

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?

1 WD CHCP welcomes the clarification and definition, provided in the guidance, of the pathway for assessment leading to support planning ,monitoring and Review.

We welcome the outlining of the specific roles and responsibilities of **all** stakeholders involved in the assessment process – not just those responsible for the assessment.

2. Given this guidance's reference to monitoring and review responsibilities, it would have been useful if it had referenced previous Scottish Govt guidance on the nature of care management and care co-ordination and indicated whether this is affected by these new guidelines.

This section is useful but we would suggest that there needs to be more focus on outcomes, including under step 7 – 'Monitoring and Review'. In Table 2 we would suggest that the supported person should be placed at the start of the table since their participation in the assessment should come before professional responsibility for the support plan.

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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?

- 1 WD CHCP welcomes the emphasis on values and principles as the basis of all work carried out in this area and it is heartening to see advice about how this should influence our practice.
- 2 The guidance refers to values and principles carrying 'legal weight'. It would therefore have been useful for the implications of this to have been explained further so as staff carrying out such responsibilities are fully aware of the statutory implications of their work.

This works well as a reminder of the values and principles which underpin Self-Directed Support.

Paragraph 9 - We would suggest that the sentence '*It would not be appropriate (nor would it be helpful) for this guidance to seek to impose particular values on individual professionals*' is unnecessary and could be removed.

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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?

- 1 WD CHCP acknowledges that the clarification of eligibility criteria for services as outlined in this guidance reflects that which is already in use by this authority
- 2 Once again, any guidance to professionals which highlights eligibility criteria is very welcome, particularly given the current financial climate affecting local authorities
- 3 We are also pleased to note that the implications of such criteria are for local Authorities themselves to decide depending on local conditions and priorities.
- 4 On the basis that, all our work should be underpinned by certain universally agreed values and principles, we very much welcome the emphasis the guidance puts on how this should influence the practice implication for staff undertaking such duties.

We suggest the heading for this section should read Assessment and Eligibility. There is a general sense that this part of the Guidance is too lengthy and a bit disordered. Suggestions for improvement are as follows:

Paragraph 18, first bullet point – the purpose of assessment is to determine whether the person is a person in need. We therefore suggest that this should read '*The first purpose of assessment is to identify the person's needs with a view to determining whether the relevant authority has an obligation to meet those needs.*' Paragraph 19 could therefore be removed.

It would be helpful if this section made reference to the Supported Person's Pathway.

Paragraph 20 should be moved to the section on Eligibility Criteria.

Paragraph 21 – the eligibility criteria currently in use pre-dates Self Directed Support so we are unsure that this reference is particularly useful as it is likely to change.

Paragraph 22 – we suggest that this is referred to as the 'current eligibility framework'. It does not fit particularly well with the principles of SDS and as

implementation progresses it will need to be reviewed. This should follow Paragraph 23

Paragraph 23 – we suggest this should come after paragraph 24

Paragraph 24 – we suggest that the first sentence '*A local authority can take into account its overall resources when determining eligibility criteria*' should be moved to the end of paragraph 25

Paragraph 25 - We would suggest that this is moved to the front of this section to replace Paragraph 21.

We believe that there will be an enhanced level of uptake within the four options of SDS. This could result in a negative impact of the financial viability for the remaining services.

e.g. Should an older person seek an individual budget in place of day care from WDC or an externally provided unit, to purchase a more individual day care/ home care service. The running costs of this provision will remain the same resulting in an overall budgetary increase.

To enable Local Authorities with this transformation Scottish Government I should consider a '**Bridging Fund**' to support this new legislation.

We suggest that this section on eligibility should come after the section on assessment, therefore paragraphs 20-25 above should come after paragraph 40.

5 This entire section appears to refer only to adults with no reference to children and families (although we realise this is covered later on). If this section is specific to adults this should be explicit.

Table 5 – we suggest this would be better displayed as a description of assessment informed by personal outcomes and the description of service led assessment (left hand column) removed.

6 Paragraph 38 – we suggest this is moved to the beginning of the section on assessment or to the Supported Person's Pathway. We also suggest that '*further assessment*' be replaced with '*statutory assessment*'. We suggest that 'from a provider' is removed from the first sentence since support may come from a variety of sources.

We suggest this whole section is too long and that paragraphs 26-29, 31 and 32 could be placed in the appendices and referenced in paragraphs 18/19. A shorter version demonstrating the thread linking assessment to support planning would make this more meaningful.

Paragraph 30 should be moved to the section on 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?

- 1 West Dunbartonshire CHCP welcomes the emphasis on outcome based support Planning
- 2 We were pleased to see the linking of support planning with the 4 options under the SDS Act, but feel this should receive greater prominence, if only to stress the point that SDS is all encompassing, and not seen as an 'optional extra'
- 3 We are particularly pleased to note the emphasis, within the guidance, on what the supported person themselves, or their family and community, can contribute to support planning, as opposed to service users being seen as passive recipients of, mainly financially, supports.
- 4 Paragraph 52 – we suggest the sentences 'Self-directed support is not about cutting people loose or leaving them to get by on their own. It is not simply about "the money" or providing that money to the person.' Are removed as they don't add anything to this section.
Paragraph 57 – we suggest this is removed and replaced with 1 or 2 examples in a text box after Paragraph 58.
Paragraph 58 – we suggest that the sentence 'Though the authority is not obliged to make arrangements as set out in this guidance, there is very few limits to what can be done.' Is removed as it doesn't add anything to the section.
Paragraph 60 – we suggest that the first two sentences are reworded as follows: 'While individuals may continue to select their support under Option 3, the principles of choice and control, collaboration and involvement should continue to hold for individuals under this option.'

5 Paragraphs 64/65/66 – The professional discretion described here is related only to the individual’s assessed need and the form of support chosen. There are a number of issues with this in relation to Option 1.

Local authorities have wider duties in relation to safeguarding, including community safety. We often work closely with individuals to develop support in circumstances where they present potential risk to other people but are not subject to any of the compulsory orders under Regulation 11 of Part 4 of the Act. In these circumstances our concerns about the use of Option 1 would not be related to the assessed need of the individual, but the safety of others they may recruit to assist with their support.

Equally, there are some adults who have capacity to consent to a particular option but who may have difficulty understanding and exercising their responsibilities as employers. The support may be adequate to meet their agreed outcomes but if difficulty arises in relation to their role as an employer, there will be no legal protection for them within employment law if they have not complied with legislation. This potentially leaves vulnerable adults exposed to legal issues they would have difficulty understanding. It could also mean that professionals would be criticised for agreeing to such arrangements when it was clear the individual would not be able to understand and exercise their responsibility as an employer.

The same concerns apply where parents, whose lifestyles may cause some concern, opt to take Option 1 to secure support for a child.

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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?

1 WD CHCP welcomes the clarification the guidance offers regarding the purpose and rationale behind reviews.

2 Given the similarity of responsibility, the task of monitoring and review should

make reference to the guidelines for Scottish Government guidance for care co-ordination/case management.

Paragraph 80 – reviews may be triggered for a variety of reasons e.g. planned review, change of circumstances, change of needs/outcomes, issues around management of support including finances. It is possible that financial review may also be needed for Option 2 if the budget is not being managed well on behalf of the supported person by a third party.

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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?

- 1 WD CHCP welcomes the guidance offered to practitioners in relation to how to facilitate choice by service users and carers
- 2 We are also pleased to note the advice offered regarding the opportunities for service commissioning that self directed support presents and will ensure that future commissioning strategies will take this on board.
- 3 Nevertheless, we also feel the guidance does not give sufficient recognition to the challenges to traditional commissioning methods that are posed by the emphasis on self directed support and the longer term difficulties to the planning and development of services that this represents.
- 4 Table 8 Part 3 – we would suggest the description here should be asset based rather than focussing on gaps or deficits.
There could be more reference to provider capacity for both statutory and independent providers.
There is also no mention of personal assistants in this part.
Links could be made to both in-house local authority support, independent support and include references to SPAEN/Self Directed Support Scotland

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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?

1 More needs to be made in this section of the role of the NHS and Integration of Health and Social Care. Evidence is emerging that pooled budgets can work well – examples would be helpful.

2 Paragraph 84 – This needs more clarification i.e. the suggestion that health funded support could replace social care.
Some reference in this section to the agenda for personalised health care agenda and the equality strategy would be useful.

3 Paragraph 85 – we would suggest that '(and senior managers)' should not be in brackets as it suggests their role is less important.
We suggest there should be reference to multi-agency assessment and NHS Continuing Care.

4 Case Study 1 – we don't think this is a particularly good example of a joint package of support and will try to provide other options. If retained page 42 paragraph 3 needs to have 'from a local care agency' removed - in relation to the employment of a personal assistant as this could cause confusion.

5 Paragraph 87 Bullet Point 2 – should read 'They can arrange for the transfer of funding from the NHS to the local authority in order to pay for aspects of health care provision'.

6 There are parallels with the agenda to integrate health and social care, though

this is not specifically referred to in the Guidance. SDS needs to be adopted by health colleagues as part of the Integration agenda and this will require collaboration, training and a culture change within health at all levels.

7 Paragraph 90 We suggest that this requires to be more detailed regarding responsibility of ensuring correct training for the individual is in place.

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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?

- 1 WD CHCP welcomes the emphasis that self directed support places on the element of choice that young people and their carers should expect when choosing support into adulthood
- 2 However, we believe that an essential prerequisite of such empowerment is consumer sovereignty which requires much more effort to ensure young people and their parents are made aware, not only of the range of adult services available, but also, how young people can be supported to utilise mainstream community facilities as an integral element of any support package
- 3 We suggest that this section of the Guidance needs more work and the Guidance around how SDS will work in the wider Children and Families context is required.
- 4 While the exclusions for Direct Payment seem to be broadly appropriate in the draft Regulations, we believe that professional judgement should be used to determine whether people fleeing domestic abuse or who are homeless would benefit from having access to direct payments. These situations are sometimes dealt with in a planned way rather than always being immediate crisis. If this is

something the local authority has a power to do it may be helpful in some situations.

5 Some young people are 'looked after' on a part time basis if they attend term time residential placements. It's important that families can access SDS options during holiday periods to ensure they are appropriately supported.

6 The concept of 'children in need' is very broad and we would suggest that SDS options could be useful in a variety of circumstances e.g. to work with families to try to prevent children from being 'accommodated'.

There needs to be much more clarity within the Guidance as to the interface between legislation for SDS and child protection legislation. Some confirmation is needed that, even where it would appear that all four SDS options could be offered, child protection concerns will always take precedence over the options for SDS.

Where compulsory measures are in place e.g. a child is 'supervised' at home, there may be little room for flexibility unless professional discretion can be applied to use self directed support as a way of empowering the family to engage.

7 The capacity of the parent to manage a direct payment on behalf of a child has to be taken into consideration, particularly where there are money management issues and also problems of addiction. Again we would suggest that professional discretion is applied.

8 Training for family carers and personal assistants needs to be accessible and sufficient to ensure children are not put at risk. The current PVG regulations are a concern as there is no legal requirement for parents to ensure that personal assistants are members of the PVG scheme.

9 We need more guidance on how self directed support can be applied to support young carers who are providing support for a parent or guardian. The parent's view of needs may be in conflict with those of the child. Some exploration of how to ensure the young carer's voice is heard in relation to the four options.

10 There are also issues during transition to adult services when a young person lacks capacity to consent but the parent has been using a direct payment to employ staff. A guardianship application would have to be made in order that the support arrangements can continue and this process needs to be started well before the young person reaches the age of 18.

Where the young person has reduced capacity and Guardianship is not deemed necessary there may be difficulty if it is considered that the young person would not be capable of taking on the role of being the employer. This could create legal issues for both the family and the local authority in terms of who is the lawful employer. Some consideration of the legal issues surrounding this would be helpful.

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?

- 1 WD CHCP LDS welcomes the guidance offered to professionals regarding the need to ensure support informed and independent decision making on behalf of service users and their carers.
- 2 However, we believe more attention needs to be paid to how service users and carers can be supported to exercise such choice and how we ensure that this is on the widest possible information available e.g. expansion of advocacy and brokerage services. There needs to be recognition that people have very different levels of understanding and capacity to engage in the process of planning support and the methods used. Where there are others who can support the individual in their decision making, a clear understanding of what their role would or could be in relation to the assistance with managing the support is needed.
- 3 More Guidance is needed in relation to people whose capacity to consent is in doubt. In one of the SDS test sites, this clearly led to an increase in applications for legal guardianship.
- 4 Where the local authority has welfare guardianship and has the power to make welfare decisions there should be clarity about whether option 3 is automatically applied and that this can include, where appropriate, the provision of the local authorities own services.

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 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?

1. WD CHCP welcomes the emphasis placed on the responsibility of all Agencies to ensure Carers needs are appropriately assessed.
- 2 The guidance offers little recognition of the potential conflicts that can arise between carers' needs and those of service users they care for, - a tension which can hamper true choice by service users as to the nature of services they Aspire to.
- 3 We are generally very supportive of the power to provide support to carers to assist them in their caring role and believe this will afford flexibility to local authorities, particularly to support carers where the supported person declines support from others.
There is no mention in the Guidance of the intention to relax the rules on employing family members using a direct payment. This raises a number of issues and we would suggest that further clarification is provided within guidance as to how this is applied in practice e.g.
 - How does carer assessment apply to family members who are providing both paid and unpaid support:
 - How should the paid support be viewed in relation to provision of short breaks/respite?
 - How should we view the circumstances where the carer is not accessing appropriate breaks from the paid support e.g. asserts that they are providing the support on an unpaid basis while on paid annual leave? This effectively means that family carers don't take the statutory breaks required under employment law and can impact on both the paid and unpaid support.
 - What plans should be put in place to cover sickness, annual leave etc when the supported person and the carer decline to have any contingency/back

up support built in to the support package?
These issues can make the support provision to family carers complex and there is a confusion of roles.

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?

- 1 Given the historical challenges faced by local authorities in encouraging uptake of direct payments WD CHCP welcomes further guidance to professionals on this issue.
- 2 We are also concerned that the ability of local authorities to safeguard the welfare of vulnerable service users continue to be compromised by their lack of access to concerns that may arise over the criminal records of personal assistants.
- 3 In relation to Third Party Direct Payments it is important that the roles of both the supported person and the third party are made clear and that there is evidence that all parties understand their responsibilities e.g. signed mandate. This can prevent problems later on. There may also be a need for some professional discretion if it appears there may be undue pressure being applied in relation to financial management e.g. a family member or friend is keen to manage the finances but are known to have issues of addiction/gambling.
It should always be clear that a personal assistant employed to provide support should not be appointed to manage the finances.
Paragraph 127 – perhaps this should read as ‘eligible need’ and not ‘assessed need’,
Paragraph 127, bullet point 4 - replace the word ‘holiday’ with short break, otherwise this raises expectations about agreed use if a direct payment.
- 4 Where a direct payment has been terminated by the local authority e.g. due to misuse, the local authority discretion as to whether to reinstate should be covered

in the Guidance.

Paragraph 138 – this will apply equally to health input, whereas the suggestion here is that it applies to social work responsibilities.

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?

1 West Dunbartonshire CHCP welcomes:

- detailed outline of LA responsibilities regarding these areas
- robust guidance as to what represents good practice in these areas
- the acknowledgement that the various areas are very much linked
- the emphasis on the integration of personal and nursing care – an area with which WDC are well acquainted given our experience in operating an integrated health/social care service now for a number of years

In terms of housing support in general, we think it would have been useful to make reference to the responsibilities of providers of social care housing in this area.

2 On the issue of whether SDS applies to re-ablement and intermediate care, we feel that as wide a range of choice as possible should be offered irrespective of the immediate circumstances. However, we acknowledge that sometimes, given the urgency of the situation, full consumer sovereignty on such issues may not always be achievable. There should be an expectation that, once the immediate need is met, the full range of services, as outlined in the SDS legislation, should be considered as soon as possible.

3 Adult Support and Protection

Much clearer guidance is required in relation to the interface between Self-Directed Support, particularly Direct Payments, and Adult Support and Protection legislation. Both of these confer statutory duties on local authorities which could be seen to be

conflicting. ASP applies to all citizens in circumstances where they could be viewed as being at risk. Local authorities often support individuals whose behaviour could be perceived as presenting a risk to others and as such we would want to exercise our safeguarding duties in respect of all citizens.

4 The application of Self Directed Support options, and in particular direct payments, is a legal duty with only a small number of exclusions relating to compulsory orders. Local authorities work with significant numbers of people for whom access to a direct payment, especially to employ personal assistants, could be perceived as risky and ill advised. Discretion on the method of support appears to be restricted to the needs of the supported person. The proposed regulations appear to afford no discretion to professionals to restrict the option to employ staff if there is substantial evidence of potential risk of harm to staff. The supported person takes on the role of employer and the authority's ability to share information with personal assistants and monitor that relationship is limited not only in practice but in law.

Local authorities may also refer individuals to independent support organisations to support them in their preparation to become employers. Sharing of information in these circumstances could be a difficult issue.

Professionals could not realistically ignore the existence of substantial risk and would be in breach of wider duties in relation to safeguarding. The same concerns would also apply to child protection issues, but the draft Guidance and Regulations does not appear to address this.

We would suggest that much clearer Guidance in relation to prioritising safeguarding duties in relation to the duties under Self-Directed Support and the legal implications of these, are necessary.

Re-ablement/Intermediate Care

The clarification that these are not subject to Self-Directed Support is helpful. Where a Self-Directed Support option is already in place and the supported person needs re-ablement support or intermediate care it is important that these can be provided alongside, and be complimentary to, the support already in place. This is particularly important where personal assistants are employed and the supported person has to meet employer responsibilities.

Equipment and adaptations

5 This section appears to be light in detail, particularly since it now covers housing adaptations. There is no information on how this impacts on other funding sources and obligations e.g. housing.

Current direct payment regulations and guidance includes information on ownership, repair and maintenance but this has been left out of this Guidance.

Clarity on how this will apply to owner occupiers and landlords is needed.

Other forms of social welfare

6 As previously stated it might be useful to have the option of Self-Directed Support for wider forms of support, however professional discretion as to when and how this would be appropriate would be important, particularly for direct payment where there are addiction issues. It would be useful to confer a power to offer Self-Directed Support on local authorities, rather than a duty.

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?

Overall, we welcome the detailed expectations of practice as laid out in the draft and look forward to ensuring such best practice is undertaken by all our staff.

The final Guidance and regulations will not be published until late in the process and this should be taken into account along with evidence from the SDS test sites that it is a lengthy process for authorities.

The employment of family carers is not addressed in the Guidance despite the fact that there is a material shift in emphasis within the draft Regulations. This is a significant gap and does not seem to recognise the complex shift in dynamics that this can produce within family relationships. It also has the potential to change the dynamic of how society views family carers in relation to what support the state provides and what a family may choose to do as part of their familial role.

The process of assessment for both carers and the people they support can be complex and difficult and there are sometimes conflicting needs and views about how needs should or could be met. It is often difficult to ascertain whether pressure is being applied either to a carer or the person they support by the other party. This is even more difficult when the carer takes on a paid role. In some families this arrangement works well, but the proposed change to regulations will make it much more difficult for professionals to exercise discretion in order to protect the interests of either carer or supported person.

There is also the risk that employing family carers could reduce their level of social inclusion and networks, if they see less of other people in the context of their support. This does not sit well with an asset based approach to increasing independence, socialisation and self reliance.

If there is concern at review that the supported person's outcomes are not being met this could substantially impact on the relationships of all concerned and the family's relationship with the local authority.

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.

We remain concerned that there will be additional costs to LA's/CHCP's. In particular, there is likely to be an increased administrative burden to manage the new scheme. We are also concerned about the possibility of additional resource requirements in relation to assessment and care management.

Having reviewed the final Business and Regulatory Impact Assessment (BRIA) we feel that the costs and budgets contained therein may not be adequate to meet the additional financial burdens placed on LA's.

We do not believe that the funds available reflect the very difficult situation LA's are experiencing. In particular, we are concerned that the costs associated with SDS do not take account of the uncertainties surrounding the closure of the independent fund (ILF) and the subsequent transfer of monies and responsibilities to LA's.

Overall, LA's will incur additional costs in administration of DP's whilst the increase in external payments will increase the demand on creditor functions. They will require to continue to reassess models of service delivery beyond the 2015 stage where transitional funding ends. We would ask that consideration is given to extending the period for this funding.'

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.

WD CHCP believe that the guidance contained within the draft document should be

applied equally to all groups within our community and that it is the task of those implementing it to ensure this by close monitoring and review of its implementation.

We believe the Guidance fulfils its obligations in relation to equality.

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>

WD CHCP believe that, if the guidance contained within the draft document is properly applied to all groups within our community, ensuring the values and principles it represents are upheld, these guidelines should clearly strengthen practitioners' observance of human rights. Once again, it is the task of those implementing the guidance to monitor how it is put into practice and to ensure human rights are upheld throughout the processes outlined.

We have listed some concerns regarding safeguarding and would suggest these could have wider implications with regards to the human rights of individuals who could potentially be placed at risk.

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)?

We do not believe that the Gross payment is helpful for Local Authorities. The Default should be Net. The gross payment will result in an issue of recharge and is likely to increase the debt burden on Local Authorities

The option for Direct Payment user to seek Gross payment involves additional administration for local authorities which increases cost unnecessarily.

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

WDC are of the opinion that having a list of suitable family members to employ and the outlining factors is undoubtedly helpful. However this raises some concerns i.e. 10(1)a .As undue pressure is difficult to quantify and therefor evidence.

These issues can make the support provision to family carers complex and lead to a confusion of roles. It is difficult for professionals to assess the level of influence placed on individuals to seek or accept these arrangements. We would therefor

suggest that the employment of family members is at the discretion of the Local Authority.

9(3)- Those factors: There requires to be an outlier that these factors apply on when resulting in the best possible outcome for the individual.

9(3)b- "The Direct Payment user has difficulty interacting with strangers" WDC would welcome a consideration of this statement being an exceptional circumstance. As a result of the Direct Payment users disability they can in the first instance find interaction with strangers difficult. Proper support planning and on-going work can alleviate some of the Direct payments users' anxieties. There is an underlying risk of Social Isolation and Development.

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 suggest that the offer of the option of a direct payment should be discretionary where there are concerns around safeguarding both of the individual and of the person providing support. Adult Support and Protection and Child Protection duties should take precedence over the duty to offer a direct payment. Otherwise the professional assessment could be significantly compromised in relation to duties associated with all of these Acts. There are significant concerns over the legal position for professionals and local authorities.

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?

As previously stated it might be useful to have the option of Self-Directed Support for wider forms of support, however professional discretion as to when and how this would be appropriate would be important, particularly for direct payment where there are addiction issues. It would be useful to confer a power to offer Self-Directed Support on local authorities, rather than a duty.

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 Agree that restricting access to Direct Payments for Residential care , other than the four consecutive weeks as stated in the 'Direct Payments Draft

Regulations' should apply.

There has been little or no demand for Direct Payments for residential care. Within the current models of provision is difficult to see any real advantage.

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?

As previously stated it would make sense to enable professional discretion in relation to when direct payments are appropriate. This would afford maximum flexibility to professionals to engage with families to secure support which best meets their outcomes at appropriate stages in the support.

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

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

Comments

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.

The full cost of implementation is difficult to estimate, and additional guidance in respect of Individual Service funds is required. There is also concern from the perspective of WDC that we will incur additional cost associated with, Administration and monitoring related to the increased uptake of Personal Budgets. We believe that additional transformational funding will be required beyond 2015.

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>

Comments