

# Consultation Questionnaire

## Draft Statutory Guidance on Care and Support

### Consultation Questions

#### Section 2: Supported Person's Pathway

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

Yes	No
✓	<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 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:

Section 1- whilst wholly acknowledging the history of SDS within the independent living movement we would propose that the introduction to the Guidance should set the scene more broadly than to 'disabled people', to ensure others included within the terms of the Guidance do not feel excluded.

Within the 'Person's Pathway' It may be helpful to make it clear that the support plan is based on the outcomes that the person wants to achieve. The roles and responsibilities section is too lengthy, and we would suggest that the 'supported person' is first on this list.

#### Section 3: Values and Principles

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

Yes	No
✓	<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 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:

It is excellent that the principles and values are articulated within the document. There should be an expectation that these inform and guide practice. Suggest that the phrase 'it would not be appropriate... for this guidance to seek to *impose* particular values on individual professionals' be deleted and instead let them stand as the values that inform the guidance.

**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 checked="" 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?*

Comments:

This section seems to lengthy and we would propose that it is reduced by removing much of the detailed description about the eligibility framework and assessment, as assessment should already be at the core of good social work practice. If possible it would be useful to include this instead in workforce development/training documentation. The section explaining outcomes would be helpful to retain as it is an approach that is central to SDS and is a developing way of working for many professionals. An example linking an individual's outcome to an assessed need to eligibility may be useful as an explanatory tool.

**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 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 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:

This is a very lengthy section but includes very useful information. We would suggest that the section be split to make it easier to access. In this section it would be helpful to have examples/guidance on ways option 2 can be used, in addition to the Individual Service Fund.

## 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"/>

**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"/>

**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:

We propose that this states that a variety of circumstances can trigger a review rather than be explicit what can and cannot trigger a review.

### **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"/>

**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"/>

**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:

The Guidance is short compared with other sections but it is still a crucial aspect to delivering SDS, and an important role for local authorities. It would be useful, for example, to include guidance for providers on what would be key aspects to deliver a personalised service – unless this is to be included in additional guidance for providers. This could include examples. Links to examples of changes in commissioning eg block to individual budgets would be useful.

### **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"/>

**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"/>

**Question 7c: Do you have any further comments on this section of the guidance?**

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

that are more appropriate for statutory guidance rather than Regulations?

**Comments:**

The Guidance is more positive in its approach to the engagement of healthcare in SDS than the legislation appears to be and we welcome the promotion of the 'person-centred' approach and the creative examples. A truly joint approach will however only happen where both parties are keen to sign up to this. 'Person-centredness' is being promoted nationally within Health services but it has limited reference to SDS. SDS needs to have more recognition at a national level within NHS services or this section of the guidance will not have any real impact. Direct payments which are solely NHS funded have been used to provide good outcomes for individuals and the process to do this should be facilitated.

**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:**

Children's services are not, in the main, ready to offer SDS to all children in need but are working toward providing SDS to children with a disability and their families. We would prefer a lead in time to prepare for SDS of 2015. This would enable us to introduce SDS through 2013 and 2014 in time for roll out. For example, although we are working toward releasing funding from services this will be a phased approach; we are not at the stage of being able to offer a direct payment within child protection. Our recommendation is that SDS is made available to children with a disability and their families, at least in the first instance.

**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?*

Comments:

This section is very light on the issue of capacity – particularly section 113

### **Section 9.3: Carers**

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

Yes	No
<input type="checkbox"/> <b>QUITE CLEAR</b>	<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:

This could provide a more flexible way to support carers if provided within the context of meeting positive outcomes for individuals and their carers. More clarity required on whether there is a duty to provide funded support – or it is a power to offer this.

### **Section 9.4: Direct payments**

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

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

**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:

Suggest that there is further guidance on third party and the responsibilities on the person and third party of this arrangement, for example of transparency and accountability, given the potential complexity of this role. Assume that 'supported person' in the phrase 'the supported person can ask for their direct payment to be paid to a third party- a supported person or an organisation' means 'person' ie who is not the supported person.

**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"/>

**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"/>

**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:

The potential to offer SDS for reablement or intermediate care should not be blocked at this stage through regulation. Whilst in most situations reablement and intermediate care will be short term prior to SDS being offered there are situations where SDS may be used positively. For example a) Someone already has SDS in place and following a hospital admission wishes to use some of the funding in a more flexible way to meet their outcomes. b) Someone has ongoing support and reablement is required for some specific aspects- short term funding could be put in place specifically for this. We would suggest that options 1 and 2 for reablement and intermediate care should be a power available to local authorities.

The guidance for equipment can follow current practice for direct payments. We have concerns about SDS being offered for housing adaptations. To date only temporary adaptations have been covered under direct payment guidance. Following national policy, the adaptations funding for the private sector and registered social landlords is joint locally and operates through a 'one stop' shop. SDS could potentially create a level of complexity that would be difficult to introduce into this new service with different funding sources.

### **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:**

Although the regulations state that family members can not be employed through a direct payment if they are power of attorney (POA) or guardian we would propose that a POA/guardian should not be able to employ themselves, regardless of whether family.

### **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:**

We support the power to extend SDS to carers but are concerned about the possible financial impact of this.

We welcome the transitional funding from Scottish Government to enable SDS to progress. However, we are concerned about the implications post April 2015 when the funding ceases and local authorities will still be in the process of transition, given the complexity and size of the change.

### **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;**



# 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:

We are in agreement that payments should, unless specifically requested, be paid net. Locally we do not currently expect an assessed contribution from people receiving SDS support and would want clarification that fits within the scope of the guidance.

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

Comments:

In some situations it is very beneficial for the individual to employ a close relative eg if there is a local language or cultural barrier; person needs a known person due to dementia/close to death, unable to employ someone due to rurality of area. We also agree that the family member must agree and be able to provide this support, without being put under undue stress. We are concerned that there could in some situations be a conflict of interest eg person feels unable to communicate that they do not want family to be employed. We propose that local authorities continue to recognise the importance of relatives being employed in unique and exceptional situations and that this detail of circumstances could be within guidance than legislation. We would suggest that the circumstance (i) which is for 'any other circumstance' be based on local authority guidance/factors. SBC is mindful of financial restrictions in extending the scope of family being employed. We would propose that guidance is given on the links with kinship caring.

**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:

We would propose that, because there may be exceptional circumstances where the flexibility and control through SDS would be of benefit then the power should be available to local authorities to offer a direct payment where it would meet the agreed outcome, and the risks are addressed through a shared risk management plan. For example, positive outcomes are currently being achieved by an individual whose employee is supporting her to 'detox'.

**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:**

SBC agrees with the principle of a direct payment being available for residential care on the basis that the individual may feel more empowered by having a direct relationship with the care home provider, or indeed it may facilitate different support options and different models of care and support. It is recognised that this proposal may be at odds with the move to rebalance care, but it does respect the choice of individuals to use this form of support. The national care home contract is quite prescriptive in terms of contractual arrangements and agreed fees but may give the individual some protection over fees set. We are concerned that an individual should not pay more through a direct payment than the care home rate agreed with the local authority for the same service.

This option would need to be introduced in a gradual way in order for providers and commissioners to be able to make appropriate preparations.

**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:**

We do not think that the timing is right to introduce SDS to care and support for all children/families and in particular do not feel local authorities are in a position to fund direct payments for child protection 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:

### **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:

We agree that the Regulations have the potential to impact positively for all the equality categories. We would like further analysis in the assessment of the impact of residential care. For example, if residential care is not available as a direct payment this could have an impact on the choice of older people who are more likely to purchase residential care. We also suggest the inclusion of rurality. Services in rural areas are often tested to provide appropriate support to people in isolated and small communities. SDS offers the potential for greater flexibility.

#### **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



## **Draft Self-directed Support Statutory Guidance on care and support Consultation response**

Additional comments from NHS Borders

Due to time constraints, we have not been able to produce a joint response between Scottish Borders Council and NHS Borders. However, we are generally supportive of the comments submitted by Scottish Borders Council.

We would wish to add a number of comments, specifically in relation to the role of NHS within the SDS guidance.

### Section 8: The Role of the NHS and the NHS Professional

1. We note the opportunity for self-directed support funding packages to both include health funding and enable individuals to purchase a package of care that includes provision of health services. We welcome the opportunities that this can provide for individuals to create holistic and individualised packages. The guidance allows the opportunities and the mechanism for a health contribution to SDS packages. However, it does not indicate whether this is voluntary or compulsory. There are two main issues from an NHS perspective:
  - There is the possibility that packages of care that include health resource or provide alternatives to health service provision could be developed between the client and the assessor without a recognition that health resources may not be free or available to provide that support
  - As a commissioning approach is not well-established in many areas of healthcare, in particular community healthcare, and particularly for small rural health boards, health resource is likely to be fully committed to existing services. The feasibility of releasing resource may be minimal when services themselves are small and potentially non-viable

It is understood that the inclusion of health resource is not mandatory and that there are provisions for protecting services that would become non-viable if individual resource is removed. However, this needs to be explicit within the guidance.
2. The requirement for health staff to carry responsibility for assessment for SDS. Whilst we welcome the opportunity for health staff to undertake SDS assessment where this fits with the needs and circumstances of the client, there needs to be explicit recognition of the impact that this may have in terms of training and support for health

staff to undertake these assessments. It is possible that this will fall to health staff infrequently and maintenance of expertise could be challenging in these situations. We also share the concerns of the local authority at the workload challenges that will come with the undertaking of SDS assessments. The NHS has relatively limited focus on SDS currently and therefore is not necessarily in a position to identify and plan for the potential impact of its introduction.

We would support the Scottish Borders Council submission in raising concerns over the link between the SDS approach and the person-centred approach championed within the NHS Scotland Quality Strategy. There appears to be little congruence between them currently, although this does represent a major opportunity to align agendas and facilitate the move towards integrated working.

Prepared by Phillip Lunts on behalf of NHS Borders