

## Consultation Questionnaire

### Draft Statutory Guidance on Care and Support

#### Consultation Questions

Section 2 : Values and Principles

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

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

**Question 1c: Do you have any further comments on this section of the guidance?**

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

Step 3: Eligibility & Assessment makes specific reference to "...personal outcomes for the individual." There has been much discussion and soul-searching amongst local authorities as to what, exactly, an "outcome" is. Perhaps this Guidance presents an opportunity to provide a detailed definition of central government's understanding and interpretation of "outcomes"?

Current interpretation of "outcomes" amongst local authorities (indeed, amongst staff within each authority) varies. Furthermore, within the NHS, "outcomes" has yet another meaning. As such, a common definition would, we believe, ensure consistent interpretation and delivery throughout Scotland.

### 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?*

We are especially pleased to see Innovation included within the principles of a good assessment and support plan.

Participation is included as one of the Statutory Principles and reference is made to the Independent Living movement. However, the wording intimates that disabled people *should expect* the same freedom, choice, dignity & control as other citizens, rather than, for example, are *entitled to*, which we would rather see included in the Guidance.

## **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?

We believe the paragraphs entitled "A Good Assessment" are too prescriptive. The professional undertaking the assessment will have learned and absorbed the described processes as part of their training regime.

In the interest of the supported person, it would make sense for the frequency of the outcomes review, or at least a minimum and maximum spectrum of time frames, to be suggested within the Guidance.

## **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?*

We are quite comfortable with this section.

## **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?*

There may be circumstances when a financial review is required. For example, the existing Direct Payment or Individual Service Fund might be identified as inadequate to meet the agreed outcomes. We would suggest that this should be included within paragraph 80.

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

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

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

As we understand it, the assertion made in paragraph 81 is incorrect: Section 19,

sub-section 2 does not *require* local authorities to provide greater options for choice, but to *promote* the choice available. If there is little or no current choice (for example, in some remote and rural areas there are limited private care provision options) then authorities can only promote the choices available.

## **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?

Every encouragement should be given to healthcare professionals to adopt the principles of "joint-working" and the integration of health & social care budgets. Section 8 of the Guidance adds to this, although we would like to see more examples of Pooled health & social care budgets.

Paragraph 88: it's "... 1968 Act", not "1958".

The Case Studies given are excellent examples.

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

We are comfortable with this section of the Guidance

## **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 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?*

We are comfortable with this section of the Guidance

## **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?*

Paragraph 119: "...they must inform the carer of the amount of support available under each of the options." The amount of support available under each option must, of course, be the same.

## **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?*

The very apposite point that Direct Payments are not intended *solely* as a means of employing a Personal Assistant is well made. Perhaps this should be emphasised throughout this section of the Guidance, in order to reinforce the point?

For example, could the bullet point list of suggested uses be extended?

## **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 useful to have the Guidance make clear that Self-directed Support Options are not to be offered in respect of reablement and intermediate care.

The Draft Self-directed Support (Direct Payments) (Scotland) regulations 2013 explicitly preclude those receiving treatment for drug or alcohol dependency. We are currently unconvinced that there would be circumstances where extending the right to Direct Payments and Individual Service Funds, for clients in these circumstances, would be sensible. This is an area that requires further discussion.

On the wider issue of homelessness and support for those fleeing domestic abuse, we are concerned that the human rights and equality agenda, which has been the impetus behind Self-directed Support, could be hijacked if Self-directed Support is extended to cover this particular set of social care needs.

## **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?*

There is much use of the words “provide”, “provision” and “providing” in relation to support, rather “facilitate”, “facilitation” and “facilitating”. One of the cornerstones of

SDS is that practitioners no longer “provide” support, but “facilitate” support, recognising that the client is in control. We would suggest that the wording should reflect this throughout the document, underpinning the move to client-control.

#### 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.*

We believe there will be arrange of direct and hidden costs associated with the legislation and the impact of this will not be evident until implementation begins and the scale of update is apparent. We would strongly suggest that bridging funds continue to be available to support the transition. Remote and rural areas are often not well served by the national allocation of funding to support specific aspects of implementation because the funded projects do not extend their reach to these areas. Examples include training opportunities, conferences, development work with the 3<sup>rd</sup> sector, projects to support services that support users of SDS, projects to develop 3<sup>rd</sup> sector capacity etc. This should be recognised and offset or the smallest and most vulnerable communities are disadvantaged in the implementation of this significant development.

#### 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.*

We do not think that there are any equality issues in the Guidance.

**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>

Everything in the Guidance seeks to address the imbalance in the human rights of the disabled and older community.

## **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 would view Gross Payments as an unnecessary extension of bureaucracy and costs. If a client fails to deposit the appropriate sum to their account and, as a consequence, agreed needs are not met, then we have the option to remove Direct Payments. As such, we would advocate net payments as the sensible option.

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

If the supported person is in a remote or rural location then appointing someone outwith the family may present a significant and, perhaps, insurmountable problem. There may also be circumstances where the person does not wish to have anyone other than a close friend or relative provide the support. As such, we would endorse the payment of friends and relatives from the Direct Payment. This should be at the discretion of the professionals involved in the case to ensure the balance between risk and choice is appropriate.

**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?

Regulation 11 appears to provide a suitably comprehensive list of those for whom Direct payments should not be made available.

**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?**

We would repeat those comments made in response to question 12c.

**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.

Government must take cognisance of age equality.

**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 would advocate professional discretion in all circumstances.

**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?

We have no further suggestions.

## **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.

It's early days, so the full costs of implementing SDS, and "bedding-in" are unclear. However, we are concerned that bridging-finance will cease in 2015. We believe it is essential to continue to support this implementation if it is to develop in the way envisaged.

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.

We do not think that there are any equality issues in the Guidance.

**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>

Everything in the Guidance seeks to address the imbalance in the human rights of the disabled and older community.