

# Consultation Questionnaire

## Draft Statutory Guidance on Care and Support

### Consultation Questions

Section 3 : Values and Principles

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

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

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

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

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

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

This section is warmly welcomed. It is acknowledged that to provide an enabling framework to ensure people can exercise choice and control with accessible advocacy, peer support etc., is a difficult task and the culture change required to achieve this significant. In practice this can be absent and could be strengthened here by reference to the ECHRC could strengthen this section e.g. Article 8

We propose the following changes to the text here:

Collaboration – The professional and the supported person work together, alongside people who know and care about the individual, in the completion of the assessment.....

Informed Choice – The supported person should receive the assistance they need to help them to make an informed choice. To ensure transparency the person and any recognised advocate should be kept informed at all stages of the process.

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

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

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

Quarriers acknowledge the difficulties in setting eligibility criteria but also recognise that real change will only be achieved through the participation of people at every stage of their journey whether they are children, young people, adults or older people. When people move from one area to another consideration should be given to previous assessments and care packages rather than starting from scratch. We recommend that local authorities involve those who use services in the setting of eligibility criteria.

The language in this section needs strengthened and Quarriers suggest the following changes:

23. Quarriers felt the Local Authorities role should be clearer and the language changed to the following:

In determining a person's eligibility, the professional **will** (not should) take full account..... The professional **will** (not should) consider.....

Assessment and support planning

Quarriers welcome the focus on outcomes in this section and the general principles of assessment being set out in Section 1 of the Act. A focus on outcomes should ensure assessment is not based on financial considerations or tick box exercises. This should ensure some consistency with regard to assessment if someone moves from one authority to another.

Any communication support to make this possible should be made available.

Consideration should also be given in guidance to the accessibility of information e.g. easy read, BSL, Braille, etc.

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

### **Consultation Questions**

#### Section 5: Support Planning

This section of the guidance covered:

- general guidance on support planning
- risk
- resources
- the choices that must be made available to the supported person and
- information and support

**Question 4a: Was this section of the guidance clear and easy to understand?  
(please tick)**

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

**Question 4b: How useful did you find this section of the guidance?  
(please tick)**

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

**Question 4c: Do you have any further comments on this section of the guidance?**

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

The shift of responsibility from the public sector to the individual in terms of organising support needs to be clearer in this section and more accessible to the individuals concerned and their circles of support. Facilitation of the support planning process itself is a skill and this may be enhanced by independent facilitation.

Meeting the needs of people with more complex needs and what constitutes good support can vary from area to area. Quarriers believe that the underlying value base is crucial and that regardless of the level of need each person can be supported in unique tailored and person centred ways. Re-emphasising the value base here is important. Quarriers consider that there should be more emphasis on shared decision making in this section involving the professional but also the individual and their circles of support. Essential Lifestyle Planning should also be explained as an important tool in this process and a case study might be useful here.

Supporting people gain choice and control over how they live is crucial. Planning should include clarity on where people get the support they need e.g. to make a transition to a direct payment especially in relation to basic money management and debt avoidance.

**Table 6**

Where there is not agreement by the individual, the individual's family/carers or guardian, Quarriers suggest developing a mechanism for arbitration.

In practice there is a growing emphasis on money and finance

**5.2. Risk**

Quarriers believe that risk should be real verified and discussed. The methodology behind risk taking should be transparent and informed by an evidence base Only then will proportionate risk taking occur. Quarriers find that often people we

support can make a choice but don't have the capacity to understand the consequences of decisions. In those circumstances the funding body can take decisions which are disabling and often more related to organisational risk than personal risk. Quarriers suggest consideration be given to the introduction of a framework which enables safe risk taking and which will assist a consistent approach being taken.

### 5.3 Resources

Quarriers suggest consideration be given to the role of assistive technology and other technology e.g. email, access to the internet in increasing independence and reducing isolation. Local Authorities following assessment should make service users aware of resources in the area.

### 5.4 Choices

The four options could be enhanced by use of small illustrations to assist creativity. Getting the mechanism right is a crucial part of supporting people gain choice and control over how they live. Consideration should be given to highlighting the benefits of one option over another. Quarriers suggest that there are still many barriers to people with learning disabilities receiving direct payment e.g. opening bank accounts and handling money and access to financial services. Care Managers need more training in this area in order to provide good information and resources so that Option 1 accessible to people.

Consideration should be given to additional support for young disabled people between 16-18 to ensure that they can maintain option 1, re financial training and support.

Clarity is required in relation to the "third party".

In Option 2 (Para 57) the individual's choice appears to be restricted to the resources 'approved' by the local authority.

The language in paragraph 58 is less helpful.

In paragraph 60 there is a presumptuous leading statement "large numbers of individuals will continue to select their support under Option 3" which should be removed.

### Option 4

This is an option which people could use to gradually move to Option 1. Would be enhanced by a case illustration.

Consideration should be given to more clarity in paragraph 66 and there is potential for inappropriate control.

Paragraph 71 - There will be variations in professionals' views on what is appropriate or reasonable and impartiality is a concept which would be difficult to

achieve whether the professional is employed by local authorities or another service provider.

There could be illustrations provided here about the role of user led support organisations, advocacy and representation.

## **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
x <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"/>	x <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?*

Quarriers consider that this section requires to be underpinned by the values and principles set out in the early part of the guidance. Individuals should have a choice in when, where and who participates in a review. Timescales should be in place for reviews and guidance to service users if they do not feel particular options work for them. The Care Inspectorate recommend six monthly reviews.

## 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
x <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"/>	x <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?*

## 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
x <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
x <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?

Paragraph 91 – Disputes around joint funding can create delays. Consideration could be given to timescales around decisions to avoid delays.

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

**Question 8b: How useful did you find this section of the guidance? (please tick)**

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

**Question 8c: Do you have any further comments on this section of the guidance?**

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

Overall, Quarriers requests that consideration be given to the needs of children and young people throughout the document alongside the adult sections. This applies in particular but not exclusively to young carers where the guidance is exceptionally scant.

Quarriers request consideration is given to the distinction and differences between the named person and the lead professional to avoid confusion.

Paragraph 96 – Following should be added ‘Professionals *should ensure the wider social care needs of parents and carers are identified and met*’. Quarriers have examples of situations where assumptions are being made that family members will provide care without taking into account issues the parent might have.

Paragraph 104 The word *should* in the last sentence before the bullet points should be replaced with *must*.



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

### **Consultation Questions**

#### **Section 9.2: Supported decision-making and circles of support**

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

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

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

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

The opening sentence of this section assumes only the professional faces challenges. The concept of Circles of Support is used in a person-centred planning context which is not just about decision making but support to a person throughout their journey. In this section it is being used in relation to decision making only.

There is also a need for clarity about decision making responsibilities and the need to involve all young people in decisions in line with the AWI 200. SDS applies to all children in need.

Paragraph 107 – remove the phrase ‘they decide that’. However, where they decide that additional assistance is required.....

Paragraph 112 - Quarriers recommend a link to the Scottish Government Guide ‘Communicating and Assessing Capacity’. The section should also emphasise the important role of the ‘proxy’ decision maker to do everything possible to enable the person to use any residual capacity.

## **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?*

Quarriers agree in principle with the proposals to waive all charges for support to carers. However implementation of this proposal may be complicated as this will require additional resources to meet this commitment.

Quarriers consider that there needs to be more differentiation between adult and child carers. For young carers the starting point is to question why they are caring and then to consider how the role can be minimised (GIRFEC agenda). For adult carers the opposite is the case, as in paragraph 116, the professional must consider whether the carer would benefit from some form of support to enable them to continue in their caring role. Children's capacity to understand and accept the assessed needs and the choice available must be considered. This is outlined for adult carers in paragraph 120. This guidance should be extended to include guidance for professionals when dealing with young carers.

In Paragraph 118 Senior Managers should encourage professionals to exercise their own judgement"... Quarriers do not consider that this will lead to consistency of approach and we would in addition suggest a local appeals procedure.

With reference to paragraph 123, Quarriers are unhappy with the wording "substantial amount of care on a regular basis". This statement suggests that the quantity of care provided determines eligibility. Consideration should also be given to the impact of caring in the determination of eligibility to any support and certainly to funded support via a formal assessment.

Quarriers also consider the guidance should be strengthened in relation to the employment of relatives. If family members are employed they must reach they reach the same care standards as any other professional. Some examples of good practice in relation to employing relatives would enhance this section.

## **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 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 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

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

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

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

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

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

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

## **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 costs and benefits arising from this guidance

**Question 14: Do you have any comments on the financial costs or benefits of the requirements set out in the guidance?**

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

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

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

Comments

#### The equality and human rights impacts of the guidance

**Question 15 (a): Do you have any views on the impact of the guidance on any or all of the following equality categories:**

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

*Some advice to help you to answer this question - By “equality impacts” we mean whether or not the guidance will affect certain groups in a positive or a negative way. In considering the impacts you may wish to consult the Equality Impact Assessment published for the Social Care (Self-directed Support) (Scotland) Act available at the following hyperlink:*

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

*We plan to update the Equality Impact Assessment in light of the comments and information from this consultation.*

Comments

**Question 15 (b): Do you have any views on the impact of the guidance on human rights?**

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

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

Comments

## **Consultation Questionnaire**

### **Draft Regulations**

#### **Consultation Questions**

**Question 1: What are your views on Part 2 of the draft Regulations (calculation, payment and termination of direct payments)?**

Comments

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

Comments

**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

**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

**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

**Question 6: The draft Regulations do not specify circumstances where the direct payment option should be unavailable for care and support to children/families. *Should* there be specific restrictions on choice of support in relation to children/families support (i.e. support provided under Section 22 of the Children (Scotland) Act 1995) and should these restrictions apply to the direct payment only, or to other options as well?**

Comments

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

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

Comments

## **Draft Regulations**

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

The costs and benefits arising from these regulations

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

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

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

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

Comments

The equality and human rights impacts of the regulations

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

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

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

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

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

Comments

**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