

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?

YouthLink Scotland is the national agency for youth work. It is a membership organisation and is in the unique position of representing the interests and aspirations of the whole of the sector, both voluntary and statutory.

Our response is mainly concerned with issues pertaining directly to young people. Where we lack the technical knowledge to respond, we will refer to the views of Self Directed Support Scotland (SDSS) – a national membership organisation which actively promotes independent living by supporting, working with, and championing the aims of self-directed support disabled people's organisations.

Overall, we welcome The Person's Pathway, which is clearly defined and will help provide consistency in relation to individuals' care and support.

SDSS has raised a concern regarding the term 'the provider', as used in The Person's Pathway. They argue that this term is potentially confusing as disabled people's organisations/support organisations are legally distinct to 'providers'. They suggest that 'support organisations' would be a more appropriate term. Furthermore, support organisations are involved earlier in an individual's pathway than is suggested here. It is recommended that these organisations be included at Steps 1 and 2. The earlier an individual has access to support, the better the outcomes are likely to be.

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 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?

Our view is that there needs to be a more explicit link between the guidance and the European Convention of Human Rights, the United Nations Convention on the Rights of Disabled People, the Equality and Human Rights Acts and the United Nations Convention on the Rights of the Child. A clearer link to existing rights legislation will help to empower individuals, increase their understanding of the range of options available to them, and ultimately lead to better outcomes.

As currently framed, children and young people are not visible in this section. We support the values and principles of care and support, but would like to see these connected to the SHAANARI indicators outlined further on in the guidance. We would also welcome greater clarity as to how the guidance will work alongside the Children and Young People (Scotland) Bill. For instance, how will the Child's Plan and the Named Person service fit with the assessment and support plan as outlined in Table 3?

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

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

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

The view of SDSS is that Part 24, in its current form, does not provide an answer or offer direction for local authorities as to their role in appropriately resourcing social

care/support packages.

The guidance provides flexibility to allow local authorities to use their discretion in relation to determining eligibility criteria. However, this can result in an inconsistent and patchy approach, with children and young people in one local authority area qualifying for support, whereas if they lived in a neighbouring local authority they would receive nothing. Moreover, the assessment criteria for children is different to that used for entitlement to adult services, which can lead to difficulties in relation to transition.

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?

We agree that the support planning process should be personalised in order to achieve the best outcomes. Support planning processes should be as accessible to the individual as possible.

It is important that resourcing policies are based on the principles of fairness and transparency, in order to protect individuals' care and funding. SDSS has reported instances where the new resource policies adopted by local authorities have resulted in an arbitrary cut in resources across social care budgets.

We would support measures to reduce the variance in resource allocation models across local authorities, as this has led to differences in the resourcing of individuals' support plans depending on where in Scotland they live. This inconsistency is unfair and unequal.

In relation to Part 46, it should be noted that there are often more than 'two parties' involved in producing a support plan. The individual, a family member, a local authority and a support organisation may all be involved. Again, there needs to be thought given to how this links in with the Children and Young People (Scotland) Bill and the Child's Plan/Named Person provisions.

Part 66 deals with complaints mechanisms. SDSS argue that that an independent review mechanism, with the power to impose sanctions, is the best means of ensuring disabled people's rights. Our view is that means of redress should, in the first instance, be local, low-level and young-person friendly. We would like to see some connection between these proposals and the new investigatory powers to be conferred on the Commissioner for Children and Young People as part of the Children and Young People (Scotland) Bill.

We welcome the inclusion of user-led support and information organisations, and, in Part 76, the acknowledgement of the role of advocacy services. It is important that professionals are aware of, and can direct young people to, peer support, information and advocacy services that meet young people's needs.

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 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?

We welcome a clear definition of when an individual or local authority can re-assess social care/support needs. However, there needs to be a stronger link between this section and the section on children and young people. Children and young people's needs and outcomes will change, often quite frequently. Reference to the SHAANARI outcomes should be made here. Again, this section should reference the duties in the Children and Young People (Scotland) Bill, as, at present, it is unclear how the monitoring and review proposals will work alongside the single Child's Plan and Named Person as the one key point of contact for families.

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 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?

This section could be strengthened by referencing the local authority's role in supporting community capacity-building. Local organisations are vital for supporting disabled young people's participation and inclusion in their communities.

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?

The role of the health service in social care/support needs clarification, and we welcome the guidance's contribution to this. SDSS has reported that the transition from health services to social care/support has been problematic and disjointed in many cases, and we would welcome a joined-up approach to planning and delivery, in line with the duties on children's service planning in the Children and Young People (Scotland) Bill.

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?

YouthLink Scotland wishes to see a stronger link between this section and the Children and Young People (Scotland) Bill. We would like to see greater clarity on how these proposals will tie into the duties in the Bill in relation to shared planning, the single Child's Plan and the Named Person service. The Bill places a concept of 'wellbeing' in statute and defines this in relation to the SHAANARI outcomes. Again, we would like to see greater thought given to how these outcomes will link to adult outcomes as a young person moves from child to adult services.

We note that there are only two paragraphs in the guidance in relation to transitions. Transition from children's services to adult services is a critical and often difficult time in an individual's pathway. We would suggest that transitions need to be managed in a manner that is similar to the arrangements for looked-

after young people leaving care. We would recommend that the GIRFEC/SHAANARI approach is continued with young people aged 16-25 until they reach a stage where they feel that they no longer require this approach.

We would also welcome greater clarity over the position of looked-after young people and those who are in foster care, in relation to how their transitions will be supported and whether they will have a full choice regarding the 4 options.

We also have concerns over the language used in this section, which in our view needs to be more positive, and should be underpinned by a rights-based approach.

For instance, paragraph 99 states that ‘the professional should inform the appropriate person that they must, in so far as practicable and taking account of the maturity of the child, give the child an opportunity to indicate whether they want to express a view about their support.’ We would suggest that the views of the child – in whatever way they wish to communicate – *must* be actively sought, and acted on. ‘An opportunity to indicate whether they want to express a view’ does not go far enough to ensure young people’s rights are respected. Similarly, ‘the appropriate person should give the child an opportunity to express their view’ and ‘the appropriate person should *have regard* to the views of the child in making the key decisions about that child’s support’ are not strong enough. Again, in paragraph 100 we would replace “the child’s opinions *need* to be actively sought” with *must* be actively sought.

Article 12 of the UNCRC states that when adults are making decisions that affect children, children have the right to say what they think should happen and have their opinions taken into account. UNCRC rights apply to all children, regardless of whether they have a disability or not (Article 2).

We would argue that all children and young people have the right to make decisions about their support, taking account of the child’s level of maturity (but not using this as a get-out clause to exclude young people’s views). The transition pathway should start early, and should not be left until the young person is just about to turn 16. Early planning for transition is likely to lead to better outcomes. There needs to be some consideration given to the age of self-determination and whether the approach taken here is consistent with that taken in other key policies and legislation affecting young people.

However, we support the statement that ‘the child should be given appropriate help to express their views and wishes, and should have access to independent advocacy when appropriate.’ We also support the flexible and gradualist approach taken in paragraphs 101 and 102, which allows for situations to change and for more responsibility to be taken over time.

We welcome the inclusion of paragraph 104 reiterating that authorities have a duty to promote the options to children, young people and their families, and that they should encourage a culture of positive risk taking to enable young people to take on more responsibility.

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?

Clarity is needed over the terminology, as 'circles of support' is not well-understood in some sectors.

It is important that existing local organisations and groups are utilised in order to ensure that young people and their families are included in their communities. There is a need to eliminate any barriers to young people's participation, and that young people and their families are aware of who they can turn to for information and support to ensure that they can access a range of opportunities that meet their needs and supports their development.

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?

The position of young carers, and their specific needs, should be more clearly addressed.

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?

Individuals should be able to access training on managing their direct payments. In the case of young people, this training should be tailored to their needs Evidence gathered by SDSS shows that when individuals have received training, their support packages are more sustainable.

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?

We support SDSS' view that charging individuals for their social care/support services is unfair, and they are in any case unable to afford to do so. This is especially true given the changes being introduced as part of Welfare Reform, in which the report to the Scottish Parliament's Welfare Reform Committee outlined that those claiming disability and sickness benefits will be most adversely affected.

This section should make reference to the existing devolved Public Duties under the Equality Act, whereby a local authority must consult with disabled people on policy/service changes.

Draft Statutory Guidance on Care and Support

Consultation Questions – General Questions

The Guidance document as a whole

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

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

The guidance should better reflect the Equality Act duties which underpin the ethos of self-directed support and the 2013 Act. Further links and references should be made throughout the guidance to the 2013 Act. We believe this would better assist local authorities in the discharging of the social care/support duties

In general, children and young people are something of an afterthought and their needs and rights should be more effectively woven through the guidance.

We would recommend – if the Scottish Government is not already doing so – that a young person-friendly version of the guidance is produced, in partnership with young people and organisations representing their interests.

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.

No 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.

Charging for social care is unfair, as this places a financial burden on disabled people which they cannot afford, and are an inefficient way of providing additional revenue for care services.

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>

No 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)?

No comments.

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

No comments.

Question 3: What are your views on Regulation 11 which deems individuals who are placed under a variety of criminal justice orders to be ineligible to receive direct payments?

For example, is it appropriate to impose the exclusions listed in Regulation 11? Are there any persons not listed in regulation 11 to whom it would be inappropriate to offer the option of a direct payment?

No comments.

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

We question why individuals who are fleeing domestic abuse are included in this category. We would suggest that individuals in these circumstances should be consulted (with advocacy support if required) as to whether they wish to receive, or continue to receive, direct payments or not.

In general, a local authority should apply proportionality and common sense when assessing an individual's suitability for options 1 and 4, and this should always take place while the individual has access to advocacy.

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.

In general, we believe that all service users should be allowed choice in social care, wherever reasonably possible. Research conducted in 2013 by SDSS (available at www.sdsinfo.org.uk) indicates that, outside of Glasgow and Edinburgh, there is a real lack of choice in relation to support organisation. This leads to inconsistency and unequal access across Scotland.

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?

We agree that the regulations should not specify circumstances where direct payments should be unavailable for children, young people and their families. Given the complex and varying nature of the care and support needs of individual children and young people, a list of restrictions would not be helpful.

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 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.

No comments.

The equality and human rights impacts of the regulations

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

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

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

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

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

As stated above, the community charges advocated by the regulations are unfair, as they place a financial burden on disabled people which they cannot afford, and are an inefficient way of providing additional revenue for care services.

Disabled people are already taking a disproportionate ‘hit’ owing to the changes being enacted under Welfare Reform. Research commissioned by the Scottish Parliament’s Welfare Reform Committee found that those in receipt of disability and sickness benefits were likely to be most affected by the changes. In addition, many of these claimants will also be affected by other changes to benefits (e.g. housing benefit). It is imperative that the Scottish Government does all it can within its powers to support and protect the rights of disabled people.

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 support the views of SDSS, which is that without community care/support, many disabled people cannot participate in society on an equal basis to others. All of the rights protected by the Equality Act, European Convention on Human Rights (ECHR), in the Human Rights Act and in subsequent human rights conventions, belong to disabled people. The United Nations Convention on the Rights of Disabled People (UNCRPD) strengthens and contextualises these rights. It also recognises the role of community care/support in doing so: Article 19 of the UNCRPD states that to ensure disabled people equally enjoy the rights laid out in the ECHR, states must make sure that “disabled people have a right to live in the community, with the support they need and can make choices like other people do”. In addition, at Section 1A, the SDS (Scotland) Act 2012 further recognises the role of community care in supporting such rights to participate in society. Given its

role in promoting, protecting and supporting the human rights of disabled people, it is unfair that users of community care/support should be asked to pay towards it.