

Consultation Questionnaire

SCLD is a Centre for Excellence funded by the Scottish Government and is made up of 12 partner organisations. Our mission is to work in partnership with people with learning disabilities, people on the autism spectrum and family carers to challenge discrimination and to develop and share good practice. SCLD's goal is an inclusive Scotland where everyone is valued and respected for who they are and what they contribute as equal citizens.

SCLD's partner organisations include 12 third sector organisations and universities: Association for Real Change (ARC), British Institute for Learning Disabilities (BILD), Badaguish Outdoor Centre, Capability Scotland, Central Advocacy Partners, Down's Syndrome Scotland, ENABLE Scotland, Key, PAMIS and the Universities of Dundee, Glasgow and St Andrews.

SCLD is one of the partners of Changing Support, Changing Lives, a project in which a number of organisations have come together to support other providers to make the transformation to Self-Directed Support (SDS) in Scotland.

SCLD welcomes the opportunity provided by the consultation process to comment on the draft guidance and regulations. Much of the content of the guidance provides useful clarity to professionals on the principles and processes behind implementing self-directed support. Our key messages for the guidance are:

- There must be a greater emphasis in the document on the cultural shift which self-directed support is seeking to achieve, and in particular the importance of a co-production approach between the individual and the professional. The way in which the ‘supported person’ is constructed within the guidance does not always reflect the principle of sharing power and maximising choice and control which drives the legislation.
- A more overt consideration of the responsibilities of public authorities in protecting and promoting the human rights of disabled people would be welcome. Human rights principles could further help to inform the values and principles articulated within the document.
- To improve the clarity and accessibility of the document. Some of the writing lacks clarity and can create confusion.
- The Draft Statutory Guidance may act as a reference point for some individuals and families and as such it should be as accessible as possible.

Draft Statutory Guidance on Care and Support

Consultation Questions

Section 2 : **The supported person’s pathway** (SCLD change)

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

Yes	No
<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"/>	<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?

Arguably this may be part of the guidance to which individuals and families will wish to refer. It is important that the language and style used in this section is accessible and clear, and that people feel that this section answers some of the questions they have about self-directed support.

The Person's Pathway

A reference to a person's right to independent advocacy needs to be included within the process, preferably at Step 3. Step 3 should clarify that although there is a duty to assess, eligibility criteria for services are set locally.

There should be some recognition that a person may need independent support for planning at Step 4

It would be helpful to have some clarity or some indication as to when the budget should be set within this explanation of the process.

Roles and Responsibilities

In terms of 'Roles and Responsibilities' there should be recognition within the guidance that local authorities are public authorities under the Human Rights Act 1998 and have responsibilities to protect, respect, promote and fulfil human rights in their activities. There should be clarity about this in terms of the role of the social worker and senior managers within local authorities.

It is not clear why 'the supported person' is not explicitly viewed as an expert in their own lives.

It is not clear that a provider should play an important role in the assessment and support planning process. Individuals should have access to independent support for planning, otherwise there is a risk that the business interests of provider organisations could influence the outcome.

Finance managers and officials should not make decisions about the level of spend required to meet a person's needs without reference to the evidence provided in assessment. Where a shortfall exists, finance managers and social workers should be supported to make flexible and creative solutions to ensure the person's needs are met.

Strategic commissioning should be inclusive; the views of disabled people should make up part of the evidence base for those who commission services and support.

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

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

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

Values

This list ought to include a commitment to sharing power, co-production and inclusion. Some context around the development of the values and principles may also be useful in the guidance.

Principles

Participation – It may be worth adding to this principle with some consideration through the lens of the social model of disability.

Responsibility – SCLD's Changing Support Changing Lives Reference Group, made up of disabled people, family carers and support providers noted that the perception of whether choice and control was being exercised responsibly could be subjective; there needs to be some mechanism for an open exchange of ideas about what the responsible use of choice and control would be.

Risk enablement – There should be a greater emphasis here on supporting people to take risks. The definition of risk enablement here is not clear and should refer to proportionality, both in terms of evaluating and responding to risk.

There is relatively little discussion of how to embed the principles into practice, which would be a desirable function of the guidance.

SCLD's Changing Support Changing Lives Reference Group have spent some time developing the principles which they feel should underpin all practices and processes in relation to the delivery of self-directed support. These are:

- Working together and collaborating. Keeping the continuity of support.
- Evidence and accountability
- Meaningful choice and control which gives power back to the person
- Consistency and high standards
- Flexibility
- Equality
- Transparency and integrity

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 checked="" 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 checked="" 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?

The section on eligibility criteria should make it clear that the eligibility framework varies across local authorities.

Under 'The local authority's role', local authorities should go beyond a consideration of investment in preventative and universal services and undertake robust processes to gather evidence, plan and respond to the need for preventative services.

A 'good assessment' does not depend uniquely on the professional. A good assessment will meaningfully include the individual in question and will consider holistically their needs and the outcomes they wish to achieve. There seems to be too great a focus on the professional in this section. It is not clear why there is no reference to the assessment as a co-production between the person and the professional, as well as

any other relevant individuals such as an advocate, family members.

It is not clear why the definition of 'personal outcomes' in paragraph 34 does not include those outcomes which are defined by the person themselves.

An assessment informed by personal outcomes would acknowledge the person's expertise in their own life.

The main products from the assessment should include some sense of what the person thinks about the assessment process.

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 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 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?

In the figure showing the 'Key ingredients of support plans', there should be a reference to **independent** information and support,

There should be a greater emphasis on the accessibility of both the approach to support planning and the final product.

Under 'Resources', there should be greater emphasis on transparency, both in the process and in the outcome.

In paragraph 50, there should be reference made to the skilled judgement of a social work or health professional **in collaboration with the person.**

Paragraph 56 notes that 'typically, the individual will be informed of a resource that will be made available to deliver their support plan.' SCLD would be of the view that individuals should always be informed of the resources that will be made available, no matter which option they select.

There should be greater acknowledgement that support planning is a process which may take some time, rather than a one-off event, and some people will require more long-term support before being able to reach conclusions about the nature of their support and exercise the choice and control anticipated by the legislation.

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

**Question 5b: How useful did you find this section of the guidance?
(please tick)**

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

Question 5c: Do you have any further comments on this section of the guidance?

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

There should be some indication that a review should happen in a timely fashion in this section. Furthermore, there should be some sense that an individual should be well-supported by people they choose and trust in review processes.

Draft Statutory Guidance on Care and Support

Consultation Questions

Section 7 : Facilitating genuine choice for individuals

**Question 6a: Was this section of the guidance clear and easy to understand?
(please tick)**

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

**Question 6b: How useful did you find this section of the guidance?
(please tick)**

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

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

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

Consultation by commissioners on the types of services which people need and want should be inclusive and meaningful. It should seek to gather a broad and representative base of opinions in an accessible way.

Draft Statutory Guidance on Care and Support

Consultation Questions

Section 8 : The role of the NHS professional

**Question 7a: Was this section of the guidance clear and easy to understand?
(please tick)**

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

**Question 7b: How useful did you find this section of the guidance?
(please tick)**

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

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

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

that are more appropriate for statutory guidance rather than Regulations?

Comments

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 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 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

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 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 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?

SCLD welcomes the various assurances around not imposing assistance or appointing proxy decision makers.

We would welcome some indication of the following in this section:

- That people should be supported to take as much choice and control as they can and as they wish to have;
- That people are given appropriate time and support to make the decisions which they can; support planning and decision making may be a longer process for some people;
- That people may lack capacity in some areas but may be able to make decisions in others and that assumptions should not be made about people's capabilities;
- That creative approaches and solutions may help people to understand and make decisions.

We would also draw attention to the principles behind the Adults with Incapacity Act which may be helpful here:

- Benefit – to the person and a reasonable way to achieve the benefit.
- Least restrictive option – to achieve the necessary outcome

- Ascertaining the views of the person – and respecting their past and present wishes.
- Respect for the views of significant others.
- Encouraging use and development of skills – this principle would seem to be particularly relevant in terms of self-directed support and enabling people to maximise choice and control.

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 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 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

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?

SCLD welcomes the opportunity provided by the consultation process to comment on the draft guidance and regulations. Much of the content of the guidance provides useful clarity to professionals on the principles and processes behind implementing self-directed support. Our key messages for the guidance are:

- There must be a greater emphasis in the document on the cultural shift which self-directed support is seeking to achieve, and in particular the importance of power-sharing and a co-production approach between the individual and the professional.
- To improve the clarity and accessibility of the document. Some of the writing lacks clarity and can create confusion. The guidance itself is not always well-written. The style and language used can detract from the clarity of the document. For example, paragraph 52: “It is about developing solutions together, recognising that a supported person’s support is their support....”
- The Draft Statutory Guidance may act as a reference point for some individuals and families and it should be as accessible as possible. There are a number of accessibility guidelines which the guidance breaches, in particular the use of italics and

underlining.

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>

SCLD welcomes the opportunity to comment on the impact of the guidance on human rights. There is insufficient consideration within

the guidance as to the potential impact and effects of SDS upon the respect for, and protection and fulfilment of, human rights. There should be more overt recognition that local authorities and other relevant public authorities are under an obligation not to act in any way which would breach an individual's human rights under Section 6 of the Human Rights Act 1998; this is the case however the relationship between an individual and a public authority is mediated through self-directed support, ie. whether or not the local authority provides support directly to the person. Furthermore, recognition of the potential implications for a given individual's human rights at the point of assessment is critical.

Some more detailed consideration of the interactions between self-directed support and the fulfilment of human rights would be welcome, particularly in terms of:

Article 3: Prohibition of torture or inhuman or degrading treatment or punishment.

Article 5: Right to liberty and security.

Article 8: Right to private, home and family life.

Given that one of the key principles of the legislation is around the right to participate in the life of the community, it may be worth referencing the right to live independently in the community as set out in Article 19 of the United Nations Convention on the Rights of Persons with Disabilities, and indeed the articles set out in this Convention more broadly.

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>

SCLD welcomes the opportunity to comment on the impact of the guidance on human rights. There is insufficient consideration within the guidance as to the potential impact and effects of SDS upon the respect for, and protection and fulfilment of, human rights. There should be more overt recognition that local authorities and other relevant public authorities are under an obligation not to act in any way which would breach an individual’s human rights under Section 6 of the Human Rights Act 1998; this is the case however the relationship between an individual and a public authority is mediated through self-directed support, ie. whether or not the local authority provides support directly to the person. Furthermore, recognition of the potential implications for a given individual’s human rights at the point of assessment is critical.

Some more detailed consideration of the interactions between self-directed support and the fulfilment of human rights would be welcome, particularly in terms of:

Article 3: Prohibition of torture or inhuman or degrading treatment or punishment.

Article 5: Right to liberty and security.

Article 8: Right to private, home and family life.

Given that one of the key principles of the legislation is around the right to participate in the life of the community, it may be worth referencing the right to live independently in the community as set out in Article 19 of the United Nations Convention on the Rights of Persons with Disabilities, and indeed the articles set out in this Convention more broadly.