

# Consultation Questionnaire

## Draft Statutory Guidance on Care and Support

### Consultation Questions

Section 2 : The Supported Person's Pathway

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

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

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

Very useful	Quite Useful	Not very useful	Not at all useful
<input checked="" 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?*

Overall this section is easy to read and useful for clarifying key steps and emphasising the key roles and responsibilities of everyone who should be involved in the individual's SDS journey. From the outset, this section of the guidance places the individual at the centre and emphasises the importance of working together/co-production. This is in line with Fife Council's current SDS pathway.

Whilst recognising that this section is a summary of more detail within subsequent sections, we do however feel that some important strands of SDS should be referred to in this section which are currently missing. We suggest that the following points should be addressed as follows:

**Para 7, p6, Table 1: The Person's Pathway**

- Step 3 (Eligibility and Assessment): does not include reference to final decision on eligibility and if eligible, point at which financial resource allocated notified to individual. Suggest a final sentence in Step 3 stating this.
- No reference to the importance of 'conversations between professional and individual' to identify personal outcomes highlighted throughout the guidance.
- Does not mention that Step 3 can take time depending on individual circumstances (evidenced from all SDS Test Sites, including those in Fife). Important for professional and individual to acknowledge this at the outset.

- Suggested wording to address the above 3 points would be under Step 3, after “ ....more detailed exploration of the personal outcomes for the individual” add “ ***These important conversations may take time and should be undertaken at the pace appropriate for each individual. A formal decision on eligibility will then be taken. If eligible, an indication of the likely financial resource will then be given to the individual.*** ”.
- Step 4(Support Planning): the first bullet point does not include reference to a very important role of the professional which is to ensure that discussion of the choices includes outlining the likely implications of each of the options. We suggest that the Bullet Point “ the choices available to the supported person” includes the additional phrase...” ***...including the nature and likely effect of these options.***” .

**Para 8, p7, Table 2: Roles and Responsibilities, Responsibilities of the professional**

- As well as highlighting legal duties of the professional, a reference should also be made to good practice principles highlighted throughout guidelines as also being important. This could be added at the end of the first sentence under the responsibilities of the professional: “ ...that the assessment is conducted in line with social care law ***and good social care practice.***”
- The use of ‘may arrange for additional assistance’ and ‘may give voice to a supported persons wishes’ is at risk of broad interpretation , which could result in limited input from service users (the antithesis of SDS) We suggest that the terminology could be improved to indicate that professionals should ***‘make every reasonable effort to ensure individuals are heard/have assistance’***

**Draft Statutory Guidance on Care and Support**

**Consultation Questions**

Section 3: Values and Principles

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

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

**Question 2b: How useful did you find this section of the guidance?  
(please tick)**

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

**Question 2c: Do you have any further comments on this section of the guidance?**

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

Fife Council supports the values and principles referred to in this section of the guidance which are in line with those underpinning SDS policy and practice in Fife.

Information in Section 2 will be a useful training and awareness raising resource for professionals and others. The setting out of a common values base should assist joint working between partners involved in SDS.

Fife Council welcomes the additional non statutory principles of innovation, responsibility and risk enablement included in Para15, p11, Table 3: The Principles that should underpin a good assessment and support plan.

We wish to propose the following amendments to this section:

**Para 11, p10: The Principles of Care and Support**

- The reference to only '...disabled people' in this paragraph excludes others who are eligible for SDS support. The 2013 Act applies to all service users who meet eligibility criteria. Applying the term 'disabled' could imply that the Act applies only to those who are 'disabled' We suggest that after '...whereby all disabled people ..' add '**and others with support needs....**'

**Para15, p11, Table 3: The Principles that should underpin a good assessment and support plan**

- A cross reference to practical examples of innovation (either elsewhere in guidance or through hyperlinks ) would be helpful for professionals and individuals. This would help give evidence of how creativity can lead to better personal outcomes and help give confidence to those considering innovative approaches to their support.
- Reference should be made to Positive Risk Enablement. In Fife's experience of SDS, this is an integral element of SDS Governance and in supporting individuals' choice and control over their support. Instead of just 'Risk Enablement' heading in table 3, replace with '**Positive Risk Enablement**'

## Draft Statutory Guidance on Care and Support

### Consultation Questions

#### Section 4: Eligibility and Assessment

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

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

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

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

Overall this section is useful as it sets out and highlights:

- Eligibility criteria
- The critical role of assessment in the SDS journey.
- Ties in the SDS framework to the legislative context for assessment.
- How to incorporate the principles of SDS into good assessment practice which is central to developing the 'culture change' towards a personal outcomes approach.
- Useful practical tools and models which can be used for awareness raising, some of which are already used in Fife for staff SDS training.
- The importance of Accessing 'alternative sources' out-with formal or 'funded' services which will enhance a more holistic approach to achieving outcomes, help utilise local community based resources and assist creative practice by professionals.

The following specific references are welcomed:

**Para 23, p15, 'The Professional's Role' :**

- "the professional and individual being able to access information and advice about alternative sources of support out-with formal or 'funded' services." This will enhance the opportunities to be innovative and consider ways of achieving personal outcomes more holistically in line with the principles of SDS.

**Para 24, p16, 'The Local Authority's Role':**

- early intervention and preventative approach. From experience of testing SDS in Fife, when SDS intervention is timely for an individual, crisis and escalated support can be avoided.

**Para 33, p19, .and para 35, p19/20 , Table 5 ‘ The Conversation: good assessment practice and personal outcomes ‘**

- The Exchange model and personal outcome approach are ones already used in Fife for the SDS test sites and are promoted in staff training. These paragraphs are clear and useful for raising staff awareness to assist culture change required around assessment.
- There is a lack of reference in this section however to the real tension between using an early intervention/preventative approach to assessment and the current eligibility framework/criteria which in practice means resources are focussed on those at ‘critical’ or ‘substantial’ risk. This difficult transition between moving towards earlier intervention and meeting current high levels of demand/need with existing resources is one which affects many areas of policy within local government and requires to be further addressed at a national and wider policy level. Until this happens it is unrealistic to expect SDS to be able to fully achieve its potential regarding early intervention/ preventative benefits.

The following legal and technical points also require to be addressed:

**Para 16, p14, ‘Determining a person’s eligibility for support’:**

- States that the legal basis for assessment for children is carried out under **s.23 of the 1995 Act**, this applies only to children affected by their own or another’s disability. What about children assessed under s.22 1995 Act? When Cross referring this to s.8(1) 2013 Act, there is only mention of s.22 of the 1995 Act but no mention of s.23 of the 1995 Act.

**Para 20, p14, ‘Determining a person’s eligibility for support’:**

- Qualifying as a person in need is expressed as those affected by ‘infirmity, youth or age....” This is prescriptive and narrow. A person in need is someone assessed as having identifiable needs/outcomes which may not necessarily relate to infirmity, youth or age. The eligibility needs to be clearer in terms of who is eligible – as people who are subject to mental health/alcohol/drug treatment orders appear under the draft regulations not to be eligible for option 1 (direct payment). This should be highlighted at this point and consistent with what is finalised in the draft regulations.

**Para 26, p16, ‘Further exploration of the person’s needs and outcomes’:**

- The reference to ‘ ..a *conversation* between the professional and supported person’ could potentially be read literally meaning one conversation. To avoid this, the term *conversations* would be clearer as would an additional reference to the purpose of these conversations to develop a relationship throughout the assessment/planning/review process.

**Para 38, p21, ‘Self-Assessment’ :**

- this paragraph should highlight the benefits of self-assessment as part of a full assessment. Self assessment as part of the full assessment could be suggested to be best practice – the service user’s self assessment helps to inform the overall holistic assessment completed in partnership with the social worker and – assessment is much more than a ‘starting point’, it is continuous and dynamic throughout service provision.

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

Overall this is an informative and easy to read section. There is welcome reference to the need to consider all available resources when support planning, not just financial.

While providing some basic information around the options, this section is also helpful in providing guidance on the limitations, which will be of support in a conflict situation.

The further guidance and hyperlinks are helpful.

More specifically:

**Para 52, p26, 'The statutory principles in the 2013 Act' :**

- the sentiments in this paragraph that SDS is going back to the basic values and principles of good social work practice are supported. These views have been echoed by a range of Social Work staff involved in the Fife SDS Test Sites.

**Table 6, p23, 'Support Plans: Key Ingredients':**

- this diagram provides clear information and will be useful for all those involved in support planning.

**Table7, p32, 'Examples of Information and Support' :**

- This is a practical and comprehensive table. From SDS experience in Fife, the use of mentoring and peer support is particularly useful and its inclusion in the table is welcomed.
- The main gaps in this section are the lack of reference to:
  - The potential time good quality support planning can take.
  - The need to be aware of what all the available resources are for individuals as outlined in this section e.g. from local support organisations to small scale community facilities.
- To help convey information on the 4 options and their implications for individuals, a DVD with real stories of individuals who have chosen each option would be useful. This would be in line with the Act's emphasis on ensuring information is conveyed in different formats to meet the diverse communication needs of individuals.

**Para 67, p31, 'Information and Support':**

- For additional clarity about the groups Para 67 refers to, please consider adding that section 9 of the 2013 Act refers to adults, adult carers, children/family members.

**Para 75, p33 The role of user-led support and information organisations –**

- when stating '...helping disabled people understand their options..' there should also be the inclusion of '...disabled and **others with support needs**' . Not all user led and peer support organisations are for disabled people.

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

### **Consultation Questions**

Section 6 : Monitoring and Review

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

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

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

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

Given the importance of Monitoring and Review in the SDS journey and in achieving personal outcomes, this section lacks detail. For example, as in other sections, this section should give examples of good practice/useful tools for doing this.

Greater detail and more clarity is required in relation to:

- Monitoring
- Differences between review, monitoring/assessment/reassessment.
- Transparency and accountability
- Para 78, p36, 'Monitoring and Review': ' ... period of reflection..' .What does this mean/involve?
- Likely time and resource implications

From experience of SDS in Fife, reviews should be more frequent at the initial stages. Would recommend that during 1<sup>st</sup> year of receiving SDS have a review after 6 weeks even if it's informal or not as detailed to check everything is ok. After 6 months have a formal review as you would after a year. Thereafter yearly or as required. A review can be called at any time by service users or any key person involved in their care, this does not have to be formal or include everyone.

Out with the SDS plan, it is important to streamline the range of reviews an individual receiving a range of supports is required to complete. Should strive for as few as possible and for consistency in outcome focussed approach. Not clear if the 2013 Act supersedes the need for other statutory social work reviews e.g. community review or residential, direct payments review?

A useful point made was for the worker to take a similar approach to that taken at initial assessment (**Para 80, p36, Review of the Supported Person's options under the 2013 Act**). Whilst this para then mentions outcome focussed, it should also refer to being person centred.



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

### **Consultation Questions**

#### **Section 7 : Facilitating genuine choice for individuals**

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

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

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

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

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

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

The introductory comments in this section which state that "...access to choice 'on paper' is of little value if there is a lack of variety in the range of providers or a lack of variety in the type of support on offer" are strongly supported as are the principles underlying this section.

The main gap in this section is the lack of detail and information on the 'how' to promote a variety of providers and variety of support e.g. good practice examples. Good practice examples should include:

- The role 'micro-providers' and their services can play in enhancing local choices. Examples of this are evident in Fife through the work undertaken by BRAG and the SHINE project.
- Capacity building work being undertaken by Arc with local authorities and providers should be referenced and possibly hyperlinked. In Fife the link between the Fife Providers Forum and SDS Team has been a useful partnership in this area of SDS development.

It should also be highlighted that Social Work services cannot do this on their own – partnership working with other local authority services, community planning partners and local communities is required.

For example, whilst commissioning an important element for facilitating choice, reference also needs to be made to other ways local authorities can do this e.g.

- Working with local communities, 'micro-providers' and organisations to meet identified needs/gaps in services locally.

- Working with other partners/services e.g. community development, economic development, housing, health authorities, social enterprises.
- Making links with 'Community Planning' framework.

More specifically, **para81, p38, 'Promotion of options for self-directed support'** Some guidance on what constitutes '...**reasonably practicable**' would be helpful as this term is open to wide interpretation as would what type of evidence the Scottish Government are seeking from local authorities to evidence this.

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

This section which outlines the importance of joint working between the NHS and local authority for individuals achieving their outcomes through SDS section is welcomed.

This is the area of SDS guidance which will be most directly influenced by the forthcoming integration legislation. The Scottish Government are frequently highlighting the mutual links between integration and joint working between health and social care on the SDS agenda.

Whilst recognising that the latter legislation is at a draft stage, there is little reference to this other than a brief mention **Para 89, p43 'Joint Funding'**. This section of the SDS guidance should incorporate more information/reference to the principles of integration to ensure that the necessary links are made in practice at a local level. Similarly integration guidance and information should clearly cross refer to SDS guidance/legislation.

The case studies (one of which Fife contributed to) are helpful in highlighting how a joined up approach can benefit the individual and their family and carers.

Specific comments on this section include:

**Para 85, p41, 'What is meant by a joint approach?'**

- Very much support that this is not just about pooling budgets but about sharing an outcome focussed approach for individuals who require health and social care support. From joint working experience in Fife and from the NHS Fife Council SDS Test Site, the pooling of expertise, ideas and experience can lead to better outcomes for the individual and therefore should be supported. A useful way of doing this in Fife has been through joint training and joint awareness raising.

**Para 90, p43, 'Budgets are Pooled : what happens next ? '**

- The possible ways of releasing combined funding are helpful practical examples.

**Para 88,p43, 'Joint Assessment and Delegated Assessment':**

- Where the social care assessment function is delegated to the NHS professional, guidance should recommend that the NHS professional follow the SDS Pathway which an individual would follow for social care in their local authority area/s. This will avoid duplication or confusion for the individual and streamline SDS approaches between local authorities and Health Boards.
- To achieve the above, it should also be recommended that local SDS developments and frameworks should involve the input of NHS representatives as key stakeholders.
- The role and usefulness of joint SDS training between health and social care professionals should be highlighted (evidenced in Fife by the NHS Fife Council test site and SHINE project) .

**Para 89, p43 ' Joint Funding':**

- In the past, the practice of transferring funding has often been for high level complex cases where there has been significant negotiation on agreed funding from respective partners. Releasing funding at the 'micro-level' for the individual is an area which would benefit from more detailed information / hyperlinks with practical examples of how this is done in different areas. This could also assist in developing tools to implement the integration agenda locally.

At the end of this section there should be a hyperlink link to the NHS Lothian and NHS Fife Council SDS Test Site Evaluation Reports and DVD.

## Draft Statutory Guidance on Care and Support

### Consultation Questions

#### Section 9.1 : Children and Families

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

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

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

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

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

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

The principle of making SDS choices available to children and families is welcomed and is in line with the Council's commitment to implementing GIRFEC and its Transitions Charter.

The SDS personal outcome approach and principles complement the GIRFEC and SHANARRI frameworks.

The importance of ensuring that any SDS assessment or plans are co-ordinated with the child's existing Single Plan is supported.

There is reference to a number of key professional practice issues which arise from this section of the guidance, e.g. providing choice in the context of the wider safeguarding role, the transition process and the involvement of the child in making and managing choices. There could be greater use of hyperlinks to more detailed good practice, practical advice and examples of relevant guidance in these areas of practice in particular to assist the professionals involved.

A specific point raised is **para 16, p14, section 4 (Draft) Statutory Guidance on Care and Support** which states the legal basis for assessment for children is carried out under s.23 of the 1995 Act. This applies to assessment with children affected by their own or another's disability. It could be inferred from this that the guidance applies only to children affected by disability, whereas s.8(1) 2013 Act refers to s.22 of the 1995 Act.

## Draft Statutory Guidance on Care and Support

### Consultation Questions

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

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

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

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

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

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

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

This section provides a good balance of recognising the need for supported decision making to ensure maximum choice and control for the individual but appreciating that the role of anyone providing assistance needs to be clearly set out. In **Para 105, p52, 'Assistance'**, we welcome that this section of guidance is not about imposing assistance or appointing proxy decision makers.

A helpful list of when decisions may need to be taken on the SDS pathway is included in **Para 106, p52, 'Assistance with Understanding and /or making decisions'**.

The potential role of independent advocacy should be referred to in this section e.g. as an option in providing assistance with communicating decisions.

**Para 108,p53, Assistance with understanding and/or making decisions :**

- The terminology of 'Circles of Support' in this paragraph should be clarified as this model/approach has different interpretations.

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

### **Consultation Questions**

#### **Section 9.3: Carers**

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

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

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

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

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

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

The principle that carers eligible for support through a carer's assessment should be offered the four SDS options and the SDS pathway is supported.

The practical examples and case study in this section are helpful and could be used when raising awareness of SDS with stakeholders.

This section does not refer to the eligibility and resourcing issues around carers' assessments and providing support to carers out with the formal carers assessment. To qualify for a carer's assessment, carers have to be providing a substantial amount of care on a regular basis. However the guidance also states the value of preventative/low level support for carers who do not meet the threshold for a carers assessment.

## Draft Statutory Guidance on Care and Support

### Consultation Questions

#### Section 9.4: Direct payments

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

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

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

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

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

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

Direct Payments have historically been promoted in Fife and we support their inclusion in the guidance.

The content of this section is however clearly inter dependent on the draft Direct Payment regulations also being consulted on. Every effort should be made, if timescales allow, to update the guidance to reflect the key points and implications of the Regulations.

More detailed points on Direct Payments are made in Fife Council's response to the draft regulation consultation questions.

The section provides a useful summary of the key characteristics of Direct Payments. It will be useful for guiding staff and raising awareness of what they are and the potential benefits/constraints.

We agree with the statement in **para 128, p62, 'The choices available to a supported person under a direct payment'**:

- that direct payments if developed on a sound basis can offer the greatest flexibility for an individual. From the long standing experience of direct payments in Fife, this has been evidenced. This flexibility often contributes to successful outcomes for the individual.
- Although covered in the draft regulations, mention of POA or welfare/financial guardianship for someone without capacity should be included in the guidance.

More specific points to raise on this section include:

**Para 127, p62, ‘The choices available to a supported person under a direct payment’:**

- the statement re. what can a direct payment be used for, ‘...The short answer is anything...’ . Does not mention the exclusion of items/services which are provided by NHS.

**Para 128, p62, ‘The choices available to a supported person under a direct payment’:**

- whilst stating that this option offers greatest flexibility, should also be highlighted at this point that it carries the most responsibility for the individual.

**Para 130, p62, ‘The responsibilities that come with a direct payment’:**

- we recommend adding ‘ **in an accessible format**’ to ‘ ...the supported person should be provided with the relevant information ...’

## **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?*

Due to the wide ranging nature of SDS, it is very important that there is consistency between SDS and other related areas of social care and health legislation and guidance. The Scottish Government is urged to ensure that this happens to avoid any confusion or unnecessary legal challenges when the new SDS Act commences.

Overall, this section is useful for highlighting and clarifying some of the links between SDS legislation/guidance and legislation which applies to other key areas of social care/health policy. This part of the guidance will be helpful in giving greater clarity to stakeholders, particularly social care and health professionals, in what can be areas of complex policy and practice.



From SDS test site experience in Fife, positive risk enablement is an important element of personal outcome focussed assessment and governance. As with other areas of guidance, **Para 141, p66, 'Adult Support and Protection'** should include examples or hyperlinks to further good practice guidance in the area of positive risk enablement. Reference should be made to the importance of the professionals discretionary role with regard to risk and protective factors.

**Para 153, p70, 'Equipment and adaptations (including housing adaptations):**

- this paragraph would benefit from further details and examples e.g. definition of temporary adaptations, examples of eligible adaptations, types of on-going costs . In relation to equipment more guidance is required on responsibility for maintenance issues.

In relation to the specific Consultation issues requested in this section, our responses are:

**Para 145, Intermediate Care, Consultation Issue –**

- from experience of the NHS Fife Council SDS Test site with Fife Rehabilitation service, we believe that for some individuals Option 1 and Option 2 could offer good personal outcomes whilst receiving re-ablement and intermediate care services. This is a complex area, particularly in relation to funding and finance, and we recommend further testing of offering all 4 options in these circumstances before any legal duties are considered. Notwithstanding this, any assessment process for re-ablement and intermediate care should be consistent with outcome focussed SDS assessments. This will allow more consistent planning for outcomes for the individual and avoid duplication when the individual is then being assessed for ongoing support. In the meantime, this need for consistent assessment approaches could be highlighted in more detail in this guidance and in any other relevant guidance for re-ablement and intermediate care.

**Para146, Residential Care, Consultation Issue –**

- views provided in our response to Q5 in the draft regulations.

**Para 153, p70, Other forms of social welfare support: assistance to people fleeing domestic abuse, assistance to address homelessness or drug and alcohol addiction, Consultation Issue –**

- we believe that the above groups should be offered the 4 options by law. A sound assessment and support planning process including positive risk assessment, as advised in this guidance, would allow for appropriate support, monitoring and guidance to be given on an individual basis. Direct Payment regulations would also provide a safeguard for any risks. Excluding these groups from the 4 options works against the principles of personalisation, could be challenged as discrimination and would be very difficult to implement legally and administratively.

Further specific detailed legal points and queries raised are accompanied in a separate note to this response.

## **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?*

From experience of testing SDS in Fife, we believe that for the SDS Act to achieve its objectives of greater choice and control for individuals, the principles and values of the Act (not just the legislative detail) must be understood and put into practice by all stakeholders. SDS is as much about a culture change as it is about service redesign.

Overall we welcome the draft guidance, particularly its focus at the beginning of the individual's pathway and the principles and values underpinning SDS. These will assist the culture change required around the implementation of the SDS Act. The guidance document itself will be a practical awareness raising tool. In this regard, the use of case studies, hyperlinks and highlighted grey boxes with good practice information are particularly useful.

One specific area of guidance which we believe should include much more detail due to its fundamental importance to the success of implementing SDS is the section on 'Review'.

As a whole document, however the draft guidance at times lacks consistency in style and format. Although there are clearly attempts to do this, the guidance would benefit from a consistent edit e.g. use of grey boxes/case studies/hyperlinks.

A final edit should also aim to ensure that information and links with other areas of relevant practice and legislation are as up to date as possible e.g. draft Integration legislation.

Overall, there should be stronger links with and use made of the practical findings, reports and experiences of :

- The SDS test sites funded by the Scottish Government over the last 5 years or so.
- The cross sector capacity building projects funded by the Scottish Government.

## 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.*

From experience of testing SDS, there are and will undoubtedly be significant initial and medium term costs required to set up new systems, raise awareness and undertake training. It is difficult at this early stage to quantify these costs.

We acknowledge that the Scottish Government has recognised this in the allocation of transformation funding to local authorities. Given the scale of change required and the evidence that these changes are taking time to implement properly and in line with this guidance, Fife Council strongly urges that the amount of transformation funding be increased for local authorities and that the timescales for using this funding are extended by at least 2 years. The need to extend timescales is evidenced by the findings of the SDS test sites funded by the Scottish Government and by the ADSW SDS Working Groups.

The cost implications of allocating staff time (evidenced in all the local authority test sites ) requires to be highlighted and analysed further.

Evidence shows that the SDS pathway is intensive in terms of staff time at the outset – this includes the need to undertake training and the time required to have outcome focussed conversations with individuals at the assessment and planning stages in line with this guidance.

There are however potential cost savings in the medium to longer term which are difficult to quantify and evidence at this early stage. These may include:

- Reductions in staff time. Although staff time at the assessment and planning stage is likely to be intensive, a sound SDS support plan prepared in line with this guidance may reduce the need for staff time in the medium to longer term. This has been evidenced by the experience of direct payments.
- Potential longer term savings from intervening earlier with relatively low cost effective personalised supports
- Evidence shows that where individuals have more control and choice, they are more likely to remain independent longer.
- More efficient and effective joint outcome focussed planning and working between stakeholders e.g. Social care and health staff will help avoid duplication of resources, promote greater co-ordination and better outcomes for individuals.

## 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.*

If SDS is implemented in line with the principles and practice advice set out, then the impact of the guidance should be positive for all individuals within the equality categories, particularly those with disability.

The core value of SDS is that it is person centred therefore the SDS pathway should take account of any individual needs arising from the potential equality issues highlighted.

**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>

Overall we believe that the impact of the guidance will be consistent with human rights principles.

However if the finalised guidance were to exclude offering the four SDS options to people fleeing domestic abuse, assistance to address homelessness or drug and alcohol addiction ( see our response to Q12c), then we believe this policy for these groups would be contrary to their human rights.

# 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)?**

Overall Part 2 provides clear information with a sufficient level of detail. Useful to clarify that direct payments can be paid in instalments, as well as a single payment.

In relation to service user contributions, Fife Council has recently abolished their Charging Policy as have some other local authorities. This will create geographical disparities in payment requirements for service users.

**Reg 6** – should give examples of who the third party could be e.g. POA . Also under 6b, remove ‘total’ from ‘total control’ as this could be misleading.

**Reg 7** – should highlight that the Service user needs to know conditions for termination at outset when agreeing to Direct Payment.

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

This section is a major diversion from current Direct Payment regulations and significantly extends circumstances when a family member can be employed. This could potentially create:

- conflict between paid and unpaid family carers particularly in the current climate of increasing financial pressures on individuals and families due to the economic recession and welfare benefit reform.
- conflicts of interest which may work against a service user. In Fife Council's Direct Payment experience, the relationship between a service user and the family member they pay changes and sometimes leads to tensions which were not there previously.
- many challenges to local authority decision making when not approving a direct payment to pay a family member for support.

Whilst Part 3 could give more choice to direct payment users to employ family members, which in turn could reduce the financial pressures on unpaid family carers, Fife Council believes the potential constraints highlighted above would outweigh these benefits.

We would therefore strongly propose that existing regulations around employing family members are retained as they currently stand i.e. only in exceptional circumstances. Aspects of welfare referred to in this Part of the regulations e.g. communication requirements, cultural beliefs, can be taken into account in a robust assessment, support planning and review process. We believe the current system works well and should not be changed. This view is based on cross sector consultation we carried out within Fife, including our service user/carer reference group, and other local authorities.

If the above recommendation is not accepted, then the following amendments are suggested for the following points in Section 9(3):

- a) – ‘Limited choice’ – open to different and wide interpretations add ‘in the opinion of both service user and local authority’.
- b) Interpretation of ‘difficulty’ open to many challenges – should be incorporated and taken into account in assessment and support planning stages.
- c) Add...’ once all other avenues/approaches have been explored’ e.g. training the support provider in the communication methods required by the direct payment user .
- d) ‘reasonably’ open to wide interpretation and needs specified further .Normal practice is to seek a provider/PA who can meet times required.
- f) ‘preferable’ loose term. Could take account of some religious or cultural beliefs into support provision.
- h) Examples of types of eligible ‘emergency’ should be clarified when direct payment is agreed.

**10b)** should apply to all guardians not just family members.

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

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

This part of the regulation restricts the choice of individuals who fall into the criminal justice categories listed but who may vary greatly in relation to their personal circumstances.

Fife Council believe that with a robust risk assessment framework and support planning process, individuals in the categories listed in Regulation 11 could be assessed and dependent on circumstances, could be offered a direct payment with any necessary safeguards/conditions built in. This approach would be more in line with the person centred values of SDS.

Offering Direct Payments to those subject to Compulsory Treatment Orders and Compulsion Orders within new regulations is welcomed as this will extend choice and control for individuals who can benefit from the flexibility and responsiveness of Direct Payments.

**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?**

Excluding these groups of individuals appears to work against the principles of SDS and would be very difficult to implement .e.g. if someone on a direct payment becomes temporarily homeless is their direct payment automatically withdrawn? This could set the individual back even further.

In the circumstances mentioned in this section, sound assessment is the most important factor in determining capacity to manage a Direct Payment. Checks and measures can also be built in to a support plan after a sound risk assessment.

Fife Council recommends that these exclusions are withdrawn and individuals are assessed on a case by case basis.

**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.

Fife Council believes that this restriction should be retained in the regulations as it retains the status quo which appears to work for most. Providers of long term residential care should already be incorporating person centred planning and support into the care of individuals.

By lifting this restriction for a few, the National Care Home agreement could be destabilised for many more with disparities in charging policies arising between those who opt for a Direct Payment and those in long term care charged under the National Care home agreement. This would also complicate and put pressure on financial assessments currently carried out by the local authority after 8 weeks of 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?**

Fife Council believes there are a range of positive reasons for not imposing restrictions in relation to Direct Payments or other SDS options for children and families.



Direct Payments can fit well with personalised support plans already in place for the child through GIRFEC. DP's can provide consistency and flexibility in the types of support children and families can access.

By offering the 4 options, children and families can have consistency of support through transition into adult services.

Where DP's are not suitable, this can be identified on a case by case basis through a sound assessment process rather than a blanket restriction.

### **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?

Overall the tone of the Regulations seems out of alignment with that of the SDS Guidance. The Regulations focus on deficits and negatives, with the guidance being more inclusive, asset based and person centred. Although it is appreciated that both are different types of documents, a more positive, person centred 'tone' to the Regulations would be welcomed.

## **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.

Other than points already made in previous questions, it is impossible at this stage to accurately predict the impact of the financial costs or benefits of the regulations.

Test site and past direct payment experience in Fife shows that more staff time is required at the outset of a SDS journey and setting up a Direct Payment. In the medium to longer term, Direct Payments recipients tend to require less staff input and time.

More specifically from our experience, Reg 7. Termination of payment, must take into account period of notice required in the contract by the service provider. If this isn't taken into account it may cause undue financial stress for the service user.



## 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.

If the Regulations are implemented in line with the principles and practice advice set out in the SDS guidance and with our suggested amendments to groups who are excluded (see answers to Q3 – Q6) then their impact should be positive for all individuals within the equality categories, particularly those with disability.

**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>

Overall we believe that the impact of the regulations will be consistent with human rights principles.

If the finalised guidance however were to exclude offering Direct Payments to people fleeing domestic abuse, assistance to address homelessness or drug and alcohol addiction (see our response to Q4), then we believe this policy for these groups would be in conflict with their human rights.