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## A public consultation on draft regulations and statutory guidance to accompany the Social Care (Self-directed Support) (Scotland) Act 2013

### RESPONDENT INFORMATION FORM

**Please Note** this form **must** be returned with your response to ensure that we handle your response appropriately

#### 1. Name/Organisation

##### Organisation Name

North Ayrshire Council

Title Mr  Ms  Mrs  Miss  Dr  Please tick as appropriate

##### Surname

Brown

##### Forename

Alan

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#### 3. Permissions - I am responding as...

Individual

/

Group/Organisation

Please tick as appropriate

**(a)** Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

**Please tick as appropriate**

Yes  No

**(b)** Where confidentiality is not requested, we will make your responses available to the public on the following basis

**Please tick ONE of the following boxes**

Yes, make my response, name and address all available

**or**

Yes, make my response available, but not my name and address

**or**

Yes, make my response and name available, but not my address

**(c)** The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

**Please tick as appropriate**

Yes  No

**(d)** We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

**Please tick as appropriate**

Yes

No

#### 4. Additional information – I am responding as:

**Please tick as appropriate**

1. Member of the public	<input type="checkbox"/>
2. Individual health/social care professional	<input type="checkbox"/>
3. Central government	<input type="checkbox"/>

<b>4. Local authority</b>	<input checked="" type="checkbox"/>
<b>5. Community Health Partnership</b>	<input type="checkbox"/>
<b>6. Health Board</b>	<input type="checkbox"/>
<b>7. Support &amp; information or advocacy organisation</b>	<input type="checkbox"/>
<b>8. Voluntary sector organisation</b>	<input type="checkbox"/>
<b>9. Private Sector organisation (e.g. private social care and support provider)</b>	<input type="checkbox"/>
<b>10. Professional or regulatory body</b>	<input type="checkbox"/>
<b>11. Academic institution</b>	<input type="checkbox"/>
<b>12. Other – please specify</b>	

# Consultation Questionnaire

## Draft Statutory Guidance on Care and Support

### Consultation Questions

Section 2 : 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

The 7 stage model reflects good Social Work Practice and mirrors assessment and care management process.

## Draft Statutory Guidance on Care and Support

### Consultation Questions

Section 3: Values and Principles

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

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

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

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

**Question 2c: Do you have any further comments on this section of the guidance?**

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

**Comments**

This section provides clear guidance that reflects Human Rights Legislation, Care Standards and SSSC Code of Practice. This ensures statutory principles are enshrined in law.

The principle of involvement and collaboration is clear, we would suggest an amendment to reflect the wider assessment and support planning process from “planning and delivering their support” to planning and on-going delivery of their support’.

**Draft Statutory Guidance on Care and Support**

**Consultation Questions**

Section 4: Eligibility and Assessment

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

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

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

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

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

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

**Comments**

The proposal for assessment supports the Talking Points Approach which is underpinned by the Exchange Model and principles of collaboration, involvement, choice and assistance. It would be welcomed if the regulations were explicit in linking to Talking Points.

The current Scottish Government and COSLA guidance on eligibility criteria pre

dates early intervention and reablement approaches, it would be appropriate to review this in light of these regulations.

The definition of and guidance around Self-Assessment could benefit from greater clarity around these terms and what they will mean in practice.

In relation to the Commissioning process, there is indeed a necessity to use the collated information on personal outcomes to improve the way that services are commissioned, planned and delivered. However, the collation of this information does not address the wider issue of how we build real wealth and capacity in communities..

## **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 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?*

Comments

Development of Support Plans clearly linked to outcomes is essential to this process. This is particularly important in terms of Positive risk management.

The Regulations propose specific circumstances and individuals who would be exempt from one or more of the SDS options, including people subject to community payback orders or compulsory treatment orders under the Mental Health Care and Treatment Act (Scotland) Act . There is a potential tension with Councils' other statutory duties and the guidance requires to take account of the Councils duties in terms of safeguarding and promoting social welfare.

Whilst the clarity around these specific groups is welcome we would propose that it is accompanied by a general statement that allows greater discretion to local authorities to withhold access to a direct payment where they consider this would entail an unacceptable level of risk to the individual or the wider public.

## **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**

National guidance would be welcome on the level and complexity required for monitoring and reviews linked to CIPFA guidance.

## **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 checked="" 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

We support the regulations emphasis on promoting and facilitating genuine choice.

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

It is our view that the Integration of Health & Social Care will provide a context to address the issues around shared budgets and partnership working..

**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

We feel that further exploration of these issues would be beneficial.

**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 <input checked="" type="checkbox"/>	No <input type="checkbox"/>
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<input checked="" type="checkbox"/>	<input type="checkbox"/>
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**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?*

Comments

The concept of Circle of Support has been used in Learning Disability for some years, however, this has not largely used among other service user groups and may have a training implication.

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

### **Consultation Questions**

#### Section 9.3: Carers

**Question 10a: Was this section of the guidance clear and easy to understand?  
(please tick)**

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

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

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

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

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

Comments

The regulation also looks to local authorities to adopt a broadly consistent approach to the carrying out of a carer's assessment. The objective is to enhance both the quantity and quality of the assessment process. These directions are welcomed as they will ensure a consistent service and increase uptake of Carers assessments. This is a priority for the North Ayrshire's draft Carers Strategy.

An issue which needs further consideration is around DP, where the young carer is under 18 years

## **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 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?*

#### Comments

The Regulations propose specific circumstances and individuals who would be exempt from one or more of the SDS options, including people subject to community payback orders or compulsory treatment orders under the Mental Health Care and Treatment Act (Scotland) Act .

There is a potential tension with Councils' other statutory duties and the guidance requires to take account of the Councils duties in terms of safeguarding and promoting social welfare. Whilst the clarity around these specific groups is welcome we would propose that it is accompanied by a general statement that allows greater discretion to local authorities to withhold access to a direct payment where they consider this would entail an unacceptable level of risk to the individual or the wider public.

In 127 – we are concerned that the use of the term holiday and perhaps the term short break should be used.

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

Comments

This section confirms the Council's duties around Adult Support and Child Protection.

The guidance suggests that Re-ablement and intermediate care should be viewed as forming part of the assessment process, as opposed to an on-going form of support.

In addition the Regulations specify that Direct Payments cannot be used for long term residential care that is longer than a continuous period of 4 weeks. This is welcomed as it allows for continuation of the National Care Home Contract which offers best value to the council and ensures quality of care to service users.

## **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 general tone and layout of the guidance's is helpful, as is the case studies. Clearer links to JIT Talking Points would be beneficial.

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 new guidance highlights a number of areas where there may be financial implications including training, Commissioning and Community Development. In addition although Early Intervention and Prevention may help with cost avoidance, it may be masked by increase in demographics and additional costs of early intervention and prevention.

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

The enshrinement in law of the values and principles of the Act is welcomed.

## 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

The Regulations state that direct payments can be made on a net basis minus any contribution stipulated by the Council's charging policy. However, service users would be able to insist on Direct Payments being paid gross rather than net of any charge by the Council. This would incur unnecessary costs in terms of recovery of any charge and recouping unpaid charges through debt recovery. The recommendation is that we propose that any payment is paid net to the service user but that the individual is provided with details of the gross budget, any applicable contribution and net payment.

The Social Care (Self-directed Support) (Scotland) Act 2013 has a specific, focus on support to Carers. The Regulations are clear in suggesting that Carers should be exempt from a charge for services that support them in their caring role. There is however, concern around the significant cost pressure this could incur and the raising of expectations about how far the public purse can go to support Carers.

There is merit in considering the waiving of charges to carers in many circumstances, such as advocacy, training or assistance with household tasks. There is, however, an issue around equity where a wealthy service user with a carer would be exempt from a charge, whereas a less wealthy service user without a carer could be subject to a charge. Many carers are also in receipt of Carers Allowance paid by the Department of Work and Pensions, and the Scottish Governments Regulations require to be aligned with this.

Current charging policy often charges against a couple's joint income. If the carer is a spouse or partner there is a question as to how the waiver would be imposed. There are circumstances where the carer receives services to meet their care needs as well as supporting their caring role. Free personal care has resulted in some older service users not paying a contribution. It would appear that further scoping or analysis of what the cost of this regulation would be to Councils is needed so that the full that the cost implication can be determined.

The regulation also looks to local authorities to adopt a broadly consistent approach to the carrying out of a carer's assessment. The objective is to enhance both the quantity and quality of the assessment process. These directions are welcomed as they will ensure a consistent service and increase uptake of Carers assessments. This is a priority for the council's draft Carers Strategy.

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

Comments

The Regulations would suggest widening the current exceptional circumstances requirement for the employment of a family member. Whilst we would not wish to oppose this clarification we suggest the proposal is too wide and negates any definition of exceptional criteria.

**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

The Regulations propose specific circumstances and individuals who would be exempt from one or more of the SDS options, including people subject to community payback orders or compulsory treatment orders under the Mental Health Care and Treatment Act (Scotland) Act . There is a potential tension with Councils' other statutory duties and the guidance requires to take account of the Councils duties in terms of safeguarding and promoting social welfare. Whilst the clarity around these specific groups is welcome we would propose that it is accompanied by a general statement that allows greater discretion to local authorities to withhold access to a direct payment where they consider this would entail an unacceptable level of risk to the individual or the wider public.

**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 might be useful to clarify that other options for SDS such as an individual service fund are applicable to this group?

We would welcome an emphasis on professional discretion as to when and how this would be appropriate .

**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



The Regulations specify that Direct Payments cannot be used for long term residential care that is longer than a continuous period of 4 weeks. This is welcomed as it allows for continuation of the National Care Home Contract which offers best value to the council and quality of care to service users.

**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

Professional discretion should be support as to when direct payments are appropriate. This would afford maximum flexibility to professionals to engage with families to secure support which best meets their outcomes at appropriate stages in the support.

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

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

Comments

## **Draft Regulations**

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

The costs and benefits arising from these regulations

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

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

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

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

Comments

We are concerned as to the hidden costs of SDS in terms of implementation including training and education of staff, service users and the wider public. Costs of redrafting policies, processes and ICT infrastructure. Further investment is required in terms of information and advice.

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  
As previous

**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  
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