

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

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

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

Layout and structure in this section was helpful, with the tables being particularly useful. We support In Control's comments regarding specific improvements to this section. General feedback on content in question 13.

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

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

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

General feedback on content in question 13

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

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

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

We agree with feedback provided by In Control Scotland. General feedback on content in question 13

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
x <input 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
x <input 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?

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 type="checkbox"/>

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

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

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

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

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)**

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

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

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

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

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

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 type="checkbox"/>

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

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

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 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 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 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 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?

General feedback on content in question 13

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
x <input 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"/>	x <input 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?

General feedback on content in question 13

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

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

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

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

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

General feedback on content in question 13

Draft Statutory Guidance on Care and Support

Section 9.5: Wider legal duties and strategic responsibilities

Question 12a: Was this section of the guidance clear and easy to understand? (please tick)

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

Question 12b: How useful did you find this section of the guidance? (please

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

Question 12c: Do you have any further comments on this section of the guidance?

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

General feedback on content in question 13, particularly in relation to providing separate examples from a variety of viewpoints, rather than a single response.

Draft Statutory Guidance on Care and Support

Consultation Questions – General Questions

The Guidance document as a whole

Question 13: Do you have any further general comments on the guidance?

For example, are there any gaps in terms of the topics covered by the guidance? Are there any major changes that you would recommend? Do you have any comments on the style and layout of the guidance, or the language used in the guidance?

The guidance is generally helpful in explaining the process and underlying principles. It is particularly helpful to have the hyperlinks to associated resources, rather than lengthy quotes from external documents all the way through.

The tables are also in general clear and helpful. Overall there is scope for the document to be more succinct as the writing style varies across sections. The document is overly long and loses focus in some sections. Whilst the examples given of scenarios are helpful, they do not always emphasise other related points to be taken into consideration, such that individuals may take the example out of context, rather than use the principles as guidance.

Taking out the practice examples and issuing these separately would shorten the guidance and give scope to allow greater exploration of a number of examples for each point, emphasising the tensions and factors that need to be considered and avoiding set piece answers. This would encourage greater emphasis on the creativeness of the solutions whilst acknowledging the complexities. For example on the implications for human rights and discrimination, care needs to be taken that the positive step of appointing staff on a more focussed and person centred basis stays focused on the outcomes and does not stray into discrimination.

We have contributed to the discussions that fed into In Control Scotland's response, which we support and have not reiterated all the detail of that response here.

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.

The Self Directed Support Act will over time result in greater transparency and

answerability, efficiency and targeting of resources through the transfer of power to individuals and this transfer of power and focus is welcomed.

There are considerable costs of compliance with regulations however, which are not adequately addressed in the guidance. How is the light touch approach which is being adopted to the management of PAs being reflected in a similar refocusing on outcome focussed inspection for organisations, for example?

The guidance does not address in any meaningful way the disparity in expectations between PAs and support staff employed by organisations. We have approached CCPS about this issue and they were unable to give any clarity on the subject at this stage.

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.

The guidance helps to make explicit the power transfer to individuals. This will have positive impacts on the groups mentioned, which are welcomed.

There is not sufficient clarity about acknowledging the complexities of genuine occupational qualification and discrimination when looking at the practicalities of employing based on individual characteristics.

Where the opportunity to be flexible about the type of person has the potential to be discriminatory, it is important that the process is robust for recording the reasons and verifying the validity of these reasons.

The following quote from page 13 of the Equality Impact Assessment shows a worrying demonstration of how this can get confused - *"Religion & Belief There may be particular benefits for people who hold certain religions or beliefs. For instance, a person may benefit from employing a PA who spoke a particular language, were it is*

difficult for a council to provide a service in this way. Existing Scottish Government guidance on SDS advises that local authorities should attempt targeted personal assistant training to make Personal Assistants (PAs) available for clients who want services provided by someone of their own faith community.”

This shows the explicit mistake of mistaking what you are looking for – if you are looking for someone who speaks the same language as you, and part of that search may take place within faith communities, but that is different to seeking support from someone who has the same religion as you. It mentions PAs but not organisations – please provide clear feedback as to whether you are looking for the same level of flexibility in employing through organisations, as this will need reassurance and clear guidance if it is to be achieved fairly and effectively.

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>

The guidance makes explicit what individuals can expect in terms of entitlements and the process. This will be a major step forward in individuals being confident about their right to direct their own support, and the mechanisms for doing so.

In practise, this will be impacted by how each local authority rolls out and interprets the Act. As we have seen so far there has been a wide variation in every aspect of this from implementation timescales to budget levels, from consultation levels and Resource Allocation Systems versus equivalency models.

To maximise the impact of this legislation on Human Rights, greater emphasis in the guidance on how consistency will be applied across Scotland would be beneficial.

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)?

General feedback on content in question 13

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

This should be a matter for judgement of those involved

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?

Decisions should be made on the basis of risk , rather than any one particular label

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?

Decisions should be made on the basis of risk , rather than any one particular label

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 would be difficult to apply effectively, Individual Service Funds would seem to be more appropriate under these circumstances.

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?

Decisions should be made on the basis of risk , rather than any one particular label

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?

See feedback to question 13

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.

Greater in depth support for the support of Transformational change along the lines of the programme that In Control Scotland offers would be beneficial in achieving the buy in that will allow the full benefits of this important progressive legislation to be implemented fully. Please see answer to question 14 for further feedback.

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/2012/03/9876>

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

Comments

The following quote from the Religion & Belief section demonstrates muddled thinking about the types of impact – *“There may be particular benefits for people who hold certain*

religions or beliefs. For instance, a person may benefit from employing a PA who spoke a particular language, were it is difficult for a council to provide a service in this way.

Existing Scottish Government guidance on SDS advises that local authorities should attempt targeted personal assistant training to make Personal Assistants (PAs) available for clients who want services provided by someone of their own faith community”

It mixes up targeting people with a particular language, with choosing staff based on their faith.

There are opportunities for people therefore to have greater choice and matching, positively impacting their opportunities and outcomes. However there is little acknowledgement of the care with which this power should be used – there is legislation which guards against discrimination, and it is important that this is considered carefully to ensure that

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