

## Health and Community Care

### **Social Care (Self-directed Support) (Scotland) Act 2013: Draft Regulations and Statutory Guidance: Consultation Analysis**

Shona Mulholland and Sue Granville  
Why Research

On 17 April 2013, the Scottish Government launched a consultation on the Social Care (Self-directed Support) (Scotland) Act 2013 draft Regulations and Statutory Guidance.

This consultation ran until 10 July 2013 and a total of 144 responses were received and included in analysis. Key findings from the analysis of these responses are summarised below.

### **Main Findings: Guidance**

- There was broad agreement with the underlying principles and values of self-directed support (SDS).
- A large majority of respondents felt each section of the guidance was clear and easy to understand. Largest numbers of respondents felt each section was 'quite useful'.
- There were mixed views on the content of the guidance. Key comments were a need for consistency in the style of writing, a relevant focus throughout, more reference to the broad legislative context and greater reference to support for carers and children's services, including transitions.
- There were requests for a transparent appeal process and clarity about the complaints and review process; and better linkage between the guidance and the regulations.
- There are concerns over the timescale for implementation of SDS, the resources that will be needed and training to support this; also concerns over the new role and responsibilities of the service user.

### **Main Findings: Regulations**

- The employment of close relatives should remain at the discretion of professionals and there should be greater emphasis on the role of professional judgement and discretion throughout the process.
- There are concerns over how to achieve consistency across all local authority areas in terms of staff training, eligibility criteria, financial allocation and access to services; with requests for a fair and transparent system of resource allocation.

## Background overview

On 17 April 2013, the Scottish Government launched a consultation on the Social Care (Self-directed Support) (Scotland) Act 2013 draft Regulations and Statutory Guidance. The consultation ran until 10 July 2013.

### Consultation

The consultation presented the draft Regulations and the Statutory Guidance and included questions on both of these documents as well as on the associated Equality Impact Assessment (EQIA) and Business and Regulatory Impact Assessment (BRIA).

A total of 144 consultation responses were received; 21 from individuals and 123 from organisations.

## Overview of main findings

Many of those responding to this consultation welcomed the opportunity to do so and noted their broad agreement with the underlying principles and values of self-directed support (SDS).

Most of the comments made on each of the sections of the guidance and regulations were specific. In many cases, these were one-off issues around things which respondents thought had been omitted or needed clarification, or on suggested changes to ordering, or to words and phrases.

While some more general themes did emerge, these came from small numbers of respondents and although the consultation asked separate questions about the draft Regulations and the Statutory Guidance, many of the themes which emerged were common to both. No dominant themes emerged in the analysis.

### Draft Statutory Guidance on Care and Support

Respondents were asked the same series of questions about each of the sections of the guidance.

When asked 'Was this section of the guidance clear and easy to understand?' a large majority answered yes for each of the sections.

When asked 'How useful did you find this section of the guidance?' at every section the largest numbers of those who responded said 'quite useful'.

Most respondents felt the equality and human rights impacts of the guidance and regulations fulfil their obligations in relation to equality.

### Guidance: main themes

A number of main, general themes emerged in relation to the statutory guidance.

There were mixed views on the content of the guidance. While many respondents commented that it is too lengthy, there

were also many requests for some sections to be extended and for more case study examples to be included.

The guidance was felt to be comprehensive and easy to read for professionals, although there were some comments that the style of writing changes throughout the document, with allied requests for greater consistency in its presentation.

There were some queries as to which audiences this guidance is meant for, with some assumptions that it is purely for a professional audience, and others that it is for all audiences. A number of respondents wanted guidance that is accessible to professionals, service users and others involved in self-directed support, although this would have implications in terms of the language used and accessibility. There were comments that too much jargon is used. Many respondents felt the guidance as it stands is not relevant to service users.

A few respondents felt there is a need to ensure the focus of the guidance is relevant throughout and that it serves the purpose for which it is intended (as guidance). Some commented that in places it currently provides information that is more relevant to staff training, rather than focusing on how the guidance should be interpreted in practice. It could also serve to undermine other support guidance produced by organisations for staff.

There were comments that the guidance does not go far enough in terms of providing an explanation of how the wording within the 2013 Act should be interpreted and especially how it should be put into practice.

Some respondents would like more reference to the Equalities Act or for the guidance to better reflect the Equalities Act. There were also calls for greater consideration of the broad legislative context. There is a need to ensure the guidance is up-to-date in relation to the integration of health and social care and that it takes account of other legislative changes planned for the future.

There were requests for greater focus on the relationships between all involved and the need to ensure that all are involved. Some respondents noted a need for more focus on private, voluntary or other support providers, and greater involvement of the wider community. There were also some requests to show how SDS will change the relationship between the supported person and providers.

There were a number of areas where it was felt there should be a greater focus throughout; these included support for carers; both for their own needs and to help them provide support as part of the SDS processes. Also, greater inclusion of children's services throughout, within the context of GIRFEC; this was also seen to be beneficial when they come to transition to adult services. Respondents also saw a need for more guidance on transitions. There were calls for more emphasis within the guidance on the involvement of Health professionals.

Many wanted to ensure that at each stage of the process a supported person has access to independent advocacy. There was concern about any increased levels of access to independent advocacy services as a result of SDS. There were also requests for a transparent appeal process and more clarity about the relationship between the complaints and review process.

There were some comments that the guidance as it currently stands does not reflect the findings from the test site evaluations, with requests for greater consideration to these in the final version.

There were comments of a lack of linkage between the guidance and the regulations, with requests to ensure that each part is a reflection of the other.

There were comments on the need for the Scottish Government to ensure that the correct information reaches the correct people; the supported person and front line workers from all sectors; at the correct part of the process. The need to provide support to access and understand the information was stressed; this would include adequate time to think about the information before making decisions and the flexibility to respond to each individual's circumstances.

A key concern for many, most notably local authorities, was the timescale for implementation of SDS and the allied impact on local authorities and service providers. Linked to this, there were also concerns over the resources that will be needed for implementation, particularly if there is going to need to be more innovation in service design and flexibility in service provision. There were concerns about an increased workload for professionals following implementation of SDS. Furthermore, a number of respondents noted a potential need for training for local authority staff, service providers and those offering advocacy and support services.

Some respondents noted there will need to be cultural shift across local authorities and service providers for SDS to be fully implemented and effective; also concern from some service providers about the sustainability of the sector, particularly as this sits alongside the integration agenda.

There was also concern about how service users and carers will be able to adapt to their role under SDS. For example, they will need to have an understanding of the implications and legislation surrounding being an employer. As such, there were a number of calls for all involved to have a clear understanding of their roles and responsibilities and links to documentation that clearly explain about issues such as being an employer, how to obtain a PVG check and so on.

### **Draft Regulations: Main themes**

There was a general view that the employment of close relatives should remain at the discretion of professionals to ensure an appropriate balance between risk and choice; there will be some instances where a family member will be most appropriate to provide support. There were also requests for more emphasis on the role of professional judgement and discretion throughout the process.

The stage of the process at which a financial allocation will be made was stressed by several respondents. There were a number of concerns over how to achieve consistency across all local authority areas in terms of staff training, eligibility criteria, financial allocation and access to services.

Some commented that out-with the central belt, access to services is not equal. There were some concerns over resources that will be needed by local authorities, service providers and advocacy providers in ensuring the right services are offered to the right individuals at the right time.

There were also references to the need for a fair and transparent system for resource allocation and a request for the guidance to be stronger in allowing local authorities to develop their Resource Allocation Systems. In terms of the direct payment, there was a preference, especially from local authorities, for the payment to be paid net rather than gross.

There was significant disagreement with the concept of excluding certain types of individual from receiving a direct payment. The need to balance risk and choice was stressed; there was a view that, where appropriate, Adult Support and Protection and Child Protection duties should take precedence.

This document, along with full research report of the project, and further information about social and policy research commissioned and published on behalf of the Scottish Government, can be viewed on the Internet at: <http://www.scotland.gov.uk/socialresearch>. If you have any further queries about social research, please contact us at [socialresearch@scotland.gsi.gov.uk](mailto:socialresearch@scotland.gsi.gov.uk) or on 0131-244 2111.