, Paragraph 11 (Participation and dignity) states that disabled people should have the same life expectations as other citizens. This is reinforcing the perception that the guidance is aimed at disabled people, rather than the broader picture of people who need support (or people in need).

It is helpful to have the statutory principles embedded however using words like reasonably can cause confusion and potentially leads to inequalities. For instance, Paragraph 13 (Informed choice) states that the supported person must be provided with any assistance that is *reasonably required* to enable them to express their views. This wording is ambiguous and allows for diverse interpretations of what would be 'reasonable'. It should be strengthened.

Under the principle of Collaboration in Table 3, there seems to be the suggestion that a professional will always work with the supported person to complete their support plan. Whilst assessment is a statutory responsibility, support planning could be completed with natural or alternative service supports, however needs to be with the collaboration of the professional.

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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"/>	X <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"/>	<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?

The legal basis for assessment does not include section 22 of the 1995 Act. This is confusing. The guidance needs to be much clearer as to who it applies to. The legal references for children and young people are inconsistent throughout the whole document.

As with the Supported Person's Pathway, this section should include explicit reference to the supported person's right to know the indicative budget the potential financial resource to which they may have access (paragraphs 18 and 26). This could be included as part of the 'further assessment' of the person's needs, once their eligibility has been determined.

The eligibility criteria only refers to the eligibility framework for adults. It should be noted in this section that there is no common eligibility framework for children and young people across Scotland nor are there holistic eligibility frameworks within local authorities alone. The GIRFEC framework for assessment and SHANARRI outcomes would be most relevant here but are not mentioned anywhere in this section.

Pathway planning for young people is a good example of supporting a young person through transition. This could be highlighted as a case study example.

We welcome the language used around risk in paragraph 23, acknowledging that risks to participation to society are valid alongside 'life and limb' support. However, there could be greater guidance on how a professional can apply eligibility criteria in relation to risks to participation and projected change to need over time. This broader approach to the professional's role in determining eligibility may feel less relevant to children's services.

Paragraph 24 allows Local Authorities to take overall resources into account when determining eligibility criteria. Whilst this is in the spirit of the concordat agreement, it results in a postcode lottery and lack of equality across Geographical areas in terms of the level of support people will receive. It could also create barriers for supported people moving local authority areas, as they will be unable to transfer their individual budget with them.

'Personal outcomes' are referred to (paragraph 26) throughout the guidance; this is at odds with the language used within GIRFEC and children's services, where common outcomes are based around the SHANARRI wellbeing indicators. There is a danger that we are establishing 2 different outcome frameworks, which will lead to a lack of continuity, particularly in the transition from children's to adult's services.

Table 4 needs to strengthen the language around the contribution of the person as

a partner. Again, in relation to supported people being provided with assistance, the phrase 'reasonably required' is open to interpretation, and needs to be strengthened.

Paragraph 33, "The detailed consideration of the nature of a person's eligible needs should be conducted on the basis of personal outcomes for the individual." What does this mean? The statement needs more clarity.

We welcome the clarity established around outcomes, personal outcomes, personal outcome based assessment and the exchange model of assessment (Fig 1, paragraph 34, Table 5).

Paragraph 34, Is this an opportunity to consider how outcomes may be linked to eligibility criteria?

Paragraph 38, "self assessmentshould not replace.." should be amended to be explicit in that it **cannot** replace the legislative duties and requirements of social work.

Paragraph 40, The reference to reviews at the end of this section would benefit from being strengthened, There is a challenge between specifying timescales and standards and having a person centered approach that is appropriate and proportional. Throughout the entire document reference to reviewing is vague and lacks detail.

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Consultation Questions

Section 5 : Support Planning

This section of the guidance covered:

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

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

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

References to financial resource within the support planning section are confusing. It is unclear whether the supported person will at this stage be planning in full knowledge of the budget to which they may be expected to have access to, or whether they are planning around the finances they think they might need, which may or may not be available from the local authority (paragraph 41).

We welcome the recognition that the act of good support planning can in itself make a difference to the person's life, and the flexibility the guidance suggests in terms of the format and presentation of the plan, allowing it to be meaningful to the person (paragraph 42).

We welcome the recognition that the supported person should be fully involved in considering their risks and how they will be managed, and that positive and informed risk taking should be enabled. This is vital in terms of putting people in control of the way in which they choose to live their lives. (para 45 & 46)

It would be helpful to have an agreed framework within which risk is considered.

We welcome the broad definition of resources, but feel that there should be clarity on the financial resource, the purpose of the indicative budget, the relationship between the indicative budget and the personal budget agreed at the sign off of the support plan.

The description of resource allocation is confusing (para 49). The common terminology of 'Resource Allocation System' seems to only refer to the system of allocating points to outcomes and therefore a level of funding; the equivalence model and professional judgement seem not to be called a RAS. This language needs to be clarified.

Having such a breadth of possible resource allocation systems, with no single Scottish Government recommended system, will lead to a postcode lottery in terms of the system used and therefore budget allocated to people across geographical

areas. It will make having a clear, transparent system that can be understood by the supported person an unlikely eventuality, which will be compounded if people move across authority areas. Greater clarity and detail on resource allocation would be beneficial.

The guidance is an opportunity for the Scottish Government to establish standards in relation to resource allocation, and a lack of clarity may lead to inconsistent practice nationally.

Paragraph 50 introduces confusion over the 4 options: by stating 'the professional should take steps to inform the person of the amount of support available under each of the options', it sounds as though there is flexibility for the Local Authority to allocate a different amount of resource to each of the 4 options. If this is the case, it should be more explicitly stated. However, if this is the case, it also seems to go against the principle that all 4 options should be equally valid for a supported person; this could lead to people selecting the option that has the greatest level of support attached, rather than the option which suits the amount of control and responsibility they wish to have over their resource.

The 4 options are introduced too late into the guidance; there should be more specific reference in the introductory section.

The table of 4 options should be written in simplified language (as per paragraphs 55 – 61), to allow a simple overview to support work with supported people.

Option 2 has moved away from the concept of an Individual Service Fund; it is now unclear as to what the difference would be between this and Option 3 if a local authority were to hold the resource on behalf of the person. Further detail is needed to clarify what this would mean to the supported person i.e. how the greater level of control over the resource offered in Option 2 would happen in practice.

All 4 options need case studies to enable them to be understood and to 'come alive', particularly around options 2 and 4, which will be less understood than direct payments and local authority arranged support. Option 4 should be promoted more positively as an opportunity for people not only to experiment with using a small portion of their budget differently, but also as the start of an active process of trying, changing and reviewing how support is used on an ongoing basis.

Paragraphs 64/65/66 – The professional discretion described here is related only to the individual's assessed need and the form of support chosen. There are a number of issues with this in relation to Option 1.

Local authorities have wider duties in relation to safeguarding, including community safety. We often work closely with individuals to develop support in circumstances where they present potential risk to other people but are not subject to any of the compulsory orders under Regulation 11 of Part 4 of the Act. In these circumstances our concerns about the use of Option 1 would not be related to the assessed need of the individual, but the safety of others they may recruit to assist with their

support.

Equally, there are some adults who have capacity to consent to a particular option but who may have difficulty understanding and exercising their responsibilities as employers. The support may be adequate to meet their agreed outcomes but if difficulty arises in relation to their role as an employer, there will be no legal protection for them within employment law if they have not complied with legislation. This potentially leaves vulnerable adults exposed to legal issues they would have difficulty understanding. It could also mean that professionals would be criticised for agreeing to such arrangements when it was clear the individual would not be able to understand and exercise their responsibility as an employer.

The same concerns apply where parents, whose lifestyles may cause some concern, opt to take Option 1 to secure support for a child.

We believe that professional judgement has an important role to play, any issues relating to compliance with Adult Support and Protection and Child Protection duties should take precedence. Clarity about this must be provided within Guidance and Regulations.

The requirement to signpost the person to independent advocacy is weak; this is something that needs strengthening throughout the guidance.

This section does not mention, far less embed, the Children's services perspective of using GIRFEC to plan with children. It is unclear how these 2 different systems will sit alongside each other, despite the earlier reference within the pathway to support planning being part of the child's Single Plan. Different outcome frameworks are used; personal outcomes within the support planning in adult services, and SHANARRI wellbeing indicators, or common outcomes, in children's services.

It should also be noted that in many cases the assessment and support planning for children and young people needs to take account of the carers and families circumstances. It may not always be appropriate to undertake a separate assessment of a parent/carer.

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Consultation Questions

Section 6 : Monitoring and Review

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

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

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

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

The section on reviewing is not strong enough in its language and requirements. There is no detail about the specific legal requirements in relation to review for children, young people and adults, which may lead to inconsistency. Reviews are 'recommended', with authorities 'prepared to respond to the likely demand for reviews', only *aiming* to conduct these annually. There should be a minimum timeframe for review established, and there should be much greater emphasis on the professional to have to call reviews for those that they support. There is a challenge between the setting of 'requirements' and the embedding of a culture that recognises an appropriate and proportionate approach. There should also be greater detail on how a review based on personal outcomes could be approached, to allow for consistency across geographical areas. This could include emphasis on the different forms a review could take, and guidance on how to prepare people well for review to allow them to be and feel in control of the process (including access to independent advocacy), as well as a case study of a personal outcome focussed review (for instance using what's working / what's not working tools). The proportion of detail in this section is inadequate in comparison to the support planning and assessment sections.

It needs to be noted that during the implementation phase of the act as reviews arise they will need to be treated as a reassessment to ensure that the supported person has the opportunity to think about the implications for them. This is likely to have a significant impact on the availability of resources to support in facilitating this.

In relation to reviewing the care plans; for example, a district nurse, community physio or hospital staff may prescribe moving and handling equipment, they have the duty of care to ensure that it meets needs of the supported person and provide guidance on the safe and correct use. This may require enhanced monitoring and reviewing particularly in option 1 where there may be changes in PAs. Whilst the duty of care remains with the prescriber the management falls to the local authority particularly OTs. Whilst this is a challenge with current arrangements we would expect through the integration with health to develop a shared approach understanding to the statutory requirements.

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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?

It is helpful to see partnership included in this section as it gives a view that SDS is wider than the local authority.

More could be mentioned about the developing of community capacity to deliver the universal offer and preventative options to help statutory bodies to think about the wider picture.

Links are helpful and the model described in Table 8 is functional. There are however still questions about where procurement and SDS sit. The independent sector organisations are at different stages of development in their relationship with the local authority and health and the funding is delivered in many different ways.

SDS is the driver for change and whilst the local authority and organisations are developing their approaches it impacts on our ability to deliver equitably.

Internal mechanisms need to be developed to facilitate the transition equitably.

Eg Day service provision has moved from building based provision to community based provision to improve access. This service was set up with SDS in mind moving from block contract to individual spot purchase. This is the first service provider funded in this way; concerns are raised that users of the service will be discriminated against. Traditional day services are non chargeable.

We need to ensure a EIA is completed to eliminate postcode funding.

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

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

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

The section whilst informative lacks vision and direction. This will need to be linked up with the integration of health and social care agenda. Further work is needed across health and social care to give clarity to what are considered health and social care needs and access to the relevant funding.

Clearer links into the charging would be welcomed, what are chargeable/non chargeable services.

Clarity and guidance on Continuing Health Care and joint funding would be welcomed.

Ian Binnie to provide some comment...on LD strategy

The progress of SDS within an integrated approach will require collaboration, training and a culture change.

It is more obvious how integration could work for children and young people with disabilities, but this may also be very relevant for children and young people in need.

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"/>	X <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"/>	X	<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?

The children's and families GIRFEC section should have been embedded throughout the whole document and not just included as a specific section within the guidance document. This makes the guidance weak for children and young people as one cannot get a clear picture as to how all the other sections apply to children and young people. The relationship between the guidance and the Children and Young people's Bill should be explicit, as proposals to raise the age of responsibility for looked after young people to 25 and having the Single Plan will have implications for the delivery of SDS.

In the description of assessment and support planning for children and young people, there is insufficient detail to understand how this will work seamlessly between children's and adult's services. There are competing approaches referenced, and it is unclear how a plan based around SHANARRI indicators, but using personal outcomes as part of a GIRFEC Single Plan, would actually work. Further detail is needed to show how these different approaches can be united within a Single Plan.

It is stated that 'the professional' should ensure that assessment is coordinated between adult's and children's services and education, and yet it isn't clear who this professional would be. Under GIRFEC this would be the Named Person or Lead Professional – if this is the case, this same language should be used consistently, for clarity's sake. Assessment will, however, be a social work function, and this may clash with the duty on education (Under the Additional Support for Learning Act 2004) to be the lead in planning, for example for transition. Roles and responsibilities for engaging the correct people, assessing, supporting and planning need to be laid out much more clearly for the young person's pathway, particularly around transition from school to adult life.

Referencing different ways of working within the guidance, between Children's Services (with the Single Plan and SHANARRI) and Adult's Services (with personal outcome focussed support planning), creates an additional layer of complication for young people in transition. If there is to be a Single Plan within children's services, this format, focus and language should continue seamlessly into adult services. There is an opportunity with this Act to create a system which smoothes the move into adult services. Any planning within Children's Services also needs to build in early reference to the concept of planning life and support beyond school.

There needs to be further clarity on matters to do with age and consent and the role of the appropriate person. Having an age limit of 16 is limiting as many young people aged 12 and over have capacity to make decisions about their support.

We welcome the positive promotion of Option 4 'mix and match' approach for young people in transition, in order to build confidence in arranging their own support. However, there is a lack of clarity (para 101) as to when a young person in transition will be offered this support; is it at 16 (when they have the right to make their own decisions on support) or at the point of transition from school

(under the ASL Act at least a year before school leaving)? There is also no acknowledgement of the fact that a budget held whilst the child is still within the Universal Service of education has a different purpose and will be a different level of resource from the budget arranged post-school, and so management of these will not be the same.

There is also lack of clarity around when it is presumed that the financial resource moves from being the responsibility of children's services to adult services; this is an area of inconsistency across local authorities, and the guidance could take the opportunity to address, or at least acknowledge, this. As part of transition planning, there could be opportunity to introduce the concept of an 'early indicative budget' for a young person still within children's services, based on their current level of need, which would allow for some planning of how future resources might be used post-school / within adult services.

There is a concern that the current approach re capacity and guardianship may be restrictive for the implementation of SDS in offering all of the options. Whilst the MWC were discussing the merit of a graduated system to guardianship the English model re 'best interest decisions' would appear to be proportionate and embedded in a legal framework. A young person is a child, who has had appropriate support from a parent to manage their finances one day, and an adult the next, the parent no longer having the legal right to manage the finance.

This section also sets a tone that SDS is geared towards disabled children and young people.

Draft Statutory Guidance on Care and Support

Consultation Questions

Section 9.2 : Supported decision-making and circles of support

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

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

There is a basic problem with this section on supported decision-making and circles of support, as it is using terminology that is understood in other sectors to mean something very different. A circle of support is here used to describe a circle initiated by the professional, who then decides who should be involved to provide assistance, in relation to a specific decision or ongoing decisions that need to be made with the supported person. Circles of support in the voluntary / third sector are built around the person as a way of helping them build resilience and plan for a good life on an ongoing basis, and are formed of people (or allies) that the person chooses to involve. They are not initiated around the need to make a decision.

If the current approach is to be advocated as described, then the name should be altered (for instance to 'decision-making circle'). However, there may be benefit in retaining the original meaning and including the concept of a circle of support as an asset or resource for a person's entire pathway, rather than just helping them to make a decision.

If a 'decision-making circle' is to be used, the supported person should not only be allowed to agree this to happen, the guidance should ensure that professionals encourage the supported person to be actively involved in choosing and setting up their circle. A case study or best practice example could illustrate how this might be done well, putting the person in control of the situation.

As it stands, this section could be open to different interpretation from professionals within different sectors, and lead to inconsistent practice. The emphasis on the person as being the centre of whatever circle is initiated needs to be strengthened.

Dependent on the outcome there are issues re the local authorities ability and capacity to deliver in the support required.

A cultural change is required to consider risk enablement and the application of professional judgement of both the assessment of support and of the mechanism by which it is delivered, rather than an exclusions approach.

In making decisions, other legislation will need to be taken into account for example for example equalities and employment.

It is important the social work training and continued professional development is not neglected to ensure that social workers are supported to consider the relevant issues.

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Consultation Questions

Section 9.3: Carers

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

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

This section does not refer to carers assessment – section 24 of 1995 Act for children and young people It should also be noted that in many cases the assessment and support planning for children and young people needs to take account of the carers and families circumstances. It may not always be appropriate to undertake a separate assessment of a parent/carer.

There is no mention in the Guidance of the intention to relax the rules on employing family members using a direct payment. This raises a number of issues and we would suggest that further clarification is provided within guidance as to how this is applied in practice e.g.

- How does carer assessment apply to family members who are providing both paid and unpaid support:
- How should the paid support be viewed in relation to provision of short breaks/respite?
- How should we view the circumstances where the carer is not accessing appropriate breaks from the paid support e.g. asserts that they are providing the support on an unpaid basis while on paid annual leave? This effectively means that family carers don't take the statutory breaks required under employment law and can impact on both the paid and unpaid support.
- What plans should be put in place to cover sickness, annual leave etc when the supported person and the carer decline to have any contingency/back up support built in to the support package?

These issues can make the support provision to family carers complex and there is

a clear confusion of roles.

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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"/>	<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"/>	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 welcome this section of the guidance and feel it reaffirms our approach to facilitating direct payments to allow increased choice and control for the supported person.

Paragraph 124, '...but it must relate in some way to the outcomes' is vague and would welcome some further explanation and clarity.

Paragraph 125, this guidance needs to make reference to the legal framework and complexities around Guardianship.

Concerns that this could result in a PA managing the DP and the potential conflict of interest. This requires clarity.

Should professional judgement consider the supported person is at risk of harm from such an arrangement it is expected that this would then trigger AP processes and that would be the means by which the council could exercise and evidence its discretion.

Paragraph 126, we welcome the guidance being explicit around the requirement to inform and explain to the supported person of the decision where the professional cannot offer a direct payment.

Paragraph 129, such issues would benefit from the reviewing and monitoring on the DP within early timescales, and assist the supported person in the best decision making in support planning. This may require significant changes to the approach to reviews.

Paragraph 130,131, the guidance is embedded in current practice.

Paragraph 133, we expect that this approach will be strengthened and strip out duplication through the integration of health and social care.

Paragraph 135, we would welcome further guidance on the application of the regulations.

Paragraph 136, this approach reinforces the need to consider and evidence the professional judgement of the social worker in the awarding of the DP to minimise terminations.

Paragraph 137, this is embedded in current practice.

Paragraph 138, we would welcome further clarity on this issue. Current practice, whilst the supported person is in hospital, health are responsible for the individuals care and support, whilst the local authority ensure the DP allows for employer to fulfil the legal requirements, we would not agree for the DP to be funding support to be provided in a health care setting. There are exceptions that focus on the emotional needs of individuals with more complex needs.

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"/>	<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"/>	<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?

It is crucial that a risk enablement framework and approach is developed. This

needs to be linked in to social work training , continued professional development and evidence based practice in securing the success implementation of SDS in stronger healthier communities. This integral to the role of social work and its status should sit in line with the role and duties of the MHO and the social work duties under ASPA.

The role of independent advocacy is essential in ensuring the protection of the rights and facilitating informed decision making.

The definitions of re-ablement and intermediate care are almost saying the same thing in the guidance, given the integration with health a common language and understanding need to be considered further. Its important to note that all local authorities deliver these service in different ways. should be agreed ie re-ablement / rehabilitation.

Equipment and adaptations should be view as a preventative service. Whilst the vision and potential process for equipment under SDS is clear further guidance would be welcomed to enable the vision for adaptations to be developed, considering the complexity of the grant funding schemes.

We currently have embedded in through practice a partnership agreement between all partners and housing tenures in relation to equipment and adaptations. This streamlines the process giving positive outcomes for the supported person and their carers.

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?

The statement of Intent at the beginning is the right approach however the reference to the independent living movement gives the wrong message as it relates to one client group, making the assumption that SDS is only relevant for disabled people. The statement of intent should be inclusive of people in need, as it will apply to this much broader group.

The complexity related to the employment of family carers and how this might be in practice requires further consideration.

The consideration of undue pressure and when concerns are raised will this progress through Adult protection.

The process for response has been very confusing in that there are a number of consultations in relation to SDS all at the same time. This feels disjointed.

The guidance could have done more to link the duties and regulations to real life. Perhaps this will be helped with the inclusion of examples. Real life examples should be used to give a flavour of the 4 options.

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.

Costs

- Increased assessment activity: assessments will take longer, especially in the beginning as both workers and service users adapt to a new way of working.
- Training and Support
- IT Systems development
- Costs of supporting the transition to more inclusive service whilst maintaining existing services (double running costs)
- Administrative costs associated with increased level of Direct Payments.
- If DP's have to be paid gross and recover charges this will further increase admin costs and lead to possible loss of income.

Savings

- Involving service users may identify more creative ways of meeting needs at reduced costs
- Once service are fully aware of the costs of their services and take on responsibility for managing their individual budgets they may value the services more and look at how they can organise services in a more cost effective way (for example taxi costs).
- Greater involvement of private/voluntary sector in assessment may identify innovative ways to provide care

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.

Overall the guidance makes strong reference to the Equality Act and places a strong emphasis on the dignity of the person and their right to live independently.

The guidance doesn't make any significant reference to the LGBT, religion or belief and gender equality issues. This could potentially be mentioned under section 5.3 'Resources' where the practitioner should be sensitive to different family structures (particularly amongst the BME community), relationships within them and attitudes to social work intervention. For example, a young gay man might appear to have family support but the family could be ignoring the man's sexuality and denying him the opportunity to express this to an external person.

The references to communication with the individual being assessed could also be strengthened to emphasise the importance of communicating with an individual in a manner which meets their needs.

The section for children and young people appears to be an 'add on' whereas this should have been embedded throughout the whole document.

Question 15 (b): Do you have any views on the impact of the guidance on human rights?

For more information about human rights please see the Scottish Human Rights Commission's website at:

<http://www.scottishhumanrights.com/abouthumanrights/whatarehumanrights>

There needs to be further clarity on issues around capacity for children and young people

Overall the guidance makes a strong connection to the principles and values of the

Human Rights Act.

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)?

Would wish DP payments to be paid net, there is no benefit for the authority in paying gross, it would increase administration costs through additional work in recharging the client.

The financial assessment must be completed prior to the DP being set up and agreed by both the supported person and the local authority.

Clients are currently made aware from DP set up of the client contribution, the local authority contribution and the agreement for payment.

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

There may be a conflict of interest and, a change of focus and at time less transparency.

Where does the carer allowance/expectations/benefits regulations fit with the regulation?

Who is managing the DP?

Competing family priorities may compromise the sustainability.

Question 3: What are your views on Regulation 11 which deems individuals who are placed under a variety of criminal justice orders to be ineligible to receive direct payments?

For example, is it appropriate to impose the exclusions listed in Regulation 11? Are there any persons not listed in regulation 11 to whom it would be inappropriate to offer the option of a direct payment?

The local authority recognise the risks that the exclusions have been put in place to address however the exclusions deny the opportunity for facilitating creativity and change for a supported person in achieving outcomes. A more rigorous and robust approach to risk enablement to the awarding or declining the offer of a DP

with professional social work judgement embedded in the decision making would be an alternative.

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?

The local authority recognise the risks that the exclusions have been put in place to address however the exclusions deny the opportunity for facilitating creativity and change for a supported person in achieving outcomes. A more rigorous and robust approach to risk enablement to the awarding or declining the offer of a DP with professional social work judgement embedded in the decision making would be an alternative.

We would agree that at a time of crisis it may not be the best time to taking on the responsibility of a DP.

There may be a number of people who have successfully managed their DP and support prior to being homeless or fleeing domestic abuse, it would appear to penalise them for what may be an unrelated matter, reducing choice, control and independence.

Measures need to be in place to enable eg LCIL enhanced service to allow continuity of care and support.

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.

In what way would the DP result in better outcomes for the individual? Whilst it would potentially increase choice allowing the supported person to pay a third party payment to the home of choice.

The national care home agreement only applies to residential homes for people over 65, there are no such agreements in Scotland for supported people under 65. Further consideration is required to the implications of this.

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?

There is a feeling that there should be no restrictions on this and the use of professional judgement is key in informing decisions as to whether certain individuals should be excluded from accessing a direct payment.

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?

Comments

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.

Comments

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.

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>