

# Consultation Questionnaire

## Draft Statutory Guidance on Care and Support

### Consultation Questions

Section 2 : The Supported Persons Pathway

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

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

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

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

Comments Under step 3, the need for a risk assessment should be highlighted, also within this section a financial assessment should be carried out, and therefore highlighted.

The guidance is reasonably clear and useful, but could be clearer and more useful in a couple of areas –

- The “Statement of Intent” links Self-directed Support explicitly to people with Disabilities, but the effect of the legislative change – to S22 of the Children (Scotland) Act 1995 is applicable to all “children in need”. The guidance needs to reflect the implications of the actual change in law.
- The section on “Roles and Responsibilities” needs to be extended to include those with parental responsibilities, guardians and advocates.

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

Comments There is a feeling that more emphasis should be placed on professional values, and not values in general. Practitioners should always be guided by professional values regardless of their own personal value base.

**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 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?*

Comments This section is not as clear or useful as it needs to be and seriously underplays the intended objectives of the policy and legislation – to maximize choice and control for supported persons and carers.

The opening statements about values are misleading and unhelpful –

- Values are not ideals; they describe aspects of personal experience – mostly in respect of social transactions – that matter to people. As such, they form a set of general yardsticks against which actual experiences can be measured, making them the basis of many accepted “service standards”, or principles for the provision of services.
- Many values are also explicitly articulated by professional , regulatory and inspectoral bodies, with the explicit intention of regulating activity, in some instances requiring adherence by practitioners and service-providing bodies.

Because the section seriously underplays the primary objective of increasing

choice and control, the statements about principles - participation and dignity, Involvement etc. – are a bit of a muddle. It would be more helpful if the principles were expressed as “rights” – for example -

- Supported people and carers have a right to such information and support as will enable them to make informed choices about –
  - The outcomes they wish to achieve
  - The services, activities or opportunities that will enable or support achievement of these outcomes
  - The means through which these services or opportunities are provided or accessed
- Supported people and carers have a right to such help as they may need to understand information and express their views, wishes, intentions and choices
- Supported people and carers have a right to choose the extent of their involvement in assessing their needs, specifying outcomes and planning how their needs will be met
- Supported people and carers have a right to expect that their views and wishes, their personal dignity and privacy will be treated with respect

It would also be helpful to make the connections with the existing conventions in respect of Human Rights, the Rights of the Child etc.

With reference to point 39 – should reference be made to the risk assessment and the financial assessment. Albeit risk is identified under point 44 in the Support Planning Section but an initial risk assessment is required to establish immediate risks to the individual if no support is put in place, hence establishing eligibility. The risk assessment defined in point 44 would refer to the risks relating to the support plan.

## **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?*

Comments As this is a major change in how deliver community care, consistency across all authorities in terms of how we allocate resources would have been helpful. A recommended, universal framework which has been tried and tested would have been useful in this section.

I think the guidance on outcomes could be more useful in illustrating how the assessment conversation should explore both **what** the service user wants to be different and **how** they want it to be different – or the way in which a positive difference would be experienced.

It would be helpful also if the guidance referred in this section to identifying barriers to achieving desired outcomes and explored the implications of this concept for assessing needs and allocating resources.

This section needs also to include some reference to assessing risk in collaboration with supported persons and carers. It doesn't make sense for risk assessment to be included in section 5, but not section 4.

I don't feel the "Exchange Model" does justice to the complexity of the process – stages 2 and 3 are quite complex in the real world.

## **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?*

Comments In table 6, it would be helpful and clearer if the bottom right cell used the term "resources", rather than "things".

The material in respect of Risk Assessment and Risk Management needs to be divided between sections 4 and 5. It would also be helpful to illustrate the way in which risk assessment can be understood as thinking about harmful outcomes that people want or need to avoid, including risk to others. This would then help make the logical connection with the critical issues in respect of the "duty of care – discretion to refuse" – i.e. that discretion would be exercised when the professional assessment of available evidence suggests the likelihood of (significant) harm to the supported person or others arising from the proposed support plan or provision. It would also enable more helpful guidance about supporting people to take proportionate, informed decisions about risk, what risk can, should and should not be lived with, in order to have a more positive life experience.

It is rather curious that the examples of "training" in table 7 don't include training on the responsibilities and liabilities of an employer and how to discharge the former and mitigate the latter.

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

### **Consultation Questions**

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

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

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

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

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

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

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

Comments Whilst I agree with section 81 (2), the logistics between providing services and having available resources in urban areas differ from rural locations. Whilst every effort is done to provide services and promote choice, individuals may be faced with options rather than genuine choices.  
This section needs to include something about considering anything that has arisen which has prevented or precluded the achievement of planned outcomes over the preceding period.  
It would also be helpful if it referred to the need to review risk assessments, to see if they should be adjusted.

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

Comments The pooling of resources and the NHS contributing to care packages is excellent in theory and I believe the guidance covers this well. However, in practice there needs to be more emphasis and guidance for the NHS in order for them to fulfil their responsibilities in this area.

**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 It would be helpful if this section included specific clarification that, with regard to the provision of social care subject to sections 22 and 23 of the Children (Scotland) Act 1995, a person is a child until they are 18 years old, but, with regard to the exercise of choice, they should be deemed to have legal capacity at 16. This section mentions the "appropriate person", with a general description of their right to decide on a child's behalf, with the balancing responsibility to seek and take proper account of the child's views and wishes; but it would be helpful to give much greater prominence to parental responsibilities, including the responsibility to act as the child's legal representative, throughout this section. In the vast majority of instances, the "appropriate person" is a parent. Paragraph 92 mentions that children have wishes and feelings, but neglects to mention that they have views and rights. Paragraph 97 directs professionals towards "the SHANARRI framework" in undertaking assessments. This is seriously misguided; the appropriate assessment

framework is the My World Assessment Model; SHANARRI is simply a list of general outcomes for children to which the Scottish Government is committed. To understand what is affecting the child's wellbeing and development it is necessary to consider the care that the child receives and any factors that may be affecting that, together with factors in the child's wider world – housing, money, social and recreational opportunities, school as a physical and social environment etc. SHANARRI is not a framework that enables this “holistic” assessment. Paragraph 98 refers to the further consultation on Direct Payments regulations and how these might be framed to enable appropriate restrictions on choice and control. It is not clear how the restriction of options can be extended in the regulations to Option 2, in respect of children only, when this is not provided for in the legislation. My view is that any restriction needs to be based on a genuine, evidence-based risk assessment and not on a catch-all that could, conceivably, include the majority of families receiving support under S22.

## **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 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?*

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 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 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?*

Comments

I think it is clear and that it is very useful, it would be useful to explain the difference between a short break for the carer that they could purchase and a respite service where the cared for receives care so that the carer is relieved from caring responsibilities. They do not always add up to the same thing and people get confused about this.

## 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?*

Comments Whist this section is clear and concise, I believe clarity around the need for guardianship/power of attorney for service users who lack capacity needs to be in place and should also be included n this section.

## 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?*

Comments I believe Option 1 – receiving a direct payment to employ staff only

would not be practical in the provision of reablement.

I do not believe direct payments should be offered for the purchase of residential care except for short term respite provision which will enable the client to consider their options and make choices regarding how they wish to use respite provision, in particular purchasing respite in residential establishments out with the area.

In terms of long term residential care, the concerns are whether the residential care establishments would give priority to individuals with direct payments which would be in conflict with individuals requiring residential care but do not select Option 1. In addition, concerns regarding contractual arrangements and whether the rates negotiated through block funding will be affected.

It would not be in the best interests to service users with drug/alcohol issues to be offered direct payments. However, individual service funds may offer more safeguards to the service user, allow for more positive outcomes and enhance recovery. It would be difficult to see how homeless service users would benefit from direct payments and whether providing such would actually be in the spirit of direct payments.

## **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 guidance on the whole is clear and direct. The style and layout is clear and comprehensible.

#### 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.*

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>

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 No Comments

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

Comments Whilst I welcome the detailed guidance regarding who can be employed, there is a danger that (b) – the direct payment user has difficulty interacting with strangers and (e) the intimate nature of the support required by the direct payment user that support is provided by a family member may be open to abuse and should therefore be removed. In genuine cases this can be covered in (i) there are any other circumstances in place which make it appropriate, in the

opinion of the local authority, for the family member to provide the services.

**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?

Comments Agree with regulations.

**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?**

Comments It would not be in the best interests to service users with drug/alcohol issues to be offered direct payments. However, individual service funds may offer more safeguards to the service user, allows for more positive outcomes and enhance recovery. It would be difficult to see how homeless service users would benefit from direct payments and whether providing such would actually be in the spirit of direct payments.

**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 I do not believe direct payments should be offered for the purchase of residential care except for short term respite provision which will enable the client to consider their options and make choices regarding how they wish to use respite provision, in particular purchasing respite in residential establishments out with the area.

In terms of long term residential care, the concerns are whether the residential care establishments would give priority to individuals with direct payments which would be in conflict with individuals requiring residential care but do not select Option 1. In addition, concerns regarding contractual arrangements and whether the rates negotiated through block funding will be affected.

**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 No further 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 I do not think the impact of the regulations have any effect on the categories listed.

**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 No Comments