

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 type="checkbox"/>	<input checked="" 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 headings for table 2 could perhaps be improved, it is not the case that all of the content on column two really can be described as responsibilities.

Should the final row of the table on commissioning say something more about individual commissioning?

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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
<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 type="checkbox"/>	<input checked="" 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 principles set out in Table 3 all seem to be discussed in more detail in the remainder of the guidance with the exception of dignity. Some indication should be given either here or elsewhere as to what might be involved in this.

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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
<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?

In paragraph 18 the words further assessment are placed within quotation marks. It is not clear why or what the purpose of this is and the same phenomenon appears elsewhere (e.g. in para 19 for eligibility and 118 for funded).

In para 20 there is a reference to persons in need including those subject to immigration control, however the availability of support to people in this category is rather complex and perhaps this should be mentioned, with further reference on to any relevant guidance.

In para 21 there is reference to the need to apply the eligibility criteria in para 22 in certain cases. It seems that many local authorities apply these in all cases and perhaps mention of that should be made here (particularly if carers and others may be reading this guidance), it could also be considered whether this guidance offers

an opportunity to formally extend these criteria to all groups. Consideration might also be given as to whether to mention RAS here, though it is dealt with at page 25.

This section seems to address assessment issues generally, including the assessment of children. If it is read in this way the suggestion made at the start of para 24 about local authorities not being in a position to refuse services needs to be clarified. It applies to services provided to adults and not, following the decision in *Crossan v South Lanarkshire Council* [2006] CSOH 28, to services provided under s 22 of the Children (Scotland) Act 1995.

Carers as part of the assessment are mentioned for the first time in para 33, they should be mentioned earlier.

Para 38 should read ‘... but it *must* not replace the further assessment....’

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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
<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?

Consideration might be given about whether it would be appropriate to say something about the legal guidance on RAS set out in *R(KM) v Cambridgeshire*

County Council [2012] UKSC 23 and about the need to take account of the duties imposed by the Equality Act 2010 both in developing the RAS and in making any changes to it.

There seems to be something missing at the end of the first sentence of the second paragraph in the box after para 52.

Section 12A would (at least in the case of adults) also seem to provide a (more appropriate?) basis for making the sort of decision discussed in para 65.

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

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

The section might comment on the need for reassessment before any change is made to support.

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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
<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?

If the guidance is to be read by a wider audience explanation of terms such as 'solution focused' and 'problem solving' or a cross reference to where they are considered would be helpful.

In para 88 the reference should be to the 1968 Act and clarifying the phrase 'give effect' would also be helpful.

Should there be a reference to NHS continuing care in this section?

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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
<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?

It might be useful to make it clear that section 23 applies to children 'affected' by disability and to explain the scope of this provision more fully. It might also be helpful to explain the difference in local authority duty as between community care services and services for individual children.

Although para 99 is correct about the acquisition of full legal capacity at 16 it might give more recognition to the increasing capacity of the child as she/he reaches that age – in some cases it may be that decisions can, in fact, only be made by the child if she/he has capacity to make that decision.

Para 103 contains an error as to the law. It is *not* possible to 'apply' for a power of attorney. Mention should also be made of the duty of a local authority to apply for the appointment of a guardian where this is necessary and no application is being made by anyone else. It might also be useful to qualify the reference to the 'opportunity' to apply for guardianship by making it clear that, in the absence of a proxy, in general no one else has the legal power to take a decision on behalf of an adult who does not have the capacity to take that decision.

Consideration might be given to mentioning the legislation on Additional Support Needs and as to whether the opportunity could be taken to provide more detailed guidance on transition to adult services.

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Consultation Questions

Section 9.2 : Supported decision-making and circles of support

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

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

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

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

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

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

In paragraph 110 the AWI Act should be given its full title. The point made above about the option to apply for guardianship and the duty of the local authority to act is also relevant here. It is not clear how relevant Advance Statements under the 2003 Act are here as these are restricted to forms treatment for a mental disorder. If capacity to make decisions may fluctuate it would certainly be possible for an individual to make a written statement setting out preferences on a number of ammeters, e.g. services to be provided, respite care etc., but there is no legal recognition for such statements in Scotland, though they would have to be considered because of the principles set out in the Adults with Incapacity (Scotland) Act 2000.

In para 113 the duty of the local authority to apply for appointment of a guardian in certain circumstances should be mentioned.

More generally, in reference to provision of services to adults who have no capacity to agree to them reference should be made to s 13ZA of the 1968 Act and the related guidance.

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Consultation Questions

Section 9.3: Carers

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

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

**Question 10b: How useful did you find this section of the guidance?
(please tick)**

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

Question 10c: Do you have any further comments on this section of the guidance?

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

In relation to choices available to the carer it should be made clear that one choice that the carer has is not to continue to provide care, or to provide the same level of care.

It might also be mentioned that the carer may also themselves have support needs quite apart from their role as a carer.

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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?

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 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 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?

Para 142 suggests that section 9.1 provides guidance on safeguarding/protection of children and links to care and support duties, if that is the intention in 9.1 then that aspect of it might be expanded.

Reference might be made to guidance relevant to paras 149-152.

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Consultation Questions – General Questions

The Guidance document as a whole

Question 13: Do you have any further general comments on the guidance?

For example, are there any gaps in terms of the topics covered by the guidance? Are there any major changes that you would recommend? Do you have any comments on the style and layout of the guidance, or the language used in the guidance?

Comments

The costs and benefits arising from this guidance

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

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

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

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

Comments

The equality and human rights impacts of the guidance

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

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

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

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

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

Comments

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

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

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

Comments

Consultation Questionnaire

Draft Regulations

Consultation Questions

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

The opportunity might have been taken to clarify the basis for assessment of need in light of the apparently different practices of local authorities in taking account of the resources of someone other than the person who will receive the service as part of this process.

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

Will regulation 10(1)(a) have the effect of deterring family members either from providing care where the requirements of reg 9 are met or, alternatively, from applying for guardianship or being appointed as an attorney (which types of support is it envisaged that a continuing attorney would have the power of control over?)?

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?

No comment

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?

No comment

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.

No comment

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?

No comment

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?

No comment

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 comment

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.

Depending on the consequences of regulation 10(1) it might be seen to treat adults with a disability, in particular those with some form of incapacity, less favourably.

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>

No comment