

# Consultation Questionnaire

## Draft Statutory Guidance on Care and Support

### Consultation Questions

Section 2 : Values and Principles

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

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

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

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

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

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

The pathway and the responsibilities of all individuals involved are laid in out in a clear and concise manner and easily understood.

## Draft Statutory Guidance on Care and Support

### Consultation Questions

Section 3: Values and Principles

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

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

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

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

**Question 2c: Do you have any further comments on this section of the guidance?**

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

The values and principles are laid out clearly and easily understood.

**Table 3.** The principles that should underpin a good assessment and support plan would be better set out with the five statutory principles grouped together. The further three principles of innovation, responsibility and risk enablement could benefit from some further development/explanation drawn from practice examples to support front line practitioners.

**Draft Statutory Guidance on Care and Support**

**Consultation Questions**

Section 4: Eligibility and Assessment

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

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

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

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

**Question 3c: Do you have any further comments on this section of the guidance?**

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

**Self Assessment**

*'Self-assessment describes a process whereby the supported person, often with support from a provider, undertakes an assessment of their own needs prior to a full assessment.'*

The above statement should include family members or carers or in conjunction with the health or social care professional. Someone entering the social care system for the first time would be unlikely to engage a provider prior to any initial assessment being carried out and this statement could be confusing.

Furthermore, examples of self assessment frameworks would be appropriate. As the Bill supports a conversational approach to identifying outcomes, capturing this through a self assessment framework for service users could be challenging. A national resource for service users (ie website with standard assessment frameworks) would create efficiencies and avoid the need for individual local authorities to develop these.

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

### **Consultation Questions**

#### Section 5 : Support Planning

This section of the guidance covered:

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

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

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

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

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

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

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

#### **Option 3 point 60.**

*'the relevant authority should seek to ensure that the services provided under Option 3 are as flexible as possible and ready to adapt to the desires of the individuals who use them.'*

The word 'desires' is open to translation and should be replaced with 'the relevant authority should seek to ensure that the services provided under Option 3 are as flexible as possible to meet the changing needs of the service user over time'

### **Section 66**

We would recommend inclusion of an appeals process prior to submission of a complaint. This would allow the decision of the Social Worker to be reviewed by Senior Officers outwith the formal complaints process. The video clip on SDSScotland web pages suggest that those unhappy with a decision could ask for their Social Worker to reconsider. Were this to be changed to a more formal appeal to a senior manager, this provides an opportunity for the situation to be reviewed independently prior to the complaints process.

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

### **Consultation Questions**

Section 6 : Monitoring and Review

**Question 5a: Was this section of the guidance clear and easy to understand?  
(please tick)**

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

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

Very useful	Quite Useful	Not very useful	Not at all useful
<input checked="" 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?*

We have no comment to make.

## Draft Statutory Guidance on Care and Support

### Consultation Questions

#### Section 7 : Facilitating genuine choice for individuals

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

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

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

Very useful	Quite Useful	Not very useful	Not at all useful
<input checked="" 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?*

Perhaps it would be worth including within this section that local authorities may need to have more flexibility in contracted services, particularly where a service user decides to use SDS funds in an alternative format.

To ensure that there is no manipulation of vulnerable service users, perhaps this section could also include suggestion of a trusted provider scheme. This would outline service providers that the local authority would be happy to contract with to reduce the likelihood of providers undercutting opponents to attract new business, at the detriment of vulnerable groups.

## Draft Statutory Guidance on Care and Support

### Consultation Questions

#### Section 8 : The role of the NHS professional

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

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

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

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

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

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

that are more appropriate for statutory guidance rather than Regulations?

Co-production of services and SDS implementation will be further enhanced by Health and Social Care Integration.

**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 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?*

Whilst providing guidance in relation to the capacity of the young person being supported, Regulation 9 does not identify the duties and consideration for the local authority where it is assessed that the parent does not hold “capacity” to ensure the appropriate support option for the child. The guidance states that professionals will advise and guide a parent where required in relation to the choice of support for the child however, does not provide regulation of guidance when it is believed the parent is not acting in the Child’s best interest and is not receptive to advice provided.

It would be helpful if the guidance to local authorities and partner agencies specifically referenced where the child was Looked after in relation to corporate parenting responsibilities, and whether conditions can be attached to a supervision order regarding the support and service received.

Similarly where the child is deemed “at risk” and in need of protection measures,

explicit guidance to ensure that if it is deemed necessary to remove parental choice where a parent presents a risk that local authorities have a due process to follow to ensure a child's service rights are managed.

The guidance is not particularly detailed in relation to children and GIRFEC principles, although provide an appropriate context, are not sufficiently explicit to the SDS guidance required.

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

### **Consultation Questions**

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

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

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

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

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

**Question 9c: Do you have any further comments on this section of the guidance?**

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

We have no comment to make.

## **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 checked="" 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?*

This section is clear with regards to the carers' assessment and subsequent processes that require to be completed.

The final sentence in section 123 '*Carers need not... undertake a formal assessment in order to receive some kind of support from the local authority.*' however, contradicts the preceding text.

Adopting such an ambiguous solution would result in significant change to information gathering processes whilst outcome monitoring may be more difficult.

Of greater concern though, is the possibility of significant growth in a requirement for resource support for carers. With no additional funding being available to support carers and potentially a large uptake in direct payment requests from this group, this could have significant impacts on local authority budgets and the availability of funding of care to service users themselves.

**Draft Statutory Guidance on Care and Support**

**Consultation Questions**

Section 9.4: Direct payments

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

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

**Question 11b: How useful did you find this section of the guidance? (please tick)**

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



### **Section 125**

Third Party Payments- Given the supported person remains responsible for the Direct Payment; is there any stipulation or guidance with regards to someone receiving a Direct Payment on behalf of a supported person to require a PVG check?

### **Section 127**

What can a Direct Payment be used for '***The short answer is anything...***' contradicts Section 124 when read without the context of section 130. These 2 sections should be linked to outline that the direct payment is there to support agreed outcomes for the individual. We would recommend against examples in Section 127 however, if they remain, they need to be explained more clearly i.e. what constitutes, '***a physical thing***' and what does not?

### **Section 128**

We would suggest inclusion of 'and responsibility' after "... carries the greatest level of flexibility". Principles of choice, control and flexibility should also be balanced and include regular reference to responsibility.

### **Section 129**

Providing examples at section 127 undermine section 129, particularly if there is a challenge, complaint or appeal against a decision by a professional in the assessment process.

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

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

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

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

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

Very useful	Quite Useful	Not very useful	Not at all useful
<input checked="" 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?*

We would support the proposal that re-ablement and intermediate care form part of the assessment process and are not subject to the 2013 Act and that this be detailed within the Act.

With regards to support interventions beyond disabled or older people, we would be against the alternatives for this particular set of social care needs. With housing legislation developed in advance of Self Directed Support, landlords have in place services and tenders that offer flexible, person centred support services. For the service users outlined, the majority experience chaotic circumstances outwith their control. Providing yet further responsibility is likely to have a direct impact on their ability to cope during a time of extreme vulnerability.

## **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?*

With a proposed roll out date of April 2014 and given the level of detail contained within this guidance; when is the finalised guidance likely to be available?

#### 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.*

There is a potential that there could be a significant rise in the cost of services to carers, particularly with the inclusion of payment to employ family members in tandem with the recent welfare reform implications. With household income affected by welfare reform, it is likely that individuals and agencies will seek SDS payments to offset reductions in income.

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

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

**i) age;**

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

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

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

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

We have no comment to make.

**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>

We have no comment to make.

## **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)?**

Part 2 of the draft Regulations are clear and easy to understand.

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

The inclusion of family members as recipients of direct payments is likely to be an area of significant growth and at high cost. There is likely to be high interest among service users to have the opportunity for family members to provide care, citing difficulty interacting with strangers or the intimacy of care. If these items are to be included, there should be clarification around how such criteria is established and justified. Without such guidance, it will be difficult to provide consistency in assessment across the country.

There is potential that people who previously provided unpaid care will now be able to be paid for their services, placing greater pressures on the public purse.

It would also suggest that paid care, which was almost exclusively carried out by persons who are regulated, will be able to be carried out more extensively by persons who are unregulated. Would work carried out by a family member be regulated work within the PVG scheme? If not, this means that the supported person who is provided with support by a family member will not have the protection afforded by the PVG scheme and risks could increase.

The previous Direct Payment legislation allowed the local authority discretion to decide if family members could provide support in exceptional circumstances. We would recommend that this should remain in place and could still be delivered within the values and principles of the Act.

**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?

We would be supportive of the proposed regulation.

**Question 4: What are your views on restricting access to direct payments for those who are homeless, those who are fleeing domestic abuse or those who require support in relation to drug or alcohol addiction?**

We would recommend that such service users should have restrictions on access to direct payments.

For a person experiencing these scenarios, seeking help is often only at crisis point, having attempted to manage their circumstances for a significant period of time.

Often, these groups will have more than 1 issue that needs to be resolved, including household debt, mental illness etc. In this transitional period, the individual often has a number of decisions to make including where they wish to be housed, applying for welfare benefits, managing a house for the first time, taking on responsibility for new financial commitments.

Inclusion of direct payments in such circumstances process is likely to make the system overly bureaucratic, cause greater anxiety to the individual and result in higher priority actions such as finding a home and how to claim benefits being affected.

**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.

We would support restricting access to direct payments in relation to provision of long term residential care.

Our concerns around offering direct payment in such circumstances include the impact on care home viability if payments are made late or possibly no payment being made to the care homes. There is also a potential that carers will move service user between care homes where they have concerns over the level of care being provided.

**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 states that professionals will advise and guide a parent where required in relation to the choice of support for the child however, does not provide regulation of guidance when it is believed the parent is not acting in the Child's best interest and is not receptive to advice provided.

It would be helpful if the guidance to local authorities and partner agencies specifically referenced where the child was Looked after in relation to corporate parenting responsibilities, and whether conditions can be attached to a supervision order regarding the support and service received.

Similarly where the child is deemed "at risk" and in need of protection measures, explicit guidance to ensure that if it is deemed necessary to remove parental choice where a parent presents a risk that local authorities have a due process to follow to ensure a child's service rights are managed.

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

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

We have no further comments to make.

**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.

No financial modelling has been carried out however, our greatest concern would be the potential increase in direct payments sought by unpaid carers. The draft Carers Regulations 2014 indicate that carers provide services that save the health and social care system £10billion each year.

With Welfare Reform affecting the household income of many individuals, there is a potential for high interest in direct payments as it becomes clear to communities the flexibility that exists in its operation. Should this come to fruition, local authority resources will be under significant pressure in a period of real time budget cuts.

The equality and human rights impacts of the regulations

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

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

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

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

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

We have no comment to make.

**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>

We have no comment to make.