



Dear Sir/Madam

## **SELF-DIRECTED SUPPORT: CONSULTATION ON DRAFT STATUTORY GUIDANCE ON CARE AND SUPPORT**

### **Responding to this consultation paper**

We are inviting written responses to this consultation paper by **10 July 2013**. **Please send your response with the completed Respondent Information Form (see "Handling your Response" below) to:**

E-mail to: [selfdirectedsupport@scotland.gsi.gov.uk](mailto:selfdirectedsupport@scotland.gsi.gov.uk)

or

Adam Milne  
Self-directed support Team,  
Room 2ER,  
St Andrew's House,  
Regent Road,  
Edinburgh,  
EH1 3DG

If you have any queries please contact Adam Milne on 0131 244 5455

We would be grateful if you would use the consultation questionnaire provided as part of the Respondent Information Form or could clearly indicate in your response which questions or parts of the consultation paper you are responding to as this will aid our analysis of the responses received.

This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at <http://www.scotland.gov.uk/consultations>.

The Scottish Government has an email alert system for consultations, <http://register.scotland.gov.uk>. This system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new consultations (including web links). It complements, but in no way replaces SG distribution lists, and is designed to allow stakeholders to keep up to date with all SG consultation activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

### **Handling your response**

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the Respondent Information Form attached to this letter as this will ensure that

we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly. All respondents should be aware that the Scottish Government are subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

### **Next steps in the process**

Where respondents have given permission for their response to be made public and after we have checked that they contain no potentially defamatory material, responses will be made available to the public in the Scottish Government Library, and on the Scottish Government consultation web pages by **7 August 2013**. You can make arrangements to view responses by contacting the SG Library on 0131 244 4552. Responses can be copied and sent to you, but a charge may be made for this service.

### **What happens next?**

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us consider any amendments or additions to the guidance. We aim to issue a report on this consultation process along with our response to it during Autumn 2013.

### **Comments and complaints**

If you have any comments about how this consultation exercise has been conducted, please send them to the address given above.

Yours sincerely

Adam Milne  
Scottish Government  
Self-directed Support Team

## Consultation Questionnaire

### Draft Statutory Guidance on Care and Support

#### Consultation Questions

Section 2 : Supported Person's Pathway

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

Yes	No
✓ <input 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 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?*

Step 3 in this section places decisions about eligibility before assessment and support planning. This prevents outcome-focussed assessment (see also our response under section 4). Assessment should come chronologically before eligibility.

### Draft Statutory Guidance on Care and Support

#### Consultation Questions

Section 3: Values and Principles

**Question 2a: Was this section of the guidance clear and easy to understand?  
(please tick)**

Yes	No
✓ <input 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 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 are of the view that the document conflates guidance on the operation of the Act with generic practitioner guidance. This makes the document unwieldy and unnecessarily long and could be interpreted as imposing prescriptive “one size fits all” professional practice.

**Draft Statutory Guidance on Care and Support**

**Consultation Questions**

Section 4: Eligibility and Assessment

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

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

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

Very useful	Quite Useful	Not very useful	Not at all useful
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" 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 guidance runs contrary to an outcomes approach to assessment by suggesting eligibility for state support is considered before detailed assessment. An outcomes-focussed assessment will involve a conversation in which all perceived outcomes / needs are discussed, regardless of whether all of those outcomes / needs are eligible for funded support. Delivery of the early intervention / prevention agenda also requires consideration of a person's full range of outcomes to identify how people can best be supported within communities to prevent more costly (eligible) intervention at a later stage. The guidance should be clear that outcome-focussed assessment must take place before consideration of eligibility for state support. This entire section appears to refer only to adults with no reference to children and

families (although we realise this is covered later on). If this section is specific to adults this should be explicit.

Again, as a result of conflating generic professional guidance with SDS specific guidance, the whole section is too long and as such is unlikely to serve its intended purpose.

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

Again, this section focuses on generic professional practice guidance to too great an extent which makes the document unwieldy.

We welcome the guidance specifying that there is no single approach to resource allocation prescribed or recommended by the Scottish Government, and also the recognition that systems and tools are no substitute for the skilled judgement of a social work or health professional.

If the generic guidance is retained (or placed elsewhere) references to risk should be more framed within risk enablement.

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## **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 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 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?*

It is possible that financial review may also be needed for Option 2 if the budget is not being managed well on behalf of the supported person by a third party.

## **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 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 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?*

We would suggest that the provision of information that facilitates choice should also be linked to Community Planning and Economic Development of the local area as there is already duplication in the collection and use of information on community assets.

**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 checked="" 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"/>	<input type="checkbox"/>	<input checked="" 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 spirit of the guidance does not reflect the government's vision for integration of health and community care. The success of SDS in our communities will be dependent on partnership working and sharing of resources between local authorities and the NHS, particularly for long-term and terminal care. The guidance should make clear that the NHS will contribute to SDS individual budgets in such circumstances.

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

We suggest that this section of the Guidance needs more work around how SDS will work in the wider Children and Families context. Section 22 of the Children's (Scotland) Act 1995 already allows for the provision of financial assistance. We believe that, in practice, it is likely that SDS options will be restricted to children with learning / physical disabilities. However, it would be preferable to retain some discretion should an exceptional case arise outwith disabilities.

We would suggest that the guidance takes the opportunity to strengthen the requirements for PVG checking for anyone caring for children (or vulnerable adults).

**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 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?*

While we fully endorse supported decision-making, *Circles of Support* methodology is recognised and utilised in some health and social care settings (notably learning disabilities and sex offending) but not in others. Incorporating one methodology but not others gives it a prominence that might not be as relevant across all of social care. We suggest that this reference is removed.

Again this section would benefit from the removal of the generic guidance.

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

Our particular concerns relating to Carers are with regard to the Direct Payments (employment of family members) and Charging guidance and we have responded within these separate consultations.

This section is very lengthy and mostly superfluous.

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

In relation to Third Party Direct Payments it is important that the roles of both the supported person and the third party are made clear and that there is evidence that all parties understand their responsibilities.

It should always be clear that a personal assistant employed to provide support should not be appointed to manage the finances.

## **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?*

Much clearer guidance is required in relation to the interface between Self-Directed Support, particularly Direct Payments, and Adult Support and Protection legislation. Both of these confer statutory duties on local authorities which could be seen to be conflicting. ASP applies to all citizens in circumstances where they could be viewed as being vulnerable. Local authorities often support individuals whose behaviour could be perceived as presenting a risk to others and as such we would want to exercise our safeguarding duties in respect of all citizens.

The clarification that Re-ablement/Intermediate Care are not subject to Self-Directed Support is helpful.

This Equipment and Adaptations section appears to be light in detail, particularly since it now covers housing adaptations. There is no information on how this impacts on other funding sources and obligations e.g. housing.

**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 document conflates guidance on the operation of the Act with generic practitioner guidance. This makes the document unwieldy and unnecessarily long and could be interpreted as imposing prescriptive “one size fits all” professional practice.

Care should also be taken not to predicate the future output from the government supported ADSW guidance. We would recommend that the generic guidance and examples are removed from the document. We think that use of hyperlinks to signpost readers to additional supporting information is a helpful device.

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.*

There are potentially significant financial costs to local authorities / NHS as a result of the requirements set out in the guidance. These include, but are not limited to the following:

- It is estimated that 1 in 8 of the population are Carers. Employing family members and Carers assessment changes could result in significant, but unknown, expenditure shifts for local authorities.
- The potential use of NHS budgets to meet long-term and terminal care at home needs specified within the guidance – this will be welcome but result in significant organisational change and income / expenditure redistribution across budget areas.
- There are significant implementation costs for local authorities arising from the transition to self-directed support, primarily in the areas of wholesale staff development and training. The potential shift from a 'wholesale' model of providing services, with the local authority as block purchaser, towards a 'retail' model of spot purchasing and contractual relationships between the user and supplier will add transitional costs to commissioning and accounting sections within local authorities as systems and processes are redesigned. Working with partners to embed new systems and processes will also incur transitional costs.
- There is a potential loss/gain of income depending on how individuals exercise provider choice in relation to currently local authority provided services.

The Scottish Government should ensure that potential increases in expenditure are monitored and that local authorities / CHCP's are adequately supported to deliver the SDS vision in future.

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 the Guidance fulfils 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>

No comment

## 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)?**

We do not feel it is necessary to create the option of receiving a direct payment gross. This is highly unlikely to be requested and also unnecessarily bureaucratic and complex for both the authority and the supported person.

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

This is of particular concern and does not seem to recognise the complex shift in dynamics that this could produce within family relationships with the caring role being exchanged for money, rather than borne out of love.

It also has the potential to change how society views family carers in relation to what support the state provides and what a family may choose to do as part of their

familial role. This runs contrary to the Government's community capacity building objectives.

Such a change to existing practice would significantly increase costs which local authorities are unable to absorb.

We are strongly of the view that employment of family members remains at the discretion of the local authority.

**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?

We suggest that the offer of the option of a direct payment should be discretionary where there are concerns around safeguarding both of the individual and of the person providing support. Adult Support and Protection and Child Protection duties will continue to take precedence over the duty to offer a direct payment. Otherwise the professional assessment could be significantly compromised in relation to duties associated with all of these Acts.

**Question 4: What are your views on restricting access to direct payments for those who are homeless, those who are fleeing domestic abuse or those who require support in relation to drug or alcohol addiction?**

As previously stated it might be useful to have the option of Self-Directed Support for wider forms of support, however professional discretion as to when and how this would be appropriate would be important, particularly for direct payment where there addiction issues. It would be useful to confer a power, rather than a duty, to offer Self-Directed Support on local authorities.

**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 agree that there should not be access to direct payments for residential care.

**Question 6: The draft Regulations do not specify circumstances where the direct payment option should be unavailable for care and support to children/families. *Should* there be specific restrictions on choice of support in relation to children/families support (i.e. support provided under Section 22 of the Children (Scotland) Act 1995) and should these restrictions apply to the direct payment only, or to other options as well?**

We believe that in practice SDS is likely to be restricted to children with disabilities. However consideration should be given to retaining discretion for other groups for use in highly exceptional circumstances.

**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?

Our main concerns are addressed above.

## **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.

There are potentially significant financial costs to local authorities / NHS as a result of the requirements set out in the guidance. These include, but are not limited to:

- It is estimated that 1 in 8 of the population are Carers. Employing family members and Carers assessment changes could result in significant, but unknown, expenditure shifts for local authorities.
- The potential use of NHS budgets to meet long-term and terminal care at home needs specified within the guidance – this will be welcome but result in significant organisational change and income / expenditure redistribution across budget areas.
- There are significant implementation costs for local authorities arising from the transition to self-directed support, primarily in the areas of wholesale staff development and training. The potential shift from a 'wholesale' model of providing services, with the local authority as block purchaser, towards a 'retail' model of spot purchasing and contractual relationships between the user and supplier will add transitional costs to commissioning and accounting sections within local authorities as systems and processes are redesigned. Working with partners to embed new systems and processes will also incur transitional costs.
- There is a potential loss/gain of income depending on how individuals exercise provider choice in relation to currently local authority provided services.

The Scottish Government should ensure that potential increases in expenditure are monitored and that local authorities / CHCP's are adequately supported to deliver the SDS vision in future.



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.

No comment

**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>

No comment