

# 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 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?*

We agree with the guidance reinforcing at Section 2 that everything should start with the person who gets support.

We feel that support to access information is important but that support to understand and make use of the information is equally important, along with having the time to reflect and make the connections needed to make use of the information. We believe that peer support and can be invaluable at this time. The timing and pace of the processes should reflect the circumstances of each person. For example, for some people it is particularly important to have access to detailed information about equipment or skills in providers while other people need longer to understand and reflect on the information they have. The guidance and any additional good practice material should recognise and support this flexibility.

The guidance has a list of the people involved in the assessment and support planning stage and their roles. We agree that this should include the role of providers and recognise they can be involved in the assessment and support planning process. We also agree that Personal Assistants are included in the list of providers at Table 2 because this is an effective way for people who need support to have the people they know – and choose – to help them plan for their future.

We think the guidance should do more to recognise the role of family and friends who know and support the person, including peer support from other people who use services. The description of unpaid carers includes both family and friends, but

many people who need support will have a wider range of people who know them well and are an important part of their lives, but neither the person nor their friends would describe them as informal carers.

## **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?*

We agree with the Statement of Intent at Section 1.

We think that these principles apply to all people who use social care services. This includes people who need additional support to make decisions because they have limited capacity and to people who live in residential settings.

We also think it should apply to people who are using social care services for other reasons, including people who are affected by a drug and/or alcohol addiction, people who are affected by homelessness, and people affected by domestic abuse.

We agree with the values and principles informing the guidance which are set out in Section 3.

We welcome the inclusion of people from service users' wider communities as part of identifying needs and being part of planning someone's support plan when they want this. (para 15)

We are pleased that the principles in Table 2 include ways for the process to encourage innovative forms of support such as those that many user-led services are developing.

People should have as much independence and responsibility as they want, and not be pressured to take on more that is right for them, e.g. when someone with mental health problems is unwell. We are pleased that this is reflected in the Risk enablement and Responsibility principles in Table 2. It would help if there was more explicit reference to the positive ways the SDS arrangements can work for people who have mental health needs throughout the guidance.

The experience of some groups within Getting There is that a focus and understanding of personal responsibilities of people using support needs to be reflected in a positive way throughout the guidance, and/or taken up in the related material which is being developed. The examples we have identified include people's roles and responsibilities around reflecting on what they want in life and from services, assessment, support planning, decision-making, keeping records and other practical aspects as far as the person is able to do this. One of the advantages of SDS is that it helps people move away from being 'looked after' and being dependent on others. Taking and developing responsibility and independence can be encouraged through all 4 of the options and at each stage of the processes.

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

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

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

This section was not as easy to understand as the previous ones. There is a lot of detail and it may be better focussing on the main points and having additional material as one of a series of back-up documents.

We are pleased that the guidance describes what a good assessment should do. We agree with basing the assessment on the outcomes each person wants and their strengths rather than just focussing on what they can't do and on risks/safety, and responding to changes even over short timescales, and to the person having as much choice as they want to have and assistance to express their views.

The experience of many people is that the quality of the assessment by staff in social work teams varies widely, both in terms of speed of response (with some people waiting months for an assessment of review) and in the quality and skills of the assessment role. We are concerned that some staff in local authorities know little about preventative supports, or about the potential range of supports beyond a fairly narrow range of traditional care and support services. We also know staff in local authorities who carry out assessments and reviews in thoughtful ways that result in people feeling positive, gaining skills and having a care plan and support which enables them to have a good life. We want to see the guidance encourage and validate the people who are getting it right.

We agree that there should be quality standards in or linked to the guidance for those providing the independent advice and support around SDS options and for those providing care and support services. We would like to see the statements in the guidance strengthened into equivalent explicit standards for those carrying out the assessment role. These should be in a form that lets someone looking for

support and other people affected by the process know if the person is delivering a good quality assessment. There should also be clear accountability within local authorities for ensuring that assessments are done to a good standard, with mechanisms for enforcing this, to ensure that people are not disadvantaged when their local authority, or their team within a local authority, is not able to provide a timely or good quality assessment or review.

We agree with the inclusion on preventative support and think there should be more emphasis on the ways in which people can get support as part of a plan through SDS that will prevent or reduce further difficulties. The experience of groups involved in Getting There is that when a person's plan includes contingency planning it is easier for the person and those who care about them to relax, and when a problem does arise it can be dealt with much more easily. We would like to see references to advance or contingency planning in the guidance as we think this will help encourage good practice and lead to better outcomes for more people.

We are pleased that the criteria include risks to people's independence as well as around their health or wellbeing, and that the guidance on how these should be allowed includes taking account of people remaining part of their community and preventing further needs or risks.

The draft guidance says both the professional making the assessment and the person getting support should have access to information about alternative sources of support such as ordinary community activities and services. We think this will be strengthened where there are more opportunities for people who know the person to be suggesting ways to keep well, and people are thinking about this at an early stage and not just as part of an assessment stage. Our experience is that having something like WRAP (Wellness and Recovery Action Plan) or the Strike Out training which Grampian Opportunities is developing lets people think about ordinary activities in a more flexible way.

We are pleased that the guidance says local authorities should consider their strategy for investing in preventative and universal services. In the current draft the guidance still leaves it to each local authority to decide what their criteria are, how they are applied and policies on preventative and alternative supports. We are pleased that it includes people who use services, carers and partner organisations – which would include user-led providers – among those who should be part of developing these policies. However we think this may need to be strengthened to ensure that the spirit of the guidance is reflected in what actually happens in every local authority area and for every group of people who can benefit from SDS and from this focus on effective, inclusive preventative and universal services. We think it would also be useful to remind local authorities how this links to responsibilities that already exist under other policies and laws around equalities and human rights and around planning for strong, sustainable and inclusive communities.

We think that assessments should be about all the supports someone can use, such as new forms of support developed by user-led providers and community resources, not just conventional or existing social care services. The guidance says assessment should consider any steps to improve the quality of life for people. It

will help if this can be expanded on, or if the additional material that is being prepared includes examples of innovative and community-based solutions.

The guidance is based on a social work or health care professional making the assessment with the person. It refers to support to people to have their say, but is not explicit about how that would happen. We think the guidance, or additional standards or good practice for the assessment stage and role, should be clearer about involving other people. The guidance says that self-assessments – which can be with support from a provider – can be part of the assessment process but not replace the input and judgement of the professional. We think this places too much confidence in the competence and skills of social workers and is also failing to draw in the skills of other people. If the standards for the assessment role are clear, then there should be opportunities for people and groups who meet those standards to take on the role within the context of the local authority having the statutory responsibility. We are following up examples in England where assessments are happening in more flexible ways with a peer support basis, and hope that the Scottish Government will also look at the feasibility and benefits of a wider approach. We think this is consistent with the overall ethos and approach around SDS, where new arrangements help improve the outcomes for everyone, including those who use the conventional arrangements, because there is the right to use a different arrangement and everyone is working to more explicit standards.

## **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?*

We are pleased that the guidance says what should be in a good support plan and that it includes practical things and people who will help the person achieve their outcomes and ways to manage and enable risks. We are also pleased that the guidance recognises that the resources in the support plan should not just be financial resources, but also people's skills and knowledge, people such as family and friends and the community, and local services and resources that everyone uses.

The guidance notes that there is no single approach to local authorities making the financial allocations for the money people can use to get support services, and that whatever system is used should be fair and transparent. This will be essential and we would like to see reference to mechanisms to make local authorities accountable for the systems being fair and transparent, with an explicit description of what this means.

We are pleased that service user and carer groups should be involved in developing the methods used to allocate resources. (5.3) Again, we think there should be a clearer standard on how this process should work, so people and organisations know what they are expected to contribute and can hold local authorities to account if the process does not meet the principles and standards needed.

Many people in the groups we know think that options 2 and 4 will benefit many people and give people good outcomes in ways that are right for them. We would like to see the positive opportunities of each of the options set out in the guidance to encourage people not to overlook options 2 and 4.

People and groups who are part of Getting There have described how many people are concerned that individuals may be pressured to take direct payments or to direct/organise the support when they don't want this. They have got this impression from the information that has been circulated in some local authority areas, or where the information has not reflected the circumstances of some

people such as those who have mental health needs and older people who are starting to use support at short notice. We are pleased that the guidance reinforces the rights of people to choose the arrangement that works for them – so no-one should be pressured to have more of the financial or practical managing of the support than they want. We think this is another instance of where the guidance should be more explicit about

Smaller, user-led providers often provide support as part of a range of services and the new arrangements could do more to recognise this. This sort of situation is not highlighted in the examples and descriptions under the other options. So there may be a risk that staff doing assessments do not think of it and it is not included in material produced about SDS.

We are concerned that local authorities may present option 3 as the preferred approach, especially for older people. Linked to this, there are concerns that local authorities will direct people to their in-house services or the services of a few external providers on a Preferred Providers list.

The guidance says that ‘large numbers of individuals will continue to select their support under option 3’ and should still have choice within their use of that service. (para 60) We realise that this may have been meant as a description of what may happen at the beginning. But we think that the guidance has to do more to encourage or require local authorities to promote the other options.

We would like the guidance to remind people that some people may want to use some of their direct payment, individual budget or support worker time as part of a collective use of resources with other people, to make their overall support resources go further. We think it has to be made explicit that this can happen when people want to do it. We think the guidance also has to recognise that sometimes it will be a provider or a local collective advocacy or peer support project that will be helping people to identify other people who want to share their resources and enjoy common interests together.

We think there are potential benefits in user-led providers being able to take on the information and support role for members, or a broker role for members and other people, if there are steps to make it distinct and independent from their provider role. We are pleased that the list of types of information and support and people/organisations which can provide this includes organisations with expertise in the person’s needs or disability and those with expertise in supporting specific client groups, in addition to user-led groups – which should include user-led providers – and also includes advocacy services(para 74 and 76). Again, we think that having a clear standard for the task and role which can apply to any person or organisation taking this on will ensure that people get the quality of support they need and that the potential conflicts of interest which can arise when any person or group takes on this role are recognised and dealt with in a sensible way.

Members of groups involved in Getting There are concerned about what happens when someone disagrees with the decision on the options of SDS arrangements or with the plan that is set for them. The guidance sets out what happens when the professional making the assessment thinks someone is not eligible for a direct

payment and the process when someone disagrees when a professional doing the assessment does not let them use a particular provider as part of their arrangements. This is an area which we would like to see strengthened in the guidance, so the people doing the assessments must have clear, objective reasons for not letting people use certain providers and this is not just down to favouring the local authority's preferred providers or a limited understanding about what other providers can do.

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

### **Consultation Questions**

Section 6 : Monitoring and Review

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

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

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

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

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

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

We think this section of the guidance needs to be developed.

The experience of the groups involved in Getting There is that the term review refers to 2 situations:

- Major reviews of what is happening, where every aspect of the support someone is getting and how it is organised are considered.
- Smaller changes to the arrangements to reflect someone's growing experience – such as what time support is delivered or the frequency and pattern of support within an overall plan.

We are pleased that the guidance will outline good practice on reviews, but it should also confirm and encourage ways for people to be able to make the smaller changes without the need for a formal review process.

The good practice for reviews should reflect all the principles of people having choice and control. This needs to include where and how the reviews happen. At

present many people who have support needs are very worried about the reviews associated with changes to Welfare Benefits. We realise that this is a separate process and issue, but that is not how it feels to many people. If the review arrangements for support plans and SDS choices can happen in a place and style that encourages people to think about their life in a positive way and build their confidence and skills, this could both improve the impact of the SDS arrangements and move away from the negative association with welfare benefit changes.

We are also worried about the reviews for people with learning difficulties and other situations or disabilities as they get older. People already have experiences of support they have found helpful being taken away from them once they reach 65 because services or budgets are managed differently for older people. We think this discrimination is wrong and should be addressed in the guidance.

We are pleased that the section on Children notes the ways SDS can be used to help people plan for and manage their way through transitions in their lives in a positive way. This should also apply to the other transitions in people's lives, including those that come as we get older.

## **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 type="checkbox"/>	<input checked="" 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 Act refers to the local authority promoting, as far as reasonably practicable, a variety of providers of support and the variety/range of types of support. We think the guidance or the statement on commissioning should be more explicit on the standards of the process to achieve this and on what a good range of providers and types of support would look like. We also think that the material on commissioning for support services needs to set this in the specific context of SDS.

We are concerned that some local authority staff do not understand about the current and potential contribution of different providers, as that may undermine the impact of SDS in giving people choices around the services and other supports people use. Para 64-66 in Section 5 covers the extent to which a local authority professional can limit the types of support someone uses, which in practice may also relate to providers of those types of services. The guidance covers situations where profession doing the assessment uses a "duty of care" discretion to refuse to fund a particular type of support and says this should be used with great care and a clear explanation of the reason. It says how people can complain about the process that led to the decision. (para 66) We are pleased these provisions are included, but people will need to know they are there in order to be able to use them. We would like to also see positive advice as part of the commissioning good practice and standards for people doing the assessments on this point.

Smaller user-led providers are often not on the 'preferred providers' list for the local authority area, because they could not provide the volume of care specified in a tender or because they did not have the capacity to put in a proposal under this process. We are concerned that in practice this means they are effectively not able to be part of SDS packages. The draft guidance does not address this aspect and we hope that the commissioning advice and good practice statement will cover it.

However it will encourage everyone to think of more flexible solutions if this situation is included in examples in the guidance.

This is one of the aspects of SDS where local authority staff need more training and professional support. The experience of eh groups who are part of Getting There is that social workers who have the right skills and confidence are able to work with people to come up with sensitive, imaginative assessments and identify innovative, successful care arrangements. But when people are afraid they will be held responsible for anything that could go wrong or just not work out, they will be over-cautious. The guidance needs to be clear what the responsibilities are for the local authority and not put an unfair burden on individual staff.

The experience of groups with members in rural areas is that in practice the range of providers or pool of people who are interested in becoming a Personal Assistant can be a major problem. We think that the combination of SDS and imaginative and innovative approaches to developing a range of services – including mainstream community resources – could do a lot to give real choices and opportunities to people in any part of Scotland where there have been few choices up to now. We would like to see the main guidance and/or further advice on commissioning raise this and encourage commissioners to look at the range of ways more choices can be created.

We would like the guidance to include the way in which local authorities learn from the overall experience of people looking for support. This should include:

- Thinking about the outcomes people want to achieve, what they find helps and the gaps they are identifying.
- Gaps in types of available support in different locations within a local authority area.
- The costs of accessing support – such as the travel costs for people who live in rural areas.

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

We are pleased the guidance refers to ways social care and health care services can work together, but would like to see it being more specific on how it will work. It will be important for people to be able to use support from user-led providers and SDS to prevent them becoming more unwell and needing hospital care – for example, when people have fluctuating long-term conditions, including mental health problems. We think this needs to be covered in the guidance.

We see a lot of potential in the possibility which SDS opens up in encouraging more opportunities for user-led services and other community-based providers to work alongside NHS staff to develop more flexible support for people, for example to make discharge home from hospital easier and safer. Our reading of the draft guidance is that this sort of situation is probably covered in the general aims and scope, but it would help if it was more explicit.

The examples in the guidance need to cover a wider range. It would be good to see examples of someone with mental health needs and an older person as 2 situations which are much more frequent and where the interaction of health and social care can be improved by the use of individual budgets and other SDS arrangements.

**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?*

Comments

**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?*

We think the guidance needs to take a much more positive approach to the ways people who have limited capacity can use SDS and be involved in all aspects of making choices and having control in their lives. Groups which are involved in Getting There include some with members who have difficulties of various kinds, who are active contributors and are using support to have a good life and be included in their communities. They include people who are looking forward to the opportunities SDS will – they hope – give them to have more choice and control, and to get access to tips of support arrangements that are difficult or not possible under the current arrangements. These include situations where local, authority staff are using the principles and powers in the Adults with Incapacity legislation to give people as much say as possible in both the decisions about their future as well as in day-to-day decisions.

We do not think there is enough in the current draft of the guidance about ways to ensure the person is at the centre of decision making even when someone else has responsibility under Guardianship or Power of Attorney.

There also needs to be more about how people with deteriorating conditions can

plan ahead – which is consistent with the AWI rules on respecting the person's views, wishes and feelings including their previous statements about their preferences and about the care arrangements they would like when they need more support.

User-led providers often have other members and staff who know people who have limited capacity well and could help them consider options, for example as part of a circle of support. We are concerned that there is no mention of providers in the descriptions of processes to help people consider and understand the choices and decisions. We know that they are not excluded, but the risk is that other people – including local authority staff – will not think of them in this context unless they are identified here.

People who have mental health problems and other conditions can have fluctuating levels of understanding and capacity. The guidance should recognise this and encourage people to plan ahead when they are well. The guidance mentions this and says Advance Statements under the Mental Health Act can be used in this situation. It would be useful to also remind people of the other ways that people can do this which will be more accessible and acceptable to many people, such as WRAP, discussing what you want and having a plan with your Circle of Support, and other informal arrangements. There also needs to be reference to the Named Person role under the mental health legislation.

## **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 guidance and funding of services should recognise that peer support groups and other activities have important roles in supporting family and friends in

continuing to be carers and preventing future difficulties.

There needs to be more links to the formal roles that friends and/or relatives can have, such as Named Person under the mental health legislation. This applies to this section but also throughout the guidance. For example, it would help to remind everyone that is a Named Person is helping someone make decisions in relation to SDS they should be working within the values and principles of the SDS Act as well as the principles and good practice in the Mental Health Act.

This should also apply to friends and relatives taking on Guardianship and Power of Attorney roles.

The guidance recognises the impact of preventative support for people who need support, but we are concerned that there is no specific reference to local authorities funding or encouraging preventative services in supporting carers at this point in the guidance.

## **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 checked="" type="checkbox"/>	<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 agree with the arrangements for the ways people get access to direct payments and the arrangements for ending this if it is no longer a safe option for the person. Given these safeguards, we do not see why the additional exclusions should apply.

We are pleased that there will be opportunities for people on Compulsion Orders or Compulsory Treatment Orders to have the right of access to direct payments as well as to individual budgets

We strongly support the extension of direct payments to cover

- Support for people who are homeless
- Support for people fleeing domestic abuse
- Support for people to help them tackle a drug or alcohol dependency
- When people are using residential care for longer than 4 weeks in any 12 month period.

The last part of the consultation on the direct payments regulations asks if there are any issues or concerns about the impact in terms of equal opportunities. The feedback from people and groups we know is that it will have a positive impact on people who are in the BME communities and on LGBT people by making it much easier to ask for an SDS arrangement which in turn gives greater choice and control over the care arrangements. We can also see opportunities for more services led by people in LGBT and BME communities, or for services focussed around the needs of women or of men, for example, when people feel that this will give them the type of support they want.

If SDS is available to people who have drug or alcohol addictions, this would give them opportunities and incentives to get more control in their lives, and be a positive step for them. The experience of groups which are part of Getting There is that the assessment processes in the guidance can fit well with the aims of people being involved in planning their current support and planning for the future, especially when they are able to involve people who they know and trust as part of this process.

We think that the safeguards around the use of direct payments which is in the guidance are strong enough to make SDS work for people with addictions and people who are vulnerable in other way. The examples which groups have described include potential benefits from the options of individual service funds but not large direct payments for some people when this would put them at risk. We also think that there is enough flexibility in the guidance to enable people to have more frequent reviews than some other people would have if this is right for them

People who have chaotic lives, or who have had few opportunities to manage their own affairs, could use SDS if they have more help than other people to manage this. We think the arrangements that are set out in the guidance will be flexible enough to do this. It would be helpful if the examples in the guidance and the statements on commissioning for advice and support services and practical care and support services take account of these sorts of situations.

People who have been homeless and people who live with addictions often have found it difficult to find staff or services who understand them and who they trust. Our reading of the scope of the advice and information role is that when someone has a good relationship with a provider the people there can be involved in helping the person plan what support they need and then manage it by taking on a broker role. It would be helpful if the guidance made this explicit.

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

Some parts of this section were easier to understand than others.

### **Links with adult protection**

User-led and other services with good community links can contribute to keeping members and other people safe, but this can get overlooked when adult protection takes a narrow focus. SDS gives opportunities to have creative packages of support that can help keep people safe, but this is more likely to happen if providers are involved in the processes. We are concerned that the steps outlined at para 141 do not mention the potential role of service providers or other community resources. This could get picked up if local authority staff make the connections with good assessments that involve a wider range of people which are set out in previous sections of the guidance. But it is more likely to happen if there is a specific reference and reminder at this point in the guidance.

### **Links with NHS services**

Many groups that work with older people or with people who have long-term conditions, including people who have mental health problems, have said that the links between health and social care matter a lot to members and other people they support. We think that all the options in SDS should be available to people using as wide a range of these services as possible, and the guidance should encourage staff in the NHS and local authorities to discuss these options for arranging the support with people.

Groups have also talked about the potential benefits and some concerns if SDS is an option for how people use the support from Community Mental Health Teams.

### **Residential care**

The consultation also asks people's views on how SDS should apply when people are using residential care.

We strongly support direct payments and the other options being available for people using residential care.

Groups involved in Getting There include both those who have members aged over 60 and those with younger members. The consistent view is that the SDS arrangements have to work well and fairly for people of all ages and have to recognise that people of all ages can use residential settings from time to time. This includes situations where the aim is that the person will move back to their home, or to live somewhere else, after a spell in a residential setting.

SDS could give people who are currently living in residential settings more choices and opportunities to have a better quality of life in that setting, or to begin the process of moving back to a more independent setting. User-led providers could

be part of those support arrangements if there is the flexibility around budgets that SDS will bring.

## **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?*

Comments

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.*

Comments

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 see the Act as having great potential to enable people to get support that is more responsive to their situations and preferences, including taking more account of equalities issues. The guidance could do more reinforce this by having more examples that refer to people from equalities groups.

**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>

Comments

## **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)?**

Comments

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

Comments

**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 are pleased that Direct Payments may be used by people on Compulsion Orders and CTOs, and can see ways in which small direct payments, or the possibility of moving at some point to a direct payment, can give a real incentive to people and stimulate the development of innovative services.

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

We see no reasons for excluding people who are homeless, people feeling domestic abuse, people with drug or alcohol problems or people who are using residential accommodation.

There are many ways in which access to direct payments can give some people who are trying to make changes in their lives more choices and enable them to get access to services and other supports that will be more effective for them.

One of the advantages of direct payments as part of the range of SDS options is to give providers and care managers the added incentive to make sure that the quality of care is right for each person, with the prospect of that person using a direct payment to make further changes if this is needed. It is important that this right and principle is not denied to some of the people who have greatest need and often least influence.

**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.

Comments

**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?**

Comments

**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.

Comments

**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>

Comments

## **Social Care (Self-directed Support) (Scotland) Act 2013 Consultation on draft statutory guidance for care and support**

### **Case example**

Name of the organisation/s submitting the case study

Outside the box, for Getting There

Contact name for the organisation submitting the case study  
Anne Connor

Contact telephone number 0141 419 0451 or 01721 752752

Contact e-mail address [anne@otbds.org](mailto:anne@otbds.org)

Provide your case study in the following space (maximum 350 words)

### **Case study 1**

A young woman has complex disabilities and needs a combination of accessible accommodation, equipment and support workers. She needs more support staff time if the equipment is not available. She has experience of employing her own PA and of using care staff from a care provider and of both arrangements working well.

One part of the package was not going to be available for 2-3 weeks.

It was agreed she would go to residential care on a respite/short break basis. Once the new supports were identified the care package had to be signed off by the care manager.

She then ran into problems.

- The staff at the residential unit struggled to meet her needs, but she did not have access to the workers who knew her to either provide some elements of support or to help her show other people what she needed.
- It was much more difficult to recruit and interview care workers when she was at the residential unit, but she couldn't get help to go back home and meet people in her community.
- The main care workers moved to other work because they were not getting paid and the delays were causing uncertainty for them. This meant she had to look for an additional worker.
- Because the woman was not at risk and so was not a high priority for the care manager, meetings tended to get postponed.

The woman was at the residential care unit for 4 months instead of 3 weeks. Even after she got home it was more difficult to get back into previous routines and activities.

How the new SDS arrangements could help:

- Using a small direct payment to maintain some support worker time when someone is in residential care.
- Focus on outcomes instead of items within a care package.

How the proposed arrangements could be even better:

- Easier ways to set up a new/revised arrangement within an overall budget.
- Direct payments being available after 6 weeks stay in residential care over a year.

## Case study 2

A woman with learning difficulties lived with her mum. They had home care for shopping and domestic tasks. The daughter's other support was at a user-led provider which supports people to use community activities.

The lady's mum died. The home support service was withdrawn, which for the woman meant another loss as she had known and trusted a few care workers for several years.

She was offered home care from a different home care provider. She wanted the same service as before, but was told this provider was contracted only to give services to older people and not to people with learning difficulties.

The woman, care manager and worker at the user-led group came up with the plan of using a direct payment and the lady buying the service direct from the first home care provider.

This ran into difficulties.

- The woman felt she could not manage the money side of direct payments.
- The only advice available for people using direct payments was about employing personal assistants.
- The user-led provider asked if they could manage the money side on the woman's behalf. She would only be using it for the home care, which this organisation did not provide, so there would be no conflicts. The local authority said no, as the organisation was not recognised by them for this purpose.

The woman refused the alternative home care service. Neighbours and the other people at the user-led provider supported her to an extent but it was not ideal. Eventually it began to be flagged up as an adult protection issue. At this point the woman said she wasn't coping well at home and agreed to the home care provider identified by the local authority, but there are still some tensions.

How the new SDS arrangements would help:

- Access to an individual budget could have achieved the outcome the woman wanted.

- Access to more independent advice and support would also have given her more choices in how the support was arranged and so in who provided the support.
- It would be even better if she could get that support from someone she already knew.