

Dear Sir/Madam

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

Responding to this consultation paper

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

E-mail to: selfdirectedsupport@scotland.gsi.gov.uk

or

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

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

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

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

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

Handling your response

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

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 If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.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

Next steps in the process

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

What happens next?

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

Comments and complaints

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

Yours sincerely

Adam Milne
Scottish Government
Self-directed Support Team

Consultation Questionnaire

Draft Statutory Guidance on Care and Support

Consultation Questions

Section 2 : Values and Principles

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

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

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

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

No comments

Draft Statutory Guidance on Care and Support

Consultation Questions

Section 3: Values and Principles

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

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

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

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

No comments

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

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

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|--------------------------|--------------------------|-------------------------------------|--------------------------|
| 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 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 council is concerned that the guidance fails to properly acknowledge the over-riding statutory duty of care that falls to local authorities. The exercise of professional judgement may determine that adequate protection cannot be offered to an individual and/or to the public in other cases not listed. Every day, social workers effectively balance the issues of individual rights and the protection of individuals and communities from harm. It is a highly skilled and complex task that that cannot be managed through application of a template.

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

Question 4b: How useful did you find this section of the guidance? (please tick)

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

Question 4c: Do you have any further comments on this section of the guidance?

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

No comments

Draft Statutory Guidance on Care and Support

Consultation Questions

Section 6 : Monitoring and Review

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

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

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

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|-------------|--------------|-----------------|-------------------|
| 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 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?

No comments

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)

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

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

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|--------------------------|--------------------------|-------------------------------------|--------------------------|
| 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?

No comments

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

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

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

No comments

Draft Statutory Guidance on Care and Support

Consultation Questions

Section 9.1 : Children and Families

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

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

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

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

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

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

The guidance is designed for situations which involve young and disabled people or young people who are adversely affected by the disability of a family member. It fails to assist in relation to the wide-ranging and high volume of cases which involve section 22 assistance for children who are in need, not because of disability but because of their parents inability, or failure, to provide an acceptable standard of care. We are involved with many families where we provide section 22 services, and endeavour to promote the upbringing of the children by their families, and to avoid any compulsory measures of care if possible - where the support is not welcomed or seen as necessary within the family. With these kind of cases it is difficult to envisage how self directed support will work in practice (see Response to draft Regulations). Our preference would be for an element of discretion to

operate in such cases in recognition that not all section 22 cases are appropriate for SDS. If the breadth of the requirement across section 22 is to remain, it would be useful to have guidance which addresses this situation for practitioners.

Draft Statutory Guidance on Care and Support

Consultation Questions

Section 9.2 : Supported decision-making and circles of support

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

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

No comments

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

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

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

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

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

This council acknowledges the crucial role of carers and their invaluable contribution to the care system. It is essential that carers are supported.

This council believes that the decision on whether to charge carers should be one for local determination, not regulation.

This council is concerned about the proposal that local authorities will cover costs of replacement care when a carer needs a break and where no other informal care arrangements exist - plus the cost of the short break for the carer and that furthermore, that the financial circumstances of the person requiring support should not be taken into account.

This presents an unrealistic expectation in terms of available resources and a deviation away from the normal local authority practice of taking financial circumstances into account. This will create an equity issue and reduce the availability of wider resources. Without additional funding, we do not believe this position is realistic or sustainable.

This council agrees with the ADSW submission that clarification is needed on the definition of a 'carer' given the potential blurring of lines between informal and formal care that is currently seen within the draft statutory guidance and the consequent impact on demand for resources.

We feel it is unrealistic to expect this proposal to be implemented without additional funding from central government.

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)

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

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

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

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

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

No comments

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?

No comments

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?

We welcome the opportunity to comment on the Scottish Government consultation on Social Care (Self Directed Support) Act 2013- Regulations and Guidance.

We strongly support the principles upon which the Self Directed Support (SDS) legislation is based, namely the right of individuals to be given the opportunity to exercise power and control over the support they are eligible to receive.

At 70 pages long, the proposed guidance is not user friendly. This will undermine its usefulness and impact.

The council is concerned that the guidance extends beyond its remit and seeks to act as guidance for practitioners. This will undermine 'supporting guidance' aimed at different stakeholder groups and is likely to result in duplication, contradiction and confusion.

We are concerned about the proposed relaxation of the restrictions on the employment of family members and waiving of charges to carers

Paying family members of an individual's personal network for support will undermine the total network of paid and unpaid social care support leading to an overall reduction in social care support in the city (i.e. we will be paying people for doing things that occur naturally within existing support networks).

This council's current practice is to advise service users about the parameters of their indicative budget, following assessment, at the stage before support planning begins. We believe this should be emphasised in the guidance

This council operates a fair and transparent system for resource allocation and believes this is necessary for SDS to work.

Glasgow City Council views SDS as the means of delivering support for people with relatively stable, long term needs, allowing them to live as independently as possible. It is important that the statutory regulations emphasise that the SDS approach is not appropriate in all cases.

This council believes SDS will improve support for children with disabilities; extending beyond this would require further consideration in terms of practical arrangements and safety considerations. Local discretion and professional

judgement must be applied.

This council is concerned by how the regulations and guidance reduce professional discretion by attempting to prescribe what should happen in specific, individual situations and circumstances.

This council's staff work within the wider legislative and policy context within which SDS will be delivered (e.g. local authorities' duty of care and also the considerable professional expertise required to assess each individual situation effectively, in co-production with service users). The guidance should reflect this.

We feel that the guidance is too long and requires to be rationalised and must avoid duplication with matters that should be covered in the practitioners' guidance. This duplication will lead to contradiction and confusion.

We agree that a fair and transparent system for resource allocation is required.

We support the notion that an indicative budget be identified at an early stage in the process following assessment and certainly before a support plan is agreed, making the parameters of their support package clear to the person requiring support. Without this, there cannot be a genuine shift of power and control.

We believe that issues around duty of care and risk need to be more comprehensively and realistically addressed within the guidance

Furthermore, a good balance between 'guidance' and 'direction' is not always achieved in the document, and this has the potential to undermine professional skill, judgement and confidence.

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.

Glasgow City Council is of the view that it is unnecessary to offer the option of 'gross' as well as 'net' direct payments.

If the 'gross' option has to be offered in addition, a proportion of the available resources would need to be shifted towards additional administrative arrangements. This is to no one's benefit.

Non-payment of client contribution will also significantly reduce the available social care support in the city. Local authorities will not be able to mitigate the impact of non-payment of client contribution.

We acknowledge the crucial role of carers and their invaluable contribution to the care system. It is essential that carers, themselves, are supported.

We believe that the decision on whether to charge carers should be one for local determination, not regulation.

We are concerned about the proposal that local authorities will cover costs of replacement care when a carer needs a break and where no other informal care arrangements exist plus the cost of the short break for the carer. Furthermore, we are concerned that the financial circumstances of the person requiring support should not be taken into account.

This is an unrealistic expectation in terms of available resources and a deviation away from the normal local authority practice of taking financial circumstances into account. This will create an equity issue and reduce the availability of wider resources. Without additional funding, we do not believe this position is realistic or sustainable.

We agree with the ADSW submission that clarification is needed on the definition of a 'carer' given the potential blurring of lines between informal and formal care seen in the draft statutory guidance, and the likely impact on demand for resources.

We feel it is totally unrealistic to expect local authorities to meet this proposal without additional funding from central government.

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.

No comments

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

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

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

No 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)?

No comments

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

As stated above, we feel that paying family members of an individual's personal network for support will undermine the total network of paid and unpaid social care support leading to an overall reduction in social care support in the city (i.e. paying people for doing things that occur naturally within support networks).

In relation to Children and Families

We are concerned that, where the direct payment is made to parent on behalf of a child under 16, the parent can choose themselves as the paid carer.

Parenting responsibilities need to be recognised.

Family support that is expected and often provided as part of a range of support available may be withdrawn if there is an expectation of payment. We suggest that employment of family members should be at the discretion of the local authority linked closely to the Child's Plan.

The effect of section 8 of the 2013 Act is that, for a child under 16, the person with parental rights and responsibilities stands in the shoes of the child as the person who will make the choices re Self Directed Support. As the Regulations currently

stand the family member identified to provide the service may also be the recipient of the direct payment (i.e. the parent acting on behalf of the child). In terms of services provided to adults, Draft Reg10 (1) (b) recognises the potential conflict of a welfare guardian or attorney, with power to make decisions as regards support, being the identified family member to provide support. There should be safeguards put in place for children whose parent, with power to make decisions as regards support, identifies themselves as the family member to provide support.

Another impact of section 8 is that there may be more than one person who is entitled to make decisions about the services to be provided to a child and to make decisions about whether a family member should provide support and which family member should do so. "A parent with parental responsibilities or rights" is the appropriate person in relation to the child. There are many situations we come across where there is conflict between two parents both holding parental rights and responsibilities. This could present a situation where two parents are selecting different options for services for their child - how could this be dealt with? The legislation/guidance does not address this difficulty.

Here is an example of a common scenario that Glasgow City Council's Social Work Services deals with.

Scenario

A father with parental rights and responsibilities (by virtue of his name being on the birth certificate) has no relationship with a child. He has never been involved in her care. Mother cares for the child at home, she is a vulnerable young mother and does not wish to engage to any great degree with the discussion about services needed for a child, but will accept some services. The child is assessed as requiring some supports that will be provided under section 22 of the Children (Scotland) Act 1995. This is in the scope for SDS and the four options are offered.

The father decides that he will become involved. His view on the services and how they should be provided are in direct conflict with the mother's. He opts for Option 1 and identifies a member of his family, who the child has never met and does not know, to carry assist with transport from A to B for the child (part of the services identified as being required). This is not in the interests of the child.

As a local authority, we have a duty to work with him in relation to SDS and take his views into account as someone with parental rights and responsibilities. Following the guidance and adhering to the Regulations, it may be that this is how the service has to be delivered. The guidance is not clear on whether discretion can be used by the local authority in this type of case.

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 Regulation allows for situations to arise where direct payments would have to be made to the parents of a child subject to child protection measures or where there are care and protection issues as these children are provided services under section 22 of the Children (Scotland) Act 1995.

The fact that child protection procedures have been started in the first place indicates that there are serious concerns about the parent or parents' ability to adequately care and protect the child.

For example – a child with complex physical disability lives with parents for whom there are concerns about drugs and alcohol misuse. A referral is made to the Children's Reporter and grounds are established at Court. At the Children's Hearing a decision is taken that there is no need for statutory measures. The parents are not subject to any legal orders.

Under the draft Regulations, in this situation all four options would need to be offered to the parents under SDS. GCC SWS would wish to continue to offer services and support but would not want to utilise the option of a direct payment.

The provision of a direct payment should be discretionary and part of the professional assessment of the ability of the parent to manage this.

This council is concerned by the section in the draft regulations that specifies groups which will be exempt. We are further concerned that the guidance fails to properly acknowledge the over-riding statutory duty of care that falls to local authorities. The exercise of professional judgement may determine that adequate protection cannot be offered to an individual and/ or to the public in other cases not listed. Every day, social workers effectively balance the issues of individual rights and the protection of individuals and communities from harm. It is a highly skilled and complex task and not one that can be managed through application of a template.

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?

This council is concerned by the section in the draft regulations that specifies groups which will be exempt. We are further concerned that the guidance fails to properly acknowledge the over-riding statutory duty of care that falls to local authorities. The exercise of professional judgement may determine that adequate protection cannot be offered to an individual and/ or to the public in other cases not listed. Every day, social workers effectively balance the issues of individual rights and the protection of individuals and communities from harm. It is a highly skilled and complex task and not one that can be managed through application of a template.

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.

This council agrees that direct payments for long term residential care or nursing care should not be allowed.

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?

As stated, we are of the view that there should be restrictions where there are concerns about the ability of a family to manage a direct payment as per previous example in Q3. There should be room for professional discretion.

Consideration should be given to restricting direct payments where a parent has been found guilty of fraud.

Consideration should be given to restricting direct payments where a parent has been assessed as having drug or alcohol dependence issues.

There is concern that this legislation implies that all families working with children and families social work do so willingly. In line with the 'minimum order' principle in the Children (Scotland) Act 1995 Social Workers engage with most families on a Section 22 basis, even reluctant families. Most children and young people are not affected by disability. It is felt that while choice and control over service provision for this group of children and their families may be an aspiration, clarity is required as to what how this would actually work in practice.

For example - A single mother with four children ages 2-10 is referred to social work. She is resistant to social work intervention but not enough to merit referral to Children's Reporter. She struggles with routines and needs support to get the children up and out to school/ nursery in the morning, to establish bedtimes routines in the evening, to maintain her house to an acceptable standard and to on managing the household budget. A home support worker is provide to assist with these tasks for one hour twice a day. Under the draft Regulations, this family would be offered the four options for service delivery and the mother could potentially choose a direct payment and nominate a family member to provide the service. Under the draft guidance and regulations, it would be difficult to object to support from a family member as they could reasonably be expected to provide the

type of support described. In addition, this type of support falls within the remit of parental responsibilities. GCC feels that this type of case (which makes up a high proportion of s22 cases) should be out-with scope for SDS.

The Regulations and Guidance also raise the following questions:

1. Does involvement of a Social Worker to provide parenting support and advice constitute a service?
2. Should families be allowed to go to a choice of provider to get this type of service?

GCC argue that this is a not a quantifiable service and should be excluded.

There are also a number of cases where a biological parent with parental rights and responsibilities but who has not so far had a role in caring for that child make contact with the child and start to try and exercise those rights in respect of the child. If that the child is in the care of another biological parent, does the 'absent' parent have the right to request a service and be offered a direct payment?

GCC think that only the primary carer for a child with parental rights and responsibilities should be in a position to exercise the right to choose one of the options for self directed support and that the guidance should contain a section on dealing with this type of case and outline the legislation more clearly.

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?

This council supports the proposed commencement date in the draft regulations is the 1st April 2014.

We support the implementation therefore of a duty to offer self directed support options to new presentations at the point of initial assessment and to all existing client groups at their next planned review.

This council supports the proposal not to prescribe review timetables is supported- this requirement exists elsewhere in legislation. Local discretion in this matter will lead to best practice that is sensitive to individual need.

In relation to Children and Families

It is felt that the application of SDS for children would be better considered if is an outcome of assessment under section 23 Children (Scotland) Act 1995. It is felt that this would better capture the children for whom it is most appropriate i.e. children affected by disability and young carers.

As stated section 22 covers a wide range of support, hopefully the examples above have given an indication of the difficulties which will flow from imposing the 4 options of self directed support to the entirety of section 22 services. To link self directed support to services provided under section 22 designed to support children

affected by disability in terms of section 23 (1) would be in our opinion a better fit for self directed support. In many section 22 cases where disability is not an issue, we are dealing with lack of parental care or poor parenting skills, and issues which place us very often in conflict with the parent. There are many such cases where we are trying to work with families to promote upbringing of the child by his/her family, but are doing so with at best a poor level of engagement and at worst actual conflict. Compulsory measures of care may result, but section 22 services would be a precursor to that in many cases. We would respectfully suggest that in such situations it is difficult to see how providing the options of self directed support could assist in safeguarding and promoting the welfare of the child in need in a household.

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.

Glasgow City Council strongly supports the principles upon which the Self Directed Support (SDS) legislation is based – namely the right of individuals to be given the opportunity to exercise power and control over the support they are eligible to receive.

This council sees SDS as the means of delivering support for people with relatively stable, long term needs allowing them to live as independently as possible. It is important that the statutory regulations emphasise that the SDS approach is not appropriate in all cases.

This council believes SDS will improve support for children with disabilities; extending beyond this would require further consideration in terms of practical arrangements and safety considerations. Local discretion and professional judgement must be applied.

The equality and human rights impacts of the regulations

Question 9 (a): Do you have any views on the impact of the Regulations on any or all of the following equality categories:

- i) age;**
- ii) disability**
- iii) gender;**
- iv) lesbian, gay, bisexual and transgender;**
- v) race, and;**
- vi) religion and belief**

By “equality impacts” we mean whether or not, and in what ways, the Regulations will affect certain groups, and whether they will impact on those groups in a positive or a negative way. In considering the impacts you may wish to consult the Equality Impact Assessment published for the Social Care (Self-directed Support) (Scotland) Act 2013, available at the following hyperlink:

<http://www.scotland.gov.uk/Publications/2012/03/9876>

We plan to update the Equality Impact Assessment in light of this consultation.

No 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>

No comments