

# Consultation Questionnaire

## Draft Statutory Guidance on Care and Support

Section 2 : Values and Principles

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

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

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

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

We are very much in favour of the 'pathway' layout of the support accessing process in this Draft Guidance. Each stage is clearly set out and it makes sense to view the journey as a process with distinct stages in order to aid understanding. With regard to support offered to carers, it is clear in the guidance that the assessment process is intended to be a conversation between social care professionals and the carer who is seeking support, and not merely a tick-box exercise. However, although the supported person's pathway is applicable to people with care needs and to carers, there is not any information on how the carer can fit in with the supported person's planning. There is particular relevance for this involvement in Steps 3, 4 and 7.

As part of Step 3, the carer will be involved in determining eligibility and assessment for support (as the support the carer can provide will affect how much support the person receives). Step 4 follows on from this and will also involve the carer in a similar way. Step 7, the review of support, will also involve the carer as their circumstances may have changed and they may be able to provide a different amount of care, which will affect the review of the statutory support that is offered to the person with care needs. The involvement of unpaid carers in support planning is made clear later in the document (Section 4, paragraph 33, 35) and it would be sensible to include these references throughout.

We appreciate the inclusion of the unpaid carer's role in Table 2, particularly the recognition of the wealth of information and expertise they may have.

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

### 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?*

We appreciate that the introductory section of the guidance makes it clear that the Draft Guidance also applies to carers who are seeking support, and that the term 'supported person' can be read as inclusive of unpaid carers in this context. However, the values and principles section of the draft guidance are an ideal point to reiterate that the Social Care (Self-directed support) (Scotland) Act extends self-directed support to unpaid carers. Paragraphs 11, 12, 13 and 14 should explicitly reference unpaid carers to ensure parity of the principles when applied to carers.

Table 3 contains a number of further statutory and good practice principles that underpin parts of the Act. Similarly to the points outlined above, there should be more explicit reference to carers (in their role in providing care to the supported person) within some of the principles in table 3, particularly the principles of collaboration, informed choice, innovation, and responsibility. This would fit well with Table 4 in Section 4 of the Draft Guidance, where the principles of assessment do explicitly include carers.

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

### Section 4: Eligibility and Assessment

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

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

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

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

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

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

We would like to see more information in this section on the benefits of early preventative support. This is particularly required for inclusion in paragraphs 19 and 20, the 'low risk' bullet point in paragraph 22, more explicitly in paragraph 23, and paragraph 26.

We welcome the point made in paragraph 24 that if an individual is assessed as requiring services, then budgetary constraint should not be a factor in determining whether to meet these needs. This goes some way towards alleviating the potential gap in service provision that is created by S3 (4) of the Act. We also welcome the recognition that investment in universal and preventative services can prevent or delay the need for more formal support – as described above, this point should be made more clear throughout the whole section.

Whilst a number of local authorities in Scotland have been offering self-assessment to carers, there can be serious issues in relying on self-assessment as a starting point that is a 'gateway' to a full assessment. We welcome the clarification that self-assessment must not replace a further assessment with input and support from professionals, but it must be considered that carers will frequently under-estimate their own needs when self-assessing and it is the conversation with the social care or health professional that can draw out the impact that caring is having on a person's life, enabling better support to be put in place. It is for this reason that self-assessment must not be used as a gateway to accessing a further assessment. Self-assessment by definition is not a conversation between a professional and a supported person – a self-assessment must be seen as a tool to prepare for a full assessment and support must be given to complete the process.

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

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

There is little mention of the role of the unpaid carer within this section. The role of carers requires further mention particularly in sections 5.2 (Risk) and 5.3 (Resources). Any discussion on risk should include risks to the sustainability of the caring role.

By the very nature of caring, an unpaid carer is clearly a resource available to an individual exploring self-directed support. However, section 5.3 must include a clear statement about carers' choice and ability to care (including the level of care they are willing and able to provide) and the impact of demands placed upon them. This should include ensuring that carers are fully consulted when the person they are looking after is planning their self-directed support, and also that they are offered a carers' assessment in their own right.

We know that carers are already being placed into unsustainable positions with budgets for support being reduced, simply because the local authority has decided the presence of an unpaid carer means that the person needs less support through self-directed support. This is often with insufficient consultation or discussion with the carer and with little understanding of a carer's right to choose to have a life outside caring, including to remain in employment.

Furthermore, the care a carer provides may in fact not be linked to the outcomes

the individual wishes to achieve for themselves. The carer might provide much of the care at home, but the outcome for the person they support is to participate in the community outside of the home and away from their carer.

The guidance should refer to sources of information and support services available for carers. However, there must be recognition of the capacity of carers' centres to be able to respond to requests and referrals, as some have already reported an increase in enquiries regarding self-directed support and are facing difficulties in providing sufficient capacity.

There is a lack of information within this draft Guidance on resource allocation. Carers frequently report:

- a lack of information on the processes of SDS including resource allocation,
- reduced budgets on review without clear reasons as to why,
- a lack of clarity in challenging budgetary decisions and
- arbitrary decisions to reduce allocations offered on the basis of the person having an unpaid carer.

Whilst we recognise that there is no single approach prescribed in law, we believe that this draft Guidance offers the Scottish Government an opportunity to provide real clarity on the best approaches, key principles for the development and implementation of local systems (including co-production and the involvement of carers as equal partners) and improved information for individuals and carers.

Local authorities must be instructed that they should not include arbitrary and often blanket decreases in the supported person's budget solely because that person has an unpaid carer.

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

### 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?*

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

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?*

Although paragraph 96 specifies that Section 22 of the Children (Scotland) Act is a broad definition, it may be useful for the guidance to make clear that the definition of a child in need includes young carers, and that the support provided to these young people is specifically due to the caring role that they undertake. This approach will help to increase recognition of young carers and make clear that support must be offered to them.
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**Draft Statutory Guidance on Care and Support**

Section 9.2 : Supported decision-making and circles of support

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

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

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

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

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

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

There is a lack of clarity in paragraph 110 about which powers a person should have under the Adults with Incapacity (Scotland) Act 2000. It is unclear whether they would require both financial and welfare powers or whether this would differ depending on the situation. For example, where a decision is made that a direct payment would be the best way of meeting the supported person's outcomes, guardians and attorneys would require both welfare and financial powers. Financial powers may not be required for Options 2 and 3 but welfare powers would be required.

Carers who also have powers under the AWI Act have reported in, for example, difficulties in being allowed to attend meetings or receive advocacy support in meetings, and in line with guidance on advocacy for carers, we would suggest adding a paragraph to discuss the need to offer appropriate support and advocacy. Carers and family members who also have relevant powers may require advocacy, other support and effective information in making decisions on behalf of the supported person. This is not a reflection on any ability to carry out their role but rather to assist them in negotiating effectively on behalf of the person they care for.

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

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

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

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

As referenced earlier in this response, we believe that it is important that reference to carers, in line with their role in providing care for the supported person, are included throughout the guidance. Including a separate section on carers is important, but having this section as one of the few references and near the end in the further guidance section does not make the correct links between what are often complicated family lives, where despite options provided under self-directed support, carers often remain as the main provider of care and support.

This section must also emphasise that carers are equal partners in the provision of care and like other partners, require resources to sustain their caring role and maintain their own health and wellbeing. In line with *Caring Together*, support should also focus on carers' right to "have an identity beyond caring which can be found in employment, volunteering and leisure opportunities<sup>1</sup>." This applies equally to young carers<sup>2</sup> and in this case should also emphasise the need for young carers to sustain their education and have the same opportunities as their peers.

We would suggest that the following paragraphs require further explanation or rewording to ensure clarity.

**Paragraph 115:** We believe that the suggestion that an assessment rests on a "problem solving" approach is incorrect. A good-quality carer assessment rests on an **open and honest** conversation between the professional and carer with a strong focus on personal outcomes.

**Paragraph 118:** A clear message is needed for local authorities that if they decide not to take up their power to offer SDS to a carer, then they should not "do nothing". In line with guidance, the authority should ensure that the carer had access to other supports e.g. universal carers services, condition specific groups etc.

We are concerned about the statement that "Carers do not tend to 'down tools'." Whilst we recognise what this is intended to mean, we believe that the following paragraph would be more suitable and would reflect the careful consideration of whether or not to provide funded services.

118. In deciding whether to provide funded services or support, the statutory agency should consider carefully the impact of their decision. Without the contribution of the carer, statutory agencies would otherwise have to step in with higher levels of support which would be considerably more costly. Senior managers should encourage professionals to exercise their own judgment whilst considering the outcomes carers wish to achieve and a preventative approach to supporting carers.

<sup>1</sup> Caring Together: The Carers Strategy for Scotland 2010-15, Scottish Government (para 10.16)  
<http://www.scotland.gov.uk/Publications/2010/07/23153304/5>

<sup>2</sup> Getting it Right for Young Carers: The Young Carers Strategy for Scotland 2010-2015,  
<http://www.scotland.gov.uk/Publications/2010/07/23153304/0>

**Paragraph 121 and table 9:** The examples given within this table are poor and misleading. In particular, the example to provide a direct payment to offer housework services whilst a carer is recovering from a hip operation is particularly poor. Any carer who is recovering from such an operation would require support for themselves and replacement care to ensure that their recovery is a full one. Moreover, if a carer is discharged from hospital, they would be entitled to care at home services to aid their recovery, normally for a period of 4 weeks.

In line with our comments on the consultation on regulations to waive charges for carers, the guidance, including these examples, must clearly differentiate between those services which a carer may choose through self-directed support in order to sustain them in their caring role or to achieve other personal outcomes – such as a short break, driving lessons, or practical help with housework and gardening – and those universal services which a carer can currently access without an assessment or a direct payment. In particular, the example detailed in the draft guidance for directing available support and providing an individual service fund to purchase peer support sessions is, in our view, outwith the scope of self-directed support and is a core funded universal service for all carers.

We suggest the following replacement examples.

Direct payment	<ul style="list-style-type: none"> <li>• A carer who lives in a remote rural area is feeling increasingly isolated and depressed. She has no friends or family living nearby and her nearest carers' centre is hundreds of miles away. The carer uses a direct payment to pay for the installation of broadband and a tablet computer. This means she can keep in touch with her family and friends through Skype, particularly her grandchildren who live in Australia. She has also made friends with other carers on an online forum and she now feels more connected.</li> <li>• A young carer who carers for his mother expresses that he has not been able to have the same opportunities as his peers. Whilst all his friends are learning to drive, he cannot because his mum cannot afford the cost and, because of his caring role, he cannot have a part-time job to save up to buy some. He thinks that having a driving licence would mean that the family could have a Motability car meaning which would help with a lot of the tasks around his caring role such as shopping and taking his mum to places. He also thinks if he was able to drive this would open up more job opportunities. The young carer uses the direct payment to pay for several driving lessons and the cost of his driving test.</li> </ul>
Directing the available support	<ul style="list-style-type: none"> <li>• A carer has never had a break from caring. He would like to have a break of an afternoon each week to have a rest where he doesn't need to worry about the safety of the person he cares for. The carer receives a short break voucher as a form of "virtual break" which they use to purchase this regular short</li> </ul>

	<p>break.</p> <ul style="list-style-type: none"> <li>• The professional arranges for an individual service fund to be set up to support a carer. This carer has always been very house-proud. However, her husband has had a stroke and she is now providing care almost continuously. She is falling behind with housework and laundry and this is making her feel increasingly tired and depressed. The carer uses the individual service fund to purchase domestic help from an agency—someone to do the cleaning and ironing and assist with other domestic tasks. The carer also uses the individual service fund to pay for a fortnightly care attendant so that she can meet her daughter for lunch and have a break from caring.</li> </ul>
<p>Arranged services</p>	<ul style="list-style-type: none"> <li>• After the death of his father, the carer is finding caring for his Mum, who has dementia, emotionally draining and he is becoming very depressed. He is on a waiting list for NHS counselling services but has been told it may take a long time and his local carers' centre does not offer this service. The professional arranges for the carer to attend a private counsellor to help him manage issues of bereavement and of caring.</li> <li>• A carer talks about missing out on making new friends as she never has time because of her caring role. She expresses an interest in attending an art class in a local authority community centre. The professional arranges for the carer to attend the class and arranges replacement care for the person she cares for once a week.</li> </ul>

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

### Section 9.4: Direct payments

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

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

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

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

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

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

We welcome the explicit clarification that direct payments are not a benefit. There have been concerns raised by some carers that receiving a direct payment will affect their Carers' Allowance, Universal Credit or Disability Living Allowance payments and although all information and support organisations do their utmost to assure people that this is not the case, further reiteration of this is welcomed, particularly in statutory guidance.

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

### Section 9.5: Wider legal duties and strategic responsibilities

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

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

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

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

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

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

It is not clear why individuals who are homeless or who are fleeing domestic abuse are not to be offered direct payments to access support, particularly when the draft Guidance states that *“Direct payments and individual service funds may deliver positive outcomes to individuals eligible for support due to homelessness, drug or alcohol addiction or because they are fleeing domestic abuse.”* Further information on why these individuals may be seen as not be suitable for this type of support would be useful.

It is more understandable why those who require support in relation to addictions are not to be offered direct payments, but it may be more suitable to look at assessments on an individual basis rather than imposing a blanket rule. Direct payments will require records to be kept of how the money is used, and support that will be paid for through the payment will have to be arranged before the payment is received – any inconsistencies would soon be noticed. As there are no such restrictions on a carer receiving a direct payment when they look after someone with a drug or alcohol addiction, we would welcome further clarity on the reasons behind this restriction.

## **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 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.*

A consequence of the increase in choice around support options is the capacity of information, advice and support agencies to offer up to date and accurate information to carers, service users and others. Many carers' services and organisations are already operating at full capacity and may struggle to keep up with demand.

It is vital that the Scottish Government, local authorities, the voluntary sector and any other organisation that provides information and advice around self-directed support is presenting clear and consistent information and is able to signpost effectively. Carers' organisations, the first port of call for many people with caring responsibilities who are searching for information regarding self-directed support, must be adequately resourced to provide this information, advice and support, and it must be recognised that some organisations have already reported an increase in enquiries regarding self-directed support and are facing difficulties in providing sufficient capacity.

#### 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)?**

We agree that if means testing must be carried out, it is more suitable to do this before the direct payment is made so that the recipient does not end up having to pay anything back.

Although the charges for direct payment users will be waived if the service is provided under the circumstances outlined in the Carers (Waiving of Charges for Support) (Scotland) Regulations 2014, we remain concerned that carers who look after their partner may have their income taken into account if their partner is assessed and means tested for some services. Current guidance on charging advises local authorities to consider whether the carer (as a supported person) has difficulty in meeting the charge due to their financial circumstances and that a holistic approach should be taken, considering the full impact of all prospective combined charges on the well-being and independence of the carer and the person they care for. Many carers and their families experience hardship, and if people who receive a direct payment have to contribute to this, it may influence their decision on whether to choose a direct payment. People often access very small amounts of support as direct payments but these have a significant impact for them. Requiring a contribution may not generate significant income for local authorities and may cost more in the administration required to carry out the means testing.

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

We welcome the recognition that there will be circumstances where it is both preferable and appropriate for a family member to be employed by the direct payment user to provide care and support. We find the list of factors setting out the circumstances (Regulation 9 Part 3) helpful and are in broad agreement with them. We believe their inclusion will provide greater transparency in decision making and significantly reduce local variations in practice which have, to date, relied upon individual interpretations of 'exceptional' circumstances. However, we would expect to see the term 'appropriate circumstances' used in the text of the regulations, in order to indicate the cultural shift in moving from exceptional circumstances only to appropriate circumstances.

Similarly, the inclusion of a 'discretionary' element where the circumstances fall outside the scope of the factors listed in Part 3 Regulation 9 but where a

reasonable argument can be made for the employment of a family member is also welcomed. We believe that this will guard against too rigid an interpretation of the circumstances in which it may be appropriate to employ a family member.

We believe that the shift from 'exceptional' to 'appropriate' will increase choice and flexibility in the delivery of care and support practitioners to move away from viewing such arrangements as 'an option of last resort'. We would suggest that a duty is placed on local authorities to inform direct payment recipients of the option of employing a family member within the parameters set out in the Regulations, that all requests for the employment of family members through direct payments should be considered without prejudice, that a full explanation is given if the request is denied, and that an appeals/review process should be available.

Further clarity is required in Section 10 (1) (b) as we are aware of situations where power of attorney is shared (for example, between two siblings who provide care for a parent) and one of the individuals who shares power of attorney is employed via a direct payment. Adequate safeguards are in place as one sibling has continuing powers and the other, who is employed through a direct payment, has welfare powers (that are not yet being exercised) and therefore there is no conflict of interest. We would caution that individual situations that are working well and maintaining good outcomes for both the supported person and the carer may be damaged if Section 10 (1) (b) is brought into force in its current form, and suggest that is only when a family member has sole guardianship or powers of attorney that they are excepted from being employed, and/or local authorities make clear what safeguarding procedures are in place to ensure that people who are employing a family member through a direct payment are not taken advantage of.

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

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

We have no comment to make on this Regulation.

**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?**

It is not clear why individuals who are homeless or who are fleeing domestic abuse are not to be offered direct payments.

It is more understandable why those who require support in relation to addictions are not to be offered direct payments, but it may be more suitable to look at assessments on an individual basis rather than imposing a blanket rule. Direct payments will require records to be kept of how the money is used, and for support that will be paid for through the payment to be arranged before the payment is

received – any inconsistencies would soon be noticed. As there are no such restrictions on a carer receiving a direct payment when they look after someone with a drug or alcohol addiction, we would welcome further clarity on the reasons behind this restriction.

**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.

Allowing people to access direct payments whilst they are living in residential accommodation allows them to continue with support and activities that they may have been using or participating in before moving to residential care. The activities provided by the accommodation may not suit everyone, and it is important to give people a choice, as is the ethos of the Social Care (Self-directed support) Act. If people want to access support and activities whilst living in residential care and self-directed support will help them to do that, it should be offered to them.

It is important to note that for many carers, their caring role does not stop when the person they care for moves into residential care, and in many cases they may face a larger financial and time burden if they then have to travel further to the residential accommodation in order to spend time with the person who is living there. Support provided to these carers (such as help with transport) is important to ensure that they can continue to provide care and meet their assessed outcomes.

**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?**

We do not believe that there should ever be restrictions on support provided through option 2, as this support option will allow the child or young person to have a great deal of input into the type of support they want whilst the arrangement of support is done by the local authority.

There may be some individual situations where support through a direct payment is not appropriate, but it is not suitable to place a blanket restriction on children and young people accessing support in this way. Under the GIRFEC approach, if a direct payment is identified as the best way for the child or young person to meet their personal outcomes (along with support from family, professionals and relevant services), then this option should be offered.

**Question 7: Do you have any further comments on the draft Regulations?**

For example, are there any gaps in terms of the topics covered by the Regulations? Are there any major changes that you would recommend? Are there any topics that are more appropriate for statutory guidance rather than Regulations?

Comments

## **Draft Regulations**

### **Consultation Questions – General Questions**

#### The costs and benefits arising from these regulations

#### **Question 8 : Do you have any comments on the financial costs or benefits of the Regulations?**

Can you identify any financial costs or benefits to individuals, local authorities, health boards, providers or any other person or organisation affected by the Regulations. In considering the costs and benefits you may wish to consult the Business Regulatory Impact Assessment published for the Social Care (Self-directed Support) (Scotland) Act available at the following hyperlink:

<http://www.scotland.gov.uk/Publications/2012/03/5525>

We plan to update the BRIA in light of the comments and information from this consultation.

A consequence of the increase in choice around support options is the capacity of information, advice and support agencies to offer up to date and accurate information to carers, service users and others. Many carers' services and organisations are already operating at full capacity and may struggle to keep up with demand.

It is vital that the Scottish Government, local authorities, the voluntary sector and any other organisation that provides information and advice around self-directed support is presenting clear and consistent information and is able to signpost effectively. Carers' organisations, the first port of call for many people with caring responsibilities who are searching for information regarding self-directed support, must be adequately resourced to provide this information, advice and support, and it must be recognised that some organisations have already reported an increase in enquiries regarding self-directed support and are facing difficulties in providing sufficient capacity.

The equality and human rights impacts of the regulations

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

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

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

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

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

Comments

**Question 9 (b): Do you have any views on the impact of the Regulations on human rights?**

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

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

Comments