

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
X	<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"/>

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?

Table 2 Responsibilities of the professional includes 'They may arrange for some additional assistance so that the supported person can play a full part in the assessment or the support planning process.' The SIAA believes that the involvement of independent advocacy should be the default position for this process so that, unless the supported person makes an informed choice not to seek the support of independent advocacy, it should be automatically involved to support the person to play a full part in the assessment and support planning process.

While the provider can play an important role in the assessment and support planning process it is important to bear in mind that advocacy support for the supported person cannot be delivered by the care provider. If the care provider were advocating on behalf of the supported person this would create the potential for conflicts of interest arising. Advocacy support should be provided by an independent advocacy organisation to ensure that the supported person is fully supported to make and express their own informed choice and that their choice is not directed by anything other than their own views and wishes.

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Consultation Questions

Section 3: Values and Principles

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

Yes	No
X	<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"/>	X	<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?

Para 13 – Assistance to express views and to make a fully informed choice about options for support should not come from Social Workers or from potential or actual care providers. Independent advocacy support can ensure that the views and choices expressed and made are those of the supported person and are not directed by a third party.

Para 14 – The supported person may require independent advocacy support to ensure their full collaboration in terms of their needs assessment and the provision of supports or services.

Table 3 – This is helpful in thinking about the principles and what they mean in practice however it would increase the impact to add the following:

Collaboration –

It will be important where the professional and the supported person are working together for the professional to keep in mind the innate power imbalance in the relationship. Independent advocacy support can help to mitigate against this.

Informed choice –

The supported person must receive the assistance they need to help them make an informed choice unless they actively turn this down.

Innovation –

In order to develop creative solutions to meet identified outcomes the supported person is likely to need some additional support beyond the support of the professional involved.

Involvement –

The professional must, where possible, involve the supported person in a genuine and active way in deciding their outcomes and in planning and delivering their support. Independent advocacy support for the supported person will help ensure real and active involvement.

Participation –

The supported person must be provided with the help that they need to participate in the life of their community and wider society. This is a stated aim of independent advocacy and the supported person should be informed about independent advocacy and directed towards local provision.

Responsibility –

It is important that the supported person has access to as much support as they need to exercise choice and control in a responsible way.

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Consultation Questions

Section 4: Eligibility and Assessment

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

Yes	No
X	<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"/>	X	<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?

The banding of risks does not take account of the need to consider implications for fluctuating conditions such as mental health issues or some physical conditions. Risks may vary as conditions fluctuate so there may be a need for flexibility of approach.

In relation to the assessment process the SIAA believes that it is vital at this stage that independent advocacy support be offered to the supported person. While some may not feel the need of such support for others independent advocacy will contribute towards a greater chance of achieving positive outcomes as early as possible.

In the case of assessments that may be conducted in challenging environments, after a fall or in hospital for example, the professional should establish whether the supported person has previously had independent advocacy support and where required re-refer. Where there has been no previous involvement of advocacy the supported person should be made aware of this support and referred where they wish.

The general principles of assessment, Collaboration, Involvement and Informed Choice, are major aims of independent advocacy.

Para 33 states that the approach for consideration of eligible needs fits with the 'exchange model' of assessment. The SIAA feels that this model, while helpful to consider in approach, does not give enough emphasis on the views and wishes of the user being paramount and taking precedence over all other views in the process.

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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"/>

**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"/>

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?

Table 6 – Support Plans: key ingredients should include a specific reference to independent advocacy support.

Para 42 – Reference to the potential need for support to understand the plan should be included.

Para 47 – Final bullet point should include reference to independent advocacy.

Para 50 – Steps to involve user and carer groups in the development of methodology may include collective advocacy resources. In relation to informing the supported person about the amount of support available under each option this should be framed in terms of wider implications as well as financial terms.

Para 59 – It is important here to emphasise that, although the individual is not seeking direct responsibility for planning or control of available resources, nevertheless the principles of choice and control are not lost in this option.

In relation to information and support to make informed choice the SIAA believes that signposting to independent advocacy should be the default position in this guidance and that only if an individual has been fully informed about independent advocacy and turned it down then the professional need not signpost to the local provision.

Table 7 –

This should be changed to the following.

Independent advocacy services to make sure that people are supported to make fully informed choices and to make sure that people's voices are heard (individually or collectively) during all stages of the care and support pathway.

Para 76 – Once again the SIAA believes that signposting to independent advocacy should be the default position.

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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"/>

**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"/>

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

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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"/>

**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"/>

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?

It is important that full and meaningful consultations are conducted by local authorities to help discover views on current services and what people need and want from services available. User views on current services can be sought from local collective advocacy groups. When conducting consultation with other service users consideration should be given for advocacy support to be made available for service users during this process.

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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"/>

**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"/>

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?

The case studies included in this section were particularly useful in helping to make this section clear.

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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"/>

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"/>	X	<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?

See previous comments on the need for access to independent advocacy. In the case of children and families it may be important to ensure that both the child and their family have access to independent advocacy support.

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
X	<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"/>	X	<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?

Access to independent advocacy should be considered for everyone where there are issues about their capacity to make, understand or communicate decisions.

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
X	<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"/>	X	<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?

This section should include access to advocacy for carers as included in *Caring Together: The Carers Strategy for Scotland 2010 – 2015*. The strategy recognises that:

'Some carers, especially the most vulnerable, benefit from independent advocacy support to help them in many different ways, including supporting them in their dealings with health and social care and other professionals.'

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 checked="" 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 checked="" 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 regulations should include a requirement to direct people to relevant sources of support in relation to aspects of direct payments to ensure that they can make a fully informed choice. Advocacy organisations have reported on instances where service users feel that they have been discouraged from applying for Direct Payments either by the professional dealing with them or by their perception of the potential complexities and difficulties that might arise. Easily accessed information on supports available to manage Direct Payments would help prevent this.

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 checked="" 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?

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?

The Statement of Intent for Self-Directed Support makes clear the aims to ensure that everyone in need of support for independent living should have the same freedom, choice, dignity and control as other citizens. To ensure that people are fully supported in this some are likely to require independent advocacy support. While the guidance does make reference to this to ensure that signposting to independent advocacy becomes a reality for all who need it the document needs to make more positive statements on the need for such signposting.

Independent advocacy support for those who want and need it in the process of assessment will be the cornerstone for ensuring that outcome based support takes full account of people's needs and wishes.

The guidance does not make any reference to 'portability' in relation to an agreed needs assessment. If someone moves to a different local authority area following establishment of support options will these be carried over to the new local authority area?

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)?

People applying for Direct Payments may require independent advocacy support to help them understand decisions and the implications of those decisions. They may also require advocacy support if they wish to challenge local authority decisions.

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

This option will be welcomed by many who would find the delivery of some care by strangers difficult. However care must be taken by local authorities to ensure that

the family member or the direct payment user are not under undue pressure to accept this. Where the local authority has concerns that this might be the case the supported person and their family member should have access to separate independent advocacy support to ensure that both parties can have their own views and wishes heard and understood.

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?

The SIAA does not believe that access to Direct Payments should automatically be restricted for those in the above circumstances. Additional considerations should be included to ensure that Direct Payments will benefit those individuals and additional or different supports may be required to support appropriate management of the Payments however automatic restrictions discriminate against individuals who are vulnerable and in need of support to move on from these situations and difficulties.

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?

The guidance should ensure clarity around any situation where a direct payment option would be unavailable.

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>

Will the restriction on certain individuals in relation to eligibility to direct payments have an impact on their Human Rights?