The Scottish Government

Social Care (Self-Directed Support) (Scotland) Act 2013: Draft Regulations and Statutory Guidance

Analysis of Consultation Responses

Health and Community Care

social research

SOCIAL CARE (SELF-DIRECTED SUPPORT) (SCOTLAND) ACT 2013: DRAFT REGULATIONS AND STATUTORY GUIDANCE

ANALYSIS OF CONSULTATION RESPONSES

Shona Mulholland and Sue Granville
Why Research

Scottish Government Social Research
2013

<u>**Table of Contents**</u>

ACKNOWLEDGMENTS

Thanks to the individuals and organisations who responded to the consultation and to all at the Adult Care & Support Division who provided input and offered advice as required.

EXECUTIVE SUMMARY

Background

1.1 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 sought views on the proposed draft Regulations and Statutory Guidance and ran until 10 July 2013.

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

1.3 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).

1.4 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).

1.5 Most of the comments made on each of the sections of the guidance and regulations were specific and, in very many cases, 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.

1.6 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; this is likely to be because there were many sections and questions on the guidance and regulations upon which respondents commented, but usually in relatively small numbers.

Draft Statutory Guidance on Care and Support

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

1.8 When asked ‘Was this section of the guidance clear and easy to understand?’ a large majority answered yes in relation to each of the sections.

1.9 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’. Very few said not very or not at all useful.

1.10 In terms of the equality and human rights impacts of the guidance and regulations, most of those responding felt that these fulfil their obligations in relation to equality.

Guidance: Main themes

1.11 The following paragraphs highlight the main, general themes that emerged in relation to the statutory guidance. It should be noted that many of these themes were also noted in responses to questions on the draft Regulations.

- 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. Regardless of who the guidance should be aimed at, many of 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 i.e. as guidance. There were some comments 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. As such, some of the content was felt not to be relevant or appropriate; furthermore, it could also serve to undermine other support guidance that is produced by professional organisations for their 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.

- There were requests for more reference to the Equalities Act or that the guidance should better reflect the Equalities Act. There were also calls for greater consideration of the broad legislative context. For example, the guidance needs to link to other relevant legislation and to other relevant strategies, standards and codes of practice. 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. This includes the supported person, carers, family and friends as well as professionals. Some respondents also 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 self-directed support will change the relationship between the supported person and the professionals 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 Self-directed Support (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 in the Guidance 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 and there were requests that greater consideration should be given 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. Furthermore, a number of respondents noted that there is likely to be a 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. There was also concern from some service providers about the sustainability of the sector during a period of significant transition, particularly as this sits alongside the integration agenda.

- As well as the impact on local authority staff and service providers, there was a lot of concern about how service users and carers will be able to adapt to their role under SDS. For example, because they will employ personal assistants, 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. While the guidance is not expected to provide full details of employment legislation, there is a need for links to documentation that clearly explains about issues such as being an employer, how to obtain a PVG check and so on.

Draft Regulations: Main themes

1.12 The following paragraphs highlight the main, general themes that emerged in relation to the draft Regulations. It should be noted that many of these themes were also noted in responses to questions on the guidance.

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

- The need to clarify at which stage of the process 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 authorities areas in terms of staff training, eligibility criteria, financial allocation and access to services.

- Some commented on the ‘postcode lottery’ nature of accessing services across Scotland, and noted that out-with the central belt access to services is not equal. Furthermore, there were concerns around the 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. This was primarily because respondents felt that each potential exclusion from a direct payment should be based on assessment, support planning and professional judgement.

- 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.

2 INTRODUCTION

Background

2.1 Self-directed Support (SDS) offers individuals and their families informed choice about how support is provided to them. It gives people control over an individual budget and lets them decide how to spend money on the support best suited to their health and social care needs. There are four ways in which a person's individual support can be accessed and these are:

- Option 1. A direct cash payment.
- Option 2. Payment to a provider chosen by the individual; the council or funder is the budget holder but decisions on how it is spent are made by the individual.
- Option 3. Choice of a council arranged service.
- Option 4. A mix of the three above options for different types of support.

2.2 In November 2012 the Social Care (Self-directed Support) (Scotland) Act 2013 was passed by the Scottish Parliament. This Act aims to deliver the Scottish Government's vision for social care where support is based around the individual accessing support rather than the services providing this support. It sets out the duties placed on local authorities and the options for those accessing services. Scottish Ministers still have to decide the date when the Act will come into force but it is expected to be in March 2014.

2.3 Statutory Guidance and Regulations have been drafted to accompany the Act. The Statutory Guidance focuses on:

- The general principles of dignity, participation, involvement, informed choice and collaboration.
- The duty to provide a range of choices to those who are eligible for care and support.
- The duty to provide information and support.
- The power to provide support to carers – and the accompanying duty to provide choice over that support.
- The duties and powers in relation to assessment, support planning and review.

2.4 The draft Regulations are intended to provide a further level of law beneath the main Act and to deal with any additional relevant details.

2.5 From 17 April to 10 July 2013, the Scottish Government ran a consultation on the Social Care (Self-directed Support) (Scotland) Act 2013 draft Regulations and Statutory Guidance. The consultation sought views on the proposed draft Regulations and Statutory Guidance and on the associated Equality Impact Assessment (EIA) and Business and Regulatory Impact Assessment (BRIA).

2.6 A total of 144 consultation responses were received; 21 from individuals[1] and 123 from organisations.

---

[1] An additional individual submitted a Respondent Information Form but no response

Overview of responses

2.7 The consultation respondent information form (RIF) included a list of organisation and individual groups and respondents were asked to tick the group most appropriate for themself or for their organisation. These groups were used to enable analysis as to whether differences, or commonalities, appeared across the various different types of organisations and/or individuals that responded.

2.8 As can be seen in the following table, almost half of all organisational responses came from the voluntary sector (57).

Table 2.1 Consultation responses

Respondent group		**Number**
Total Individuals		21
	Local authority***	24
	Community Health Partnership*	4
	Health Board***	2
	Voluntary sector organisation	57
	Private Sector organisation	2
	Professional or regulatory body	8
	Support & information or Advocacy	16
	Other**	10
Total Organisations		123
Total		**144**

*****Community Health Partnership respondents will be referred to as CHP in the reporting.
**Organisations in the Other category will be referred to as another organisation in the reporting.
***One local authority and health board submitted a joint response, this is included in the Other category.

2.9 A number of user-led organisations responded and these are included either in the Voluntary or in the Support & information or Advocacy organisation totals, depending on which of these was ticked on the response form. Where both of these boxes were ticked the response has been included in the Support & information or Advocacy total.

2.10 No respondents classed themselves as Central government or Academic institutions.

2.11 Fifteen respondents (individuals and voluntary organisations) submitted their comments using an easy-read summary version of the consultation which had fewer questions.

2.12 The consultation paper also provided a template for respondents to submit case studies for consideration in the final version of the statutory guidance, or additional best practice guides. Seven respondents submitted one or more case studies.

2.13 A list of all those organisations who submitted a response to the consultation is included in Appendix 1.

Analysis and reporting

2.14 Comments given at each question were examined to identify main themes; similar issues raised or comments made in a number of responses. We also looked for sub-themes such as reasons for opinions, specific examples or explanations, alternative suggestions or other related comments.

2.15 It became apparent that a great many responses contained very detailed comments on wording or other aspects of the guidance and Regulations. Most of the comments made on each of the sections of the guidance and regulations were very specific and, in very many cases, 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. Respondents submitted their own suggestions for alterations and additions; some included re-writes of paragraphs or sections. There were also detailed comments on structure. While the Self-directed Support Policy team are considering all of these points, they have not been included here as this would make for a very long and complicated report.

2.16 While some, more general, themes did emerge, these came from fairly small numbers of respondents. In addition, although the consultation asked separate questions about the draft Regulations and the Statutory Guidance, many themes, and many specific points, were common to both.

2.17 The themes that were identified were looked at in relation to respondent groups to see whether any particular theme was specific to one particular group, or whether it appeared in responses across groups. It must be borne in mind that where an opinion has been identified in relation to a particular group or groups, this does not indicate that other groups do not share this opinion, but rather that they have simply not commented on that particular point. Where no groups are mentioned in relation to a theme it can be taken that related comments appeared in responses across a number of groups.

2.18 Some questions contained yes/no or other tick box options to allow respondents to indicate their response. Results from these questions are presented either in text or in table format. Where respondents did not use the questionnaire format for their response but indicated within their text their answer to one of the closed questions, these have been included in the relevant count.

2.19 The following chapters document the substance of the analysis and present the main views, or themes, emerging from responses. Appropriate verbatim comments, from those who gave permission for their responses to be made public, are used throughout the report to illustrate themes or to provide extra detail for some specific points.

2.20 While the consultation gave all those who wished to comment an opportunity to do so, given the self-selecting nature of this type of exercise, any figures quoted here cannot be extrapolated to the wider population.

3 GUIDANCE - THE SUPPORTED PERSON'S PATHWAY

3.1 **Section 2** of the guidance, **The Supported Person's Pathway**, presents a table detailing seven steps that a supported person will follow; their pathway to access care and support; and gives a short description of each step. These steps are:

- Step 1: "I need support"
- Step 2: First Contact
- Step 3: Eligibility and assessment
- Step 4: Support Planning
- Step 5: Decision Time
- Step 6: Support
- Step 7: Monitoring and Review

3.2 This section also provides a table summarising the roles and responsibilities of the supported person, their carer, their support provider along with various managers, advisers and officials within relevant organisations such as the NHS or local authority.

Question 1a: Was this section of the guidance clear and easy to understand?

3.3 More than half of all respondents (80) said yes, this section was clear and easy to understand. Two respondents said no and the rest (62) did not give a definitive answer.

Question 1b: How useful did you find this section of the guidance?

3.4 Respondents were asked to say whether they had found the section very useful, quite useful, not very useful or not at all useful. The table below shows that many of those who gave an answer said that it was **quite useful** (50). A smaller number said it was very useful (30). Two respondents said it was not very useful and one, an individual, said it was not at all useful. Sixty-one did not specify.

Table 3.2 Usefulness of Section 2 of the guidance

Respondent group	Very useful	Quite useful	Not very useful	Not at all useful	No response
Individuals (21)	4	2	-	1	14
Local authority (24)	9	12	1	-	2
Community Health Partnership (4)	1	1	1	-	1
Health Board (2)	1	-	-	-	1
Voluntary sector organisation (57)	9	22	-	-	26
Private Sector organisation (2)	1	1	-	-	-
Professional or regulatory body (8)	2	2	-	-	4
Support & information/Advocacy (16)	1	7	-	-	8
Other (10)	2	3	-	-	5
Total (144)	**30**	**50**	**2**	**1**	**61**

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

3.5 Ninety-three respondents answered this question and while many respondents voiced support for this section, most comments related to omissions, additions and changes.

3.6 Most points described below were raised by a small number of respondents as, on the whole, different respondents commented on different parts of Section 2.

Section 2

3.7 Several respondents made general supportive comments; some simply said that this section is clear or helpful.

3.8 Respondents, across various groups, identified a number of other issues that they would like to see addressed or included in Section 2. These included:

- Emergency intervention
- Contingency planning
- Forward plans
- Conflict resolution
- More information on eligibility criteria and on why criteria is localised
- Recognition "that there will be 'reasonable adjustment' for the needs of individuals who have particular and sometimes unseen communication needs (voluntary organisation commenting on people with autism)
- The need for a clear and comprehensive understanding of each individual's circumstance, experience and/or condition (especially with regards dementia)

3.9 There were also comments, from a local authority and voluntary organisations, that the pathway is very adult-focused and should be extended to include the needs of children and their families. One voluntary organisation pointed out "It is not clear from the guidance how the SDS model aligns with proposals in the Children and Young People Bill. As guidance refers to the Children and Young People Bill, it is likely to need updated when the Bill is enacted in 2014 to explain the named person provision, the single child's plan and the array of changes to the planning and delivery of children services that will arise from the raft of applicable legislation currently being progressed in Scotland".

3.10 Another felt that the role of education and third-sector organisations in supporting children and families should be made clearer in the guidance.

3.11 Commenting on the transition between child and adult services, a voluntary organisation saw the need for children to be included throughout the full document as "the pathway for a young person leaving children's services into adult services is a very different experience if the young person has been introduced to the ideas of choice and control as from already existing SDS services". This respondent included a rewritten pathway reflecting this point.

3.12 A private organisation also commented on transitions, particularly that from child to adult services, and asked that an additional stage be inserted relating to additional support needs at transitions.

3.13 While one voluntary organisation made positive comments about the move to outcomes based assessment, other respondents commented on the need for a greater focus on outcomes. One local authority suggested: “that the ‘person’s support plan’ should be referred to more simply as the ‘person’s plan’. This would assist with the shift away from inputs and process to a focus on outcomes”.

3.14 There were also comments, primarily from voluntary sector organisations, on the need for a culture change in order to ensure that self-directed support succeeds. This should include reference to Article 8 of the European Convention on Human Rights (a right to respect for private and family life, home and correspondence). Emphasis on provision of support at each stage of the process was of particular importance.

3.15 Financial issues were mentioned by a small number of respondents from various groups. In particular, in the area of substance misuse, there were comments on the need for block funding for voluntary services dealing with people with substance use issues who may be unwilling or unable to access support through their local authority social work services.

The Supported Person’s Pathway

3.16 A small number of respondents saw a need for a step pre-stage 1 “which reflects the requirements of local authorities to promote awareness of the rights to request assessment and support. For an individual or a carer to get to the stage that they recognise that they ‘need support’, they must first know that a) support is available, and b) know where they can go, and who to make contact with”. (voluntary organisation)

3.17 Several organisations, mainly from the voluntary group, wanted to see support organisations included in the first two steps as: “The earlier an individual has access to support, the better the outcomes are likely to be.” (voluntary organisation).

3.18 There were many comments on Step 3, mainly from local authorities and voluntary organisations. Comments included the need to strengthen this step to include an expectation that local authorities will recognise the value of all types of support services and understand the need to provide support before a ‘crisis point’. Individuals also highlighted the need to consider whether the supported person needs support at this stage. The need to reference the right to independent advocacy was also mentioned, by voluntary organisations. Similar comments were noted in relation to Step 4.

3.19 Respondents, across various groups, wanted to see more focus on outcomes and to see Step 7 including a record of whether outcomes had been achieved as well as whether outcomes have changed

3.20 A small number of respondents commented on the language used in Section 2 and especially in the Supported Person's Pathway table. There were suggestions from voluntary organisations that "some of the language could be made a little brighter and more inspiring." These respondents suggested replacing 'needs' with 'needs and aspirations'.

3.21 A few respondents felt that the language was more geared towards professionals, for example: "It is important that the language and style used in this section is accessible and clear, and that people feel that this section answers some of the questions they have about self-directed support." (voluntary organisation)

3.22 The use of some specific terms was mentioned and these included:

- 'Social Services' and 'Social Care'; the difference between these may not be clear to everyone.
- The term 'provider' could be confusing as support organisations are legally distinct to providers. The term support organisations would be more appropriate.
- That the use of the word professional is unhelpful; this should be social care or health professional.
- That terms such as review or assessment would not be understood by people who do not understand the system.

3.23 Other comments included the need for the role and involvement of carers, including unpaid carers, at each step of the pathway to made more clear. A voluntary organisation suggested: "May we suggest that reference is made about support organisations near the start of the pathway to secure support in providing full understanding of the options available? Pathway appears not to mention support organisations at any point even though the Act talks about support orgs being an intrinsic part of the path".

3.24 There was also a suggestion that the role of the supported person should be more positive, reflecting that supported people understand their needs and know best what will meet these needs. A respondent from the professional/regulatory body group suggested that a column showing who may be involved at each stage would be helpful.

3.25 Several respondents commented on the linear layout of the Pathway. Views on this layout were mixed with a small number of mainly voluntary organisations welcoming the linear or stage layout; some felt that the whole of the guidance should adopt a similar style. A few of these organisations also suggested that pictures or diagrams would make the guidance more user-friendly.

3.26 However, there were concerns, from support & information/advocacy and voluntary organisations, that the process is not linear and needs flexibility, as re-assessments and reviews are required, especially for progressive or degenerative conditions. A private organisation suggested a circular diagram while a voluntary organisation suggested that: "this section uses the same person's pathway/cycle developed by the M&E subgroup. It has been proposed that this be used for the best practice guidance so for the avoidance of confusion it should be used in the statutory guidance as well".

3.27 Another issue with the stage format was raised by a private organisation; that there is no guidance on “what would happen if an individual after they had started their support plan decided that they had made a wrong or inappropriate choice”. This concern applied not only to the supported person but also in the challenges this would pose for businesses providing the support.

Roles and Responsibilities

3.28 There was a large number of comments on the Roles and Responsibilities table; many of these comments came from voluntary organisations. Several respondents, across groups, said that the supported person should be placed at the start of the table.

3.29 A private sector organisation asked why the term ‘professionals’ only applied to statutory professionals and not to independent or third sector professionals. This respondent also commented that they “are not sure the description of responsibilities is sufficiently strong in recognising the significant culture change which needs to take place for the local authority ‘professional’ in order to achieve the outcomes of the Act, which in practice will mean a change in the dynamic of power and control”. Voluntary sector respondents also commented on this issue, particularly in respect of the word ‘may’ in the responsibilities of the professional (they may arrange; they may give voice); one suggested that ‘may’ be replaced with ‘should’. Similar comments on this issue were noted in several other responses across respondent groups. Comments on the role of the provider also included suggestions that ‘can’ play an important role be changed to ‘should’ play an important role.

3.30 A professional/regulatory respondent felt that ‘professional’ should be replaced by more specific terms at different places, for example ‘assessor’ could be used in the Roles and Responsibilities table. In relation to professionals, a voluntary organisation commented that Local Area Co-ordinators are not included. Again in relation to the ‘roles of the professional, a local authority felt there needed to be reference to other legislation which needed to be taken into account such as the Adult Support and Protection Act.

3.31 The term ‘the provider’ was seen as potentially confusing; several support & information/advocacy and voluntary organisations suggested that should be changed to support organisations. There were also several requests for advocacy and user-support organisations to be added to the table.

3.32 While there was appreciation for the inclusion of the unpaid carers role, respondents identified a lack of clarity on the role of guardians. There was also a call for the unpaid carer section to acknowledge that these carers may be children or young people and a call to include the role of other family and friends who provide support.

3.33 The need for equality, diversity and disability awareness training, including deaf awareness, for finance managers was put forward by one voluntary organisation. There was also a call for Social Work professionals to be aware of equality legislation and human rights law in carrying out their duties.

4 GUIDANCE - VALUES AND PRINCIPLES

4.1 **Section 3: Values and Principles** explains that the values underpinning care and support will be unique to each professional, the guidance does not, therefore, seek to impose values but rather describes the core values used to inform the guidance: These core values are: Respect; Fairness; Independence; Freedom; and Safety.

4.2 This Section of the guidance also outlines the four principles of care and support provided in the 2013 Act: In addition to the statutory principles, the guidance also outlines other good practice principles. A table shows all of these principles alongside what each means in practice. The principles are:

- Participation and dignity (statutory) – these are separated in the consultation table
- Involvement (statutory)
- Informed choice (statutory)
- Collaboration (statutory)
- Innovation
- Responsibility
- Risk enablement

Question 2a: Was this section of the guidance clear and easy to understand?

4.3 Most of those who replied (76) said that this section of the guidance was clear and easy to understand. Six respondents said it was not and the remainder (62) did not reply.

Question 2b: How useful did you find this section of the guidance?

4.4 Most of those who gave an answer said that it was **quite useful** (43), 33 respondents said it was very useful. There were five respondents who thought that this section was not very useful; one individual said it was not at all useful.

Table 4.2 Usefulness of Section 3 of the guidance

Respondent group	Very useful	Quite useful	Not very useful	Not at all useful	No response
Individuals (21)	2	4	-	1	14
Local authority (24)	11	9	2	-	2
Community Health Partnership (4)	1	1	1	-	1
Health Board (2)	1	-	-	-	1
Voluntary sector organisation (57)	15	15	1	-	26
Private Sector organisation (2)	-	2	-	-	-
Professional or regulatory body (8)	-	4	-	-	4
Support & information/Advocacy (16)	-	6	1	-	9
Other (10)	3	2	-	-	5
Total (144)	**33**	**43**	**5**	**1**	**62**

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

4.5 Eighty-five respondents commented, a small number of these simply stated their support for this section and many others voiced support in their response before going on to comment on issues that they felt needed to be addressed.

4.6 As with the previous section, few points were made by large numbers of respondents although many did make points specific to the guidance for children and young people with several identifying a need to make explicit reference to the SHANARRI wellbeing indicators for children and young people (Safe, Healthy, Active, Nurtured, Achieving, Respected, Responsible, Included).

4.7 A small number of respondents, mainly from the voluntary sector, commented on the need for a more explicit link between the guidance and various equality legislation and more links with and focus on rights of independent living. There were comments from a number of respondents that equality and rights should be included in the list of values.

4.8 Some respondents thought this section long and unwieldy. A CHP respondent felt this was because "that the document conflates guidance on the operation of the Act with generic practitioner guidance". A voluntary organisation said: "I agree with anchoring the guidance in a few key principles but surely less is more here?"

4.9 Several respondents welcomed the principle of Informed Choice underpinning care and support provision. There was, however, a call for greater clarity on how this should be supported and a need for the description of 'informed choice' to be strengthened to "emphasise that the supported person should be assisted to have as much control as they want over the support they choose". (professional/regulatory body)

4.10 The inclusion of Innovation was welcomed by respondents, with another organisation saying: "Although it is not a statutory principle, it is hoped that the use of the other principles will lead to innovation, with the help of creative thinking from people, professionals, providers and advocacy/Brokerage services". However, there were calls for this to be clarified or for examples to be given. A voluntary organisation suggested 'Creativity' would be a better term.

4.11 There were suggestions that the sentence 'Communities should be assisted to play an active role in the commissioning of services' be moved from Involvement to Participation; there was also a suggestion that this be reworded as their input extends beyond commissioning." There were also queries over what is meant by communities and how this would be achieved and comments that this sentence is confusing.

4.12 The need for monitoring and documentation was mentioned in several responses, for example a voluntary organisation said: "At paragraph 12 (Involvement (Section 1 in SDS Act)) we believe that the guidance should detail how this should be recorded and monitored, as without robust recording and monitoring it is unclear how meaningful involvement will be assured. It may also be useful to include a minimum expectation of what might be expected in terms of ‘involvement’ or further explanation of what ‘involvement’ might mean.”

4.13 Another voluntary organisation asked: “how will statutory services demonstrate that they are acting in accordance with the principles and how easy would it be to challenge a service which repeatedly ignores the principles”. There was also a question as to whether staff have adequate training and support to ensure they are able to provide the support required in relation to SDS.

4.14 There were some suggestions that more emphasis needs to be placed on safety and risk; including clarification and personal responsibility. This would also include the need for greater emphasis on supporting people to take risks. More clarification was requested over the terms risk enablement and risk management.

4.15 Several respondents, mainly from voluntary organisations, asked for more detail on how the principles and values would be achieved; there was a suggestion that examples of how to put these into practice would be very useful in this section.

5 GUIDANCE - ELIGIBILITY AND ASSESSMENT

5.1 **Section 4: Eligibility and Assessment** looks at assessment, its basis in social care legislation, its purpose in day to day practice and its place in the supported person's pathway. The legal basis for assessment and the purpose of assessment are set out in this section.

5.2 Guidance on determining eligibility for support includes eligibility criteria and the role of the professional and local authority in applying this criteria via the assessment. There is guidance on the detailed exploration of the person's needs and on the general principles for assessment given in the 2013 Act (Collaboration, Involvement and Informed choice).

5.3 The Exchange Model of Assessment is described and illustrated, showing how the views of all involved can be brought together and the personal outcomes (things that matter to the supported person) identified.

5.4 The differences between Service led assessment and assessment based on personal outcomes are detailed and challenges in moving to an outcome based approach are addressed. There is also short description of self-assessment.

5.5 The final part of this section sets out three main products expected from the assessment process: the assessment; the support plan; and the actual support provided to the individual.

Question 3a: Was this section of the guidance clear and easy to understand?

5.6 Sixty-eight respondents yes, it was clear and easy to understand. Eight respondents said no and 68 did not reply.

Question 3b: How useful did you find this section of the guidance?

5.7 Most of those who answered felt it was **quite useful** (53). Twelve thought it very useful, 15 said not very useful and 2 said it was not at all useful. The remainder (62) did not give an answer to this question. The table below shows the results.

Table 5.2 Usefulness of Section 4 of the guidance

Respondent group	Very useful	Quite useful	Not very useful	Not at all useful	No response
Individuals (21)	3	2	-	1	15
Local authority (24)	2	15	5	-	2
Community Health Partnership (4)	-	2	-	1	1
Health Board (2)	-	1	-	-	1
Voluntary sector organisation (57)	5	18	8	-	26
Private Sector organisation (2)	-	1	1	-	-
Professional or regulatory body (8)	-	4	-	-	4
Support & information/Advocacy (16)	1	6	1	-	8
Other (10)	1	4	-	-	5
Total (144)	**12**	**53**	**15**	**2**	**62**

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

5.8 Comments were noted in 98 responses. As can be seen by the introduction to this chapter, Section 4 contains guidance on a wide range of topics and, while many respondents supported the section and the guidance contained in it, there were also many issues which they wanted to see addressed.

5.9 Several respondents commented that this section is too long, contains too much jargon and is rather disordered.

5.10 Other comments included the need for greater detail, especially on definitions, and several respondents felt that examples or case studies would be useful.

5.11 There were also comments that the language of the support plan was unfamiliar compared to the more traditional language of a care plan. One local authority commented: “A shorter version demonstrating the thread linking assessment to support planning would make this more meaningful.” Others suggested streamlining or removing detail about the eligibility framework, support planning and assessment.

5.12 Respondents gave some suggestions on how to shorten the section and these included splitting it into two separate sections, one on assessment and one on eligibility. There were also various suggestions for re-ordering the section; some respondents included their own example of the section as they felt it should be laid out.

5.13 General comments on this section included suggestions that the title should be reversed to read Assessment and Eligibility as, respondents felt, this was the correct order. A local authority said: “the purpose of assessment is to determine the person’s eligibility for support. This should be reflected as an outcome of the assessment and, therefore, the section on eligibility should follow the section on assessment”. Several respondents commented that putting eligibility before assessment runs contrary to an outcomes approach.

5.14 A small number of respondents mentioned the need to give estimates of how long an assessment process is likely to take, this could perhaps be illustrated by graphics or pictures. The need for interim support while the assessment is taking place was also mentioned as was the possibility of an indicative budget, which would be especially useful for young people moving to adult services to allow them to plan their care choices.

5.15 Respondents pointed out that the section seems only to refer to adults and asked that this be clarified. For example, several organisations across groups made a similar suggestion: “If this section is specific to adults this should be explicit. If it intended to be reflective of assessment generally it should include references to GIRFEC, carers assessment etc” (local authority).

5.16 A small number of respondents, mainly from voluntary organisations, felt that the SHANARRI indicators for children could be placed in this section.

5.17 Other specific groups were mentioned and these included deaf people and deaf children, people with Parkinson's disease and people with autism. The specific requirements of these groups need to be considered within the assessment process to ensure they are properly supported to engage with the process. Communication methods, assistive technology and interpretation services and specialist approaches, among others, need to be considered within the assessment process. There was a comment that the range of eligibility criteria should be examined to ensure that people with autism or Asperger's Syndrome are included, as currently many fall outwith the criteria even though they have support needs.

5.18 There were also suggestions that the fluctuating or degenerative nature of many mental health and physical conditions should be recognised; Parkinson's and Motor Neurone Disease were specific areas of concern.

5.19 Respondents were also concerned that people who are in recovery may not be included, even though they need on-going support or support in the case of relapse. A voluntary organisation also commented that "people at an early stage of developing a problem with drugs/alcohol also need access to support and it would be counterproductive to wait until an individual had deteriorated in order to be able to provide support. The need for the protection of funding for early intervention/recovery support for people with substance problems is therefore indicated".

5.20 There was concern, mainly from voluntary organisations, that the connection between eligibility criteria and outcome-led assessments is based on the initial threshold for support rather than outcomes. Respondents felt there should be more focus on outcomes and there was a suggestion, from a voluntary organisation, that this could be achieved through approaches such as the Talking Points Approach which has demonstrated the positive effects of person-centred discussions on individual outcomes.

5.21 There was also concern over a lack of consistency across local authorities in respect of assessments and eligibility criteria. One voluntary organisation reported: "A couple of years ago we undertook a study of EC [eligibility criteria] in Scotland and discovered that there was not even a common understanding about what these terms applied to – some councils viewed them as referring to "risk", others saw them as an overall judgement of "need". We welcome the development in England of a move to a single definition of EC with clear definitions and a minimum standard for when people can expect support". There was a call for a Scottish standard and for a standardised assessment tool.

5.22 Several respondents pointed out that the eligibility criteria currently used pre-dates SDS and asked whether this reference would change. A local authority and a professional/regulatory body commented that the eligibility criteria as described is not, in any case, accurate in relation to the 2009 Eligibility Guidance. In addition, the 2009 guidance was mandatory for older people but optional for those aged 18-64.

5.23 Many, especially voluntary organisations, welcomed the focus on the needs of the individual over budgetary considerations, the commitment to involving individuals and their families and carers and the guidance that local authorities ‘should publish the eligibility criteria/framework and it should do so in a clear and transparent way’.

5.24 However, several respondents wanted to see national guidelines or minimum standards in order to avoid a postcode-lottery of care and support provision and problems when a supported person moves from one area to another with different criteria. There was also some concern that preventative support in particular may suffer from reducing budgets. Several voluntary organisations expressed concern that there is no direction given to local authorities in appropriately resourcing care and support.

5.25 There were comments that the guidance could remind local authorities of the need to conduct an Equality Impact Assessment when reviewing or changing eligibility criteria and to make these criteria publicly available. There were also comments that the guidance should make it clear that eligibility criteria should reflect the statutory principle of participation and a right to an ordinary life.

5.26 Local authorities raised a variety of other points and these included concern that “the guidance fails to properly acknowledge the over- riding statutory duty of care that falls to local authorities”. There was also concern that local authorities may struggle to achieve everything in this paragraph because of “the current spending review, fiscal pressures and overarching policies including Welfare Reform”.

5.27 Respondents welcomed the assertion that the supported person and professional will work together. It was suggested that there should be training to assist professionals in thinking innovatively.

5.28 There was some support for the use of the Exchange Model but also comments that it should place more emphasis on views and wishes of the user being paramount.

5.29 There were calls for the guidance to highlight the potential for a conflict of interest when providers help with self-assessment. The need for independent support was stressed to ensure that the organisations or people supporting the self-assessment have no self-interest in the outcome.

5.30 There were also comments that the term self-assessment could be misleading; a local authority commented said it “could lead to the expectation that the assessment is complete without the input from a health or social care professional. There is certainly a great deal of benefit to be gained from individuals preparing for the “supported assessment” and we would want to encourage them to do so but care should be taken when deciding on the terminology used for this”.

5.31 Support to take part in a self-assessment was seen as vital but respondents stressed that it must be made clear this will contribute to, but will not replace, the full assessment.

6 GUIDANCE - SUPPORT PLANNING

6.1 **Section 5: Support Planning** sets out some key aspects for a support plan: personal outcomes; resources; available choices and other associated information. Key ingredients of support plans from the point of view of the supported person are also included. The planning process is examined as is the format and purpose of the plan itself.

6.2 Risk assessment and risk management are also addressed in this section.

6.3 On the topic of resources, the guidance looks at both financial resources (including approaches to resource allocation) and other resources including:

- the person’s attributes and assets (their skills, knowledge, awareness, background, decision-making skills and contacts);
- the person’s well-being and inner strength;
- the person’s extended family, close friends, work colleagues and community;
- the budget or funding which the person can access to meet their eligible needs;
- the professional’s knowledge, expertise, background and contacts;
- the local resources, shops, health and education services, community facilities (libraries, sports centres, community “hubs” etc.), and;
- any other sources of information, advice and support available to the supported person.

6.4 The choices that must be made available to the supported person are detailed in the Act, as is the way in these choices must be offered. The guidance discusses each of the four options in the Act:

- Option 1 The making of a direct payment by the local authority to the supported person for the provision of support.

- Option 2 The selection of support by the supported person, the making of arrangements for the provision of it by the local authority on behalf of the supported person and, where it is provided by someone other than the authority, the payment by the local authority of the relevant amount in respect of the cost of that provision.

- Option 3 The selection of support for the supported person by the local authority, the making of arrangements for the provision of it by the authority and, where it is provided by someone other than the authority, the payment by the authority of the relevant amount in respect of the cost of that provision.

- Option 4 The selection by the supported person of Option 1, 2 or 3 for each type of support and, where it is provided by someone other than the authority, the payment by the local authority of the relevant amount in respect of the cost of the support.

6.5 This section then outlines the circumstances in which a supported person’s range of choices may be limited by a professional.

6.6 The guidance looks at how to put into practice the requirements in the 2013 Act; that professionals must provide the information and advice needed to enable the supported person to make an informed decision. It also talks about the requirement to point the supported person towards other sources of information out with the local authority.

6.7 Key forms of information and support are offered to assist local authorities or health boards.

6.8 The role of user-led support and information organisations is outlined as is the use of advocacy services.

Question 4a: Was this section of the guidance clear and easy to understand?

6.9 Most of those who answered (73) said yes this section of the guidance was clear and easy to understand. Ten said no and 61 did not give an answer to this question.

Question 4b: How useful did you find this section of the guidance?

6.10 The table below shows that most of those who replied (51) said it was **quite useful** and 21 said it was very useful. Ten respondents said it was not very useful while one individual said not at all useful. The remainder (61) did not give an answer.

Table 6.2 Usefulness of Section 5 of the guidance

Respondent group	Very useful	Quite useful	Not very useful	Not at all useful	No response
Individuals (21)	3	3	-	1	14
Local authority (24)	3	13	6	-	2
Community Health Partnership (4)	-	2	1	-	1
Health Board (2)	1	-	-	-	1
Voluntary sector organisation (57)	10	20	1	-	26
Private Sector organisation (2)	1	-	1	-	-
Professional or regulatory body (8)	1	3	-	-	4
Support & information/Advocacy (16)	1	6	1	-	8
Other (10)	1	4	-	-	5
Total (144)	**21**	**51**	**10**	**1**	**61**

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

6.11 Comments were noted in 107 responses; again these were very detailed and lengthy.

6.12 This section of the guidance and the general principles included in it were widely welcomed by respondents; especially the focus on person centred planning. A number of respondents commented on the length of this section and there were suggestions that it could be spilt up. There was also a comment that the section contains a large amount of generic professional practice guidance.

6.13 General comments on this section of the guidance came from across respondent groups and mainly dealt with factors which respondents felt had been omitted. There were a number of themes noted in small numbers of responses and these are outlined in the following paragraphs.

6.14 The range of options was widely welcomed although there were requests for examples of how Option 2 in particular could be used.

6.15 There were a number of points specific to disabled people; including comments that disabled people have been frustrated by inconsistencies in support planning across local authorities. A support & information/advocacy respondent commented that disabled people have expressed their frustration with “the inconsistency within local authorities’ support planning methodologies and training that has resulted in poor or insufficient support planning.”

6.16 Respondents agreed that there is a definite link between the individual’s eligible needs, their outcomes and the support required to meet those needs and outcomes. Respondents saw a need to include a reference which highlights the legal duties in the Equality Act 2010 to make adjustments for equal access.

6.17 Respondents wanted to see the legal duties the Equality Act 2010 places on a local authority included at this section.

6.18 Issues over a supported person’s capacity to be an employer and understanding of all that entails were mentioned; the guidance could recommend that people are referred to appropriate support and information if they make this choice.

6.19 There were also concerns about “People who have the capacity to make an informed choice, but lack the ability to recognise and safeguard themselves against harm by unscrupulous members of their families and members of the public; parents whose substance abusing lifestyle may cause concern, choose Option 1 to meet the support needs of their child; individuals, who may represent a risk to other people, but are not subject to any of the compulsory orders under Regulation 11 of Part 4 of the Self-directed Support (direct Payments) (Scotland) Regulations 2013” (local authority).

6.20 A number of respondents were in agreement that any resource allocation systems are not a substitution for the skilled judgement of a professional and that professional judgement is a crucial element of resource allocation. That said, a significant number of respondents noted that professional judgement alone should not be the basis for decisions about resource allocation and noted a need for transparency throughout this process or a need for mechanisms to make local authorities accountable for their systems. Allied to this, a voluntary organisation noted the need to ensure that local authorities have adequate staff training in place.

6.21 A voluntary organisation submitted a best practice example "to highlight how a change management programme around Self Directed Support can be designed and implemented".

6.22 Several respondents commented on Table 6 (Support Plans: key ingredients) describing it as clear and helpful; the use of key ingredients rather than prescription was welcomed. Respondents suggested that there should be a focus on "how the supported person will communicate their support needs, outcomes and personal preferences" (local authorities).

6.23 Respondents also saw the need for a stronger description of how to develop a proportionate approach.

6.24 The guidance on professional discretion to limit the choices available to individuals was welcomed but there were some specific concerns identified by respondents. In particular, the language was not seen as particularly accessible; respondents asked that it be simplified. There were also calls for information on an appeals process

6.25 The need to allow wider professional judgement and discretion was stressed by many, as was the need for child and adult protection to take precedence. Various examples and reason were given including a local authority that pointed out: "This option may be considered to place an already existing adult or child protection service user at greater vulnerability and in these instances it would be the mechanism that the local authority object to and would need to refuse under the duty of care. This is not clear within the guidance".

6.26 Provision of information was seen as central to the delivery and management of SDS options. For this reason, respondents wanted the language to be stronger and wanted to be sure that staff had the correct knowledge and time available to communicate to the supported person.

6.27 Respondents welcomed the inclusion of user-led support but a small number of voluntary organisations asked that the language here be strengthened, for example: "It should be far stronger than simply the "professional should point the supported person towards other sources of information out with the local authority." There should be a duty upon the local authority to actively involve disabled people-led support and information organisations who are independent and not trying to sell the supported person services" (voluntary organisation)

6.28 Comments on the need to strengthen the language were made in relation to many of the paragraphs in this section.

6.29 There was widespread acknowledgement of the importance of advocacy; some described it as vital at every stage and wanted the guidance to reflect this.

Risk

6.30 There was welcome for the section on risk, which respondents described as helpful. However, respondents felt that examples of risk factors would be helpful as people have different ideas of what constitutes a risk.

6.31 The need for reference to risk tolerance and the balance between that and safeguarding was also seen as important.

6.32 Respondents commented that risk assessment and management are subjective; there is no substitute for good professional judgement and this should be allowed. However as risk management is complex, respondents acknowledged that there may be differences of opinion, perhaps between the supported person and the professional; details of any disagreement should be recorded and the guidance should include information on making a complaint.

6.33 Respondents wanted to see the guidance emphasise the joint responsibility of the supported person and the professional "where it is clear that the supported person has the capacity to make well informed decisions about risk" (local authority). There was a comment that the risk assessment may need to involve both health and social care, depending on the circumstances of the individual.

6.34 However, a voluntary organisation reported that "There is evidence that people receiving support often feel that risk management is imposed on them: 'risk is often perceived negatively by people using services (used as an excuse used for stopping them doing something) – but risk needs to be shared between the person taking the risk and the system that is trying to support them."

6.35 Another commented on the need to manage 'tensions' between "professionals who seek to enable the service user to accept a manageable risk and families who seek to ensure that the person they care for is safe".

6.36 A voluntary organisation wanted to see consideration given to developing practice in this area; this respondent mentioned that in Glasgow risk enablement process is developing as an evidence based approach to risk forecasting.

6.37 There were comments that risk is hard to manage in relation to people with autism as they may not be able to imagine the consequences and may therefore have unrealistic ideas.

Resources

6.38 Some respondents welcomed the range of resource allocation to be considered, although once again, there were comments that there needs to be more discussion placed upon the involvement of service users and carer groups, with more clarity on how this process would work. A small number of voluntary organisations noted the need to include community development staff and the third sector within the planning for sourcing and developing opportunities within the community.

6.39 There were also some requests for further guidance for local authority staff, service users and others involved in the process.

6.40 A key concern that emerged was that there should be a single resource allocation approach for the whole of Scotland (this comment came primarily from voluntary sector organisations) and noted concerns over a 'postcode lottery' if there is no single approach to resource allocation.

7 GUIDANCE - MONITORING AND REVIEW

7.1 **Section 6: Monitoring and Review** details the need for the professional to review the supported person's needs and outcomes.

7.2 The review should consider the choices made and support provided are meeting the needs of the supported person and that these are meeting their personal outcomes. Any changes to the supported person's needs or outcomes should also be considered and support adjusted where required.

7.3 This section also looks at the review of the supported person's options in relation to the terms of the Act.

Question 5a: Was this section of the guidance clear and easy to understand?

7.4 Seventy-five respondents said that this section of the guidance was clear and easy to understand. Thirteen respondents said it was not and 56 did not reply.

Question 5b: How useful did you find this section of the guidance?

7.5 Most of those who replied said it was **quite useful** (54). Ten respondents said it was very useful and 14 said not very useful. One individual said it was not at all useful and 65 did not give an answer.

Table 7.2 Usefulness of Section 6 of the guidance

Respondent group	Very useful	Quite useful	Not very useful	Not at all useful	No response
Individuals (21)	2	4	-	1	14
Local authority (24)	2	14	6	-	2
Community Health Partnership (4)	-	2	1	-	1
Health Board (2)	1	-	-	-	1
Voluntary sector organisation (57)	1	21	5	-	30
Private Sector organisation (2)	1	-	1	-	-
Professional or regulatory body (8)	1	3	-	-	4
Support & information/Advocacy (16)	1	6	1	-	8
Other (10)	1	4	-	-	5
Total (144)	**10**	**54**	**14**	**1**	**65**

Question 5c: Do you have any further comments on this section of the guidance?

7.6 Eighty-three respondents replied to the question and a number of themes were noted in addition to specific comments on the paragraphs in this section.

7.7 While some respondents commented on the clarity of, and detail in, the section, others commented that this section seems brief and, given the importance of review and monitoring, needs to be developed further. One local authority said: "Although this section is headed Monitoring and Review it makes no reference at all to monitoring functions and what is anticipated or expected". Another commented "Given the importance of Monitoring and Review in the SDS journey and in achieving personal outcomes, this section lacks detail". Others commented that the brevity and the tone of the section make it appear as if review and monitoring is optional or not important. Respondents wanted to see good practice examples in this section.

7.8 There was a suggestion that a sentence could be added at the beginning of the section stressing the value and necessity of review. One voluntary organisation said that: "Rather than the last step of the process it should be viewed as a mechanism to make sure things are right for the person as they continue to learn and develop though the use of creative support options if that is what they have opted for."

7.9 In relation to timings, a small number of respondents commented on the need for a minimum timescale for reviews or a recommended period within which the review should take place; suggestions included six-monthly, annually and two-yearly. A small number of voluntary organisations wanted to see reviews undertaken more frequently and a local authority said "Clarity required to show that reviewing is not a once a year occurrence, rather this is an ongoing and crucial aspect intrinsically linked to assessment. A clear guide/timeline as to when people who are already supported in Local Authorities should be reviewed and go through the SDS pathway is required."

7.10 The importance of including this in the guidance was stressed as one voluntary organisation was "concerned that local authorities will not be able to meet the pressures on resources to facilitate reviews in a timely and appropriate manner as many people already wait considerable lengths of time for reviews." Several respondents commented on resource issues; both financial and staff time. A local authority suggested:

> "There are different options available in undertaking a review which might include self review for those who have non complex stable needs. This would allow professionals to concentrate on those with the most demanding and changing needs or where significant levels of risk are involved."

7.11 There was a query as to whether a timescale would be set in relation to meeting a request for a review or reassessment. There was also a request for the guidance on timings to ensure the supported person has adequate notice and time to prepare.

7.12 One local authority asked for clarification on whether the review process would be used to offer the four SDS options to existing service users.

7.13 Some of the voluntary organisations felt that the guidance should stress the need for a collaborative approach in order to provide support to enable the service user to participate fully in the review.

7.14 Commenting that many people are worried by reviews, a voluntary organisation wanted to see good practice "reflect all the principles of people having choice and control. This needs to include where and how the reviews happen". There should also be guidance on what to expect from a review. A private sector organisation wanted to see recognition of “the uncertainty and unease which such processes and reviews can result in particular for individuals with fluctuating conditions. It would be helpful if the guidance contained some description of how these can be achieved in a manner which is enabling and positive.”

7.15 Once again, respondents wanted to see the guidance include the need for signposting to independent advocacy support.

7.16 The guidance should also make clear that reviews are not used to cut the level of support. The outcome of the review should be “communicated to and agreed by the supported person before any changes to the package take place” (support & information/advocacy organisation).

7.17 Respondents felt the review should be described as a process for correcting mistakes and/or making improvements to the support package; flexibility was seen as key and the supported person should be clear that they are allowed to change their minds about the option of support planning and delivery they have chosen. A voluntary organisation suggested adding ‘flexibility’ to the title “to remind all involved that the selection of a support option is not a one-off event”.

7.18 A voluntary organisation included an appendix “demonstrating how if SDS principles are started early for Children and Young people the initial referral in adult services consist of a review rather than a full assessment all over again.”

7.19 Voluntary organisations commented on the need to consider the review of support for children and young people within this section, pointing out that the needs and outcomes of children and young people will change, perhaps frequently. One said that “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”.

7.20 Some supported people will be being reviewed for other reasons such as Compulsory Treatment Order reviews; a voluntary organisation wanted to see these co-ordinated to ensure the supported person “is not subjected to repeated, separate reviews and to avoid unnecessary duplication of effort and use of resources amongst the different professionals”.

7.21 There were also requests, from professional/regulatory bodies, to:

- include reference to the “Chief Social Work Officer role in terms of monitoring and quality assurance of service delivery.”
- include reference to “the role of the Care Inspectorate in in scrutiny of local authorities.”

7.22 A professional/regulatory body also commented: “local authorities should also be considering Standards or Codes of Practice in relation to self-directed support and opportunities for peer reviews across local authorities/partnerships, as already developed through the self-directed support networks”.

8 GUIDANCE - FACILITATING GENUINE CHOICE FOR INDIVIDUALS

8.1 **Section 7: Facilitating genuine choice for individuals** looks at the requirement in the 2013 Act for a local authority to take active steps to promote variety in the support options available to those who are eligible for care and support.

8.2 The guidance offers an approach to commissioning for self-directed support. This approach sets out four steps:

- Learn and understand what people need and want.
- Set out what you will do to meet what people need and want.
- Try out different approaches.
- Review - ask if it worked and make changes.

Question 6a: Was this section of the guidance clear and easy to understand?

8.3 Seventy-one respondents said that this section of the guidance was clear and easy to understand. Five said it was not and 68 did not reply.

Question 6b: How useful did you find this section of the guidance?

8.4 As can be seen in the table below, most of those who answered said it was **quite useful** (48). Twelve respondents felt it was very useful, 15 said it was not very useful and two said not at all useful. Sixty-seven did not reply.

Table 8.2 Usefulness of Section 7 of the guidance

Respondent group	Very useful	Quite useful	Not very useful	Not at all useful	No response
Individuals (21)	3	2	-	1	15
Local authority (24)	2	13	7	-	2
Community Health Partnership (4)	-	2	1	-	1
Health Board (2)	1	-	-	-	1
Voluntary sector organisation (57)	4	16	6	1	30
Private Sector organisation (2)	1	-	-	-	1
Professional or regulatory body (8)	-	4	-	-	4
Support & information/Advocacy (16)	1	6	1	-	8
Other (10)	-	5	-	-	5
Total (144)	**12**	**48**	**15**	**2**	**67**

Question 6c: Do you have any further comments on this section of the guidance?

8.5 Seventy-five respondents commented and, while several respondents welcomed the guidance in this section, the main theme to emerge from responses was a feeling that this section is under-developed or simplistic. One private sector organisation reported that their members were disappointed by this section. The need for more detail and more examples was stressed by many respondents. A particular omission identified by respondents was the need to show how the outlined approach would be achieved.

8.6 Respondents saw a need for more in-depth information for local authorities, professionals and providers. The following is a typical example:

> “We welcome the explanation of Section 19 of the 2013 Act in this Section 7 of the guidance however we feel that as a whole it would benefit from a more in-depth description to emphasise and demonstrate the breadth and source of the variety implied here. In particular the inclusion of Disabled People’s Organisations and support providers.”
>
> (voluntary organisation)

8.7 A professional/regulatory body commented: “review should not just be about the commissioning process working, but should also measure whether the provision of services to meet identified need resulted in improved outcomes for people”.

8.8 Respondents felt that reference to community capacity building would strengthen the section; there were commented that local organisations are vital elements in providing support in a range or areas, including support to participate in the local community. One support & information/advocacy organisation suggested “Part 82 should be enhanced to include the local authority’s role in capacity building in their local area”.

8.9 Another organisation said: “there is too great a focus on formal services. We feel that there should be greater emphasis on the importance of seeing an individual within context of the family and wider community.” A local authority commented that this section focuses solely on local authority provision and suggested it be expanded to encompass wider options such as third sector, health and community support. Other comments on this issue included a CHP respondent who said: “Should there be more reference to the capacity of providers for both statutory and independent providers. Links could be made to both in-house local authority support, independent support and possibly refer to SPAEN and SDS Scotland as other sources.” This comment was also noted in a number of responses from local authorities and other groups.

8.10 Inclusion in the community is particularly important. One voluntary organisation gave the following example: “In order for people with PMLD to successfully access their community, lack of access to basic requirements such as fully accessible changing places facilities must be addressed”. A local authority commented:

> “There is a need to develop stronger links with those who live and work in our communities, with groups and organisations, which are already actively promoting the development of community capacity and with service users and carers at locality level. This requires a shift in emphasis for planning and commissioning teams, operational social work teams and other Council, health and statutory services towards a community focus.”

8.11 In particular, there is a need for local authorities and their partners to find out what services are required and to take steps to ensure these are available: “Consultation by commissioners on the types of services which people need and want should be inclusive and meaningful. It should seek to gather a broad and representative base of opinions in an accessible way” (voluntary organisation).

8.12 Another voluntary organisation “recommends that the Scottish Government strengthen provision within the guidance around facilitating choice by including the recommendation that authorities undertake a review of their service to ensure there are clear plans, and capacity to appropriately commission, for self-directed support”.

8.13 Another, from the support & information/advocacy group, said it is important that “full and meaningful consultations are conducted by local authorities to help discover views on current services and what people need and want from services available. User views on current services can be sought from local collective advocacy groups. When conducting consultation with other service users consideration should be given for advocacy support to be made available for service users during this process”.

8.14 The Scottish Government Strategy for Autism was highlighted as a good practice example. It requires that people with autism have access to services which understand their needs and which are able to deliver in ways specifically related to their autism.

8.15 Commenting on the table ‘Commissioning for self-directed support’, several respondents, mainly local authorities, made the same point “we would suggest the description here should be asset based rather than focussing on gaps or deficits”.

8.16 Also, in relation to this table, a professional/regulatory body said: “review should not just be about the commissioning process working, but should also measure whether the provision of services to meet identified need resulted in improved outcomes for people”.

8.17 There were comments in relation to financial matters and resource needs. Respondents wanted to see more information on:

- Bridging finance.
- Special project finance.
- The development of Public Social Partnerships.
- Support for cooperative and user controlled developments that are starting from scratch.
- How to ensure services in local areas are sustainable.

8.18 More detail was requested in relation to local authority commissioning. There were requests for guidance on commissioning bespoke packages as well as on strategic commissioning of social work services. A voluntary sector organisation said: “It would be helpful if specific guidance on commissioning for self-directed support, in particular how to deliver the step change between block funded services and direct payment funded services could be included in this section. There is also the need for a transparent pricing approach from all providers".

8.19 One voluntary organisation commented on the question of how to ensure rates attached to SDS are sufficient to buy the support that is available:

> "Our experience with parents of disabled children with complex needs is that rates are currently set too low to buy support from a provider employing practitioners with the necessary level of skill. Further to this, depending on where children and their families live, they may not be offered the same choice of provision from their own council as you would in others. A strategic planning process for councils and local area co-ordinators managing resources may assist this. It would also be useful if the Government monitored the resource allocation in Local Authorities after implementation to ensure consistency and equity."

8.20 Problems in rural areas were highlighted; services in these areas may not be sustainable without core funding. Inconsistency in services for specific groups such as deaf people were also raised. A local authority commented: "As we understand it, the assertion made in paragraph 81 is incorrect: Section 19, sub-section 2 does not require local authorities to provide greater options for choice, but to promote the choice available. If there is little or no current choice (for example, in some remote and rural areas there are limited private care provision options) then authorities can only promote the choices available".

8.21 The need for consistency across local authorities was stressed; respondents worried that there could be a post-code lottery situation where people are assessed differently depending on where they live. The need to ensure assessment is accessible to all was also mentioned; a voluntary organisation commented that this is the only way to ensure genuine informed choice. Another commented that independent advocacy should be available to ensure the person seeking support has all the options and is supported to choose the one they think is best.

8.22 Voluntary organisations spoke of the need for innovation in the approach of those providing support to ensure the support is tailored to the needs of each individual; this would have to involve services users, carers and the wider community.

8.23 Respondents also commented on the need for professionals to have full knowledge of the options available . However, there was also some concern over the resources required to provide genuine choice.

8.24 Implications for health staff were also mentioned, one health respondent, while welcoming the opportunity for health staff to undertake SDS assessment, commented that there would be an impact on training and support for the health staff undertaking assessments.

8.25 A small number of respondents again commented on the lack of detail in relation to children and families in this section and suggested that much more detail should be included.

9 GUIDANCE - THE ROLE OF THE NHS PROFESSIONAL

9.1 **Section 8: The role of the NHS professional** clarifies what is possible under the respective legal frameworks and discusses, and promotes, a joint approach between health and social care to make use of all sources of information, resources and expertise in assessment and support planning.

9.2 Two case studies of combined packages of support are used to illustrate these points.

Question 7a: Was this section of the guidance clear and easy to understand?

9.3 Sixty-nine respondents said yes, this section of the guidance was clear and easy to understand. Six said no and 69 did not give an answer.

Question 7b: How useful did you find this section of the guidance?

9.4 The table below shows that most of those who replied said it was **quite useful** (48). Twelve respondents said it was very useful, 13 said not very useful and two said not at all useful. The remainder (69) did not give an answer.

Table 9.2 Usefulness of Section 8 of the guidance

Respondent group	Very useful	Quite useful	Not very useful	Not at all useful	No response
Individuals (21)	2	1	1	1	16
Local authority (24)	2	14	6	-	2
Community Health Partnership (4)	1	1	-	1	1
Health Board (2)	-	1	-	-	1
Voluntary sector organisation (57)	3	19	4	-	31
Private Sector organisation (2)	1	1	-	-	-
Professional or regulatory body (8)	-	4	-	-	4
Support & information/Advocacy (16)	1	5	1		9
Other (10)	2	2	1	-	5
Total (144)	**12**	**48**	**13**	**2**	**69**

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

9.5 Seventy-two respondents commented and while the section was widely welcomed, the main theme to emerge was that much more work is needed in this area of the guidance.

9.6 In particular, many respondents, across groups, commented on the need for this section to reflect the impact of the integration of health and social care within the guidance; especially on how this related to SDS. One local authority commented: “We would submit that the principles embedded in self-directed support require to be fully adopted by health colleagues as part of the Integration agenda and that this will require collaboration, training and a culture change within health at all levels.”

9.7 Respondents acknowledged that the guidance was written before the Public Bodies (Joint Working) (Scotland) Bill was published in May 2013 but stressed the need for the Bill to be reflected in this section of the guidance. Clarity around roles and responsibilities in relation to integrated working was seen as important. The following is a typical example:

> "The guidance should encourage local authorities and health boards to work much more effectively together on developing joint packages and should refer to the health and social care integration legislation as a unique opportunity to develop effective joint approaches towards SDS."
> (support & information/advocacy organisation)

9.8 Related to this point, several respondents, particularly local authorities, commented that pooled budgets can work well and asked that this section include examples showing how pooled budgets work. A voluntary organisation reported: "There has been little to no evidence of the pooling of health and social care budgets locally (although if this is happening then this would likely be confined to high cost packages). Essentially local providers feel that this is still very much at an aspirational stage and not embedded in local thinking and practice". Guidance on protocols for shared funding of support packages was also seen as important. One local authority commented:

> "As it would appear that there is no intention to provide bridging finance to enable that shift over time from public to more personally sourced provision, public bodies will require to reprioritise current commissioning and provision arrangements to meet the demands of SDS. Perhaps this is something that could be taken forward through the development of joint commissioning strategies and therefore also joint budget setting arrangements."

9.9 Another raised the issue of charging, saying: "One of the major complexities in developing jointly funded packages of support is the issue of charging; services provided by the NHS being free at the point of delivery, whilst local authorities have the power to charge for support with the exception of free personal and nursing care. No reference to this issue is made in either section 8 of the guidance or paragraph 149, which deals with charging. This is a significant omission."

9.10 Guidance on funding including timescales and how, and from which department, funding will be released was requested.

9.11 A support & information/advocacy organisation, however, felt that this section focuses too much on "the financial aspects of joint working, rather than emphasising the complementary roles of NHS and social care professionals in working with individuals to plan care packages".

9.12 Several respondents, across groups, identified areas that they felt were missing from this section; they wanted to see reference in this section to multi-agency or joint assessment, Single Shared assessment, NHS Continuing Care, the role of the NHS in delivering on the SDS agenda and the equality strategy.

9.13 The need to reference the personalised health care agenda was also noted in a number of responses. There were again calls to include guidance on children and young people.

9.14 There were comments, from a number of voluntary organisations, that the information for NHS professionals is rather limited and “doesn’t really add anything to the role that NHS should undertake within the SDS process and in terms of personalisation.” A CHP commented on the need for the section to focus more on the social care functions that can be transferred to the NHS and also on how this would be achieved.

9.15 Implications for health staff were also mentioned, one health respondent, while welcoming the opportunity for health staff to undertake SDS assessment, commented that there would be an impact on training and support for the health staff undertaking assessments.

9.16 A small number of respondents commented on the need for this section to be rewritten in plain English or for more definitions to be included.

9.17 A support & information/advocacy organisation commented on the need to avoid duplication. Its members “told us that it was unacceptable to have to tell the same story to several professionals” because they have moved services, because they did not always deal with the same person or because more than one professional was involved. These service users “want the guidance to say there should be a single point of contact within the local authority, and that contact should be made easier overall”.

9.18 The need for training and support for carers in relation to SDS was re-iterated by a voluntary organisation while another wanted to see more emphasis on mediation support and dispute resolution.

9.19 There was also a comment, from a voluntary organisation, that the “whole of this section reads as though it refers only to those with physical problems”. And while some respondents welcomed the “excellent” examples given, there were comments that the case studies given relate only to those with physical disabilities; examples for Mental Health & Learning Disability were requested.

10 GUIDANCE - CHILDREN AND FAMILIES

10.1 **Section 9.1: Children and Families** looks at the 2013 Act in relation to children (and their families). The guidance also looks at the provisions of the 2013 Act within the wider policy and practice framework for children and young people including: the Scottish Government's Guidance and Regulations on the Children (Scotland) Act 1995; Getting it Right for Every Child; and the Children (Scotland) Act 1995.

10.2 Guidance is given on providing choice in the context of the wider safeguarding role and on the involvement of the child in making and managing choices.

10.3 Issues around transition from children's support to adult's support are examined as are issues around incapacity.

10.4 This section of the guidance also looks at the duty on local authorities to promote the options available to children and families.

Question 8a: Was this section of the guidance clear and easy to understand?

10.5 Most of those who replied (63) said this section of the guidance was clear and easy to understand. Eight felt it was not and 73 did not reply.

Question 8b: How useful did you find this section of the guidance?

Table 10.2 Usefulness of Section 9.1 of the guidance

Respondent group	Very useful	Quite useful	Not very useful	Not at all useful	No response
Individuals (21)	2	3	1	-	15
Local authority (24)	-	16	5	1	2
Community Health Partnership (4)	-	2	1	-	1
Health Board (2)	-	1	-	-	1
Voluntary sector organisation (57)	6	15	2	-	34
Private Sector organisation (2)	-	-	-	-	2
Professional or regulatory body (8)	-	4	-	-	4
Support & information/Advocacy (16)	1	5	1	-	9
Other (10)	1	4	-	-	5
Total (144)	**10**	**50**	**10**	**1**	**73**

10.6 As shown in the table above, most of those who commented said that this section of the guidance was **quite useful** (50). Ten respondents said it was very useful, ten said not very useful and one, a local authority, said it was not at all useful. Seventy-three did not reply.

Question 8c: Do you have any further comments on this section of the guidance?

10.7 Seventy-one respondents commented and again many of these responses were detailed and lengthy. Several themes did emerge and these are outlined below.

10.8 Although one local authority said they were "comfortable with this section of the Guidance" many others included a variety of suggestions. Several local authorities, along with some respondents from other groups, all submitted very similar responses to this question. Where a quote is not attributed to a particular group it can be taken that this comment appeared in multiple responses.

10.9 While one CHP commented that they saw the references to Getting it Right for Every Child (GIRFEC) and to the SHANARRI indicators (Safe, Healthy, Active, Nurtured, Achieving, Respected, Responsible, Included) as positive but felt that the section needed more detail on the legal framework and on legislation.

10.10 However, the need for integration with GIRFEC was mentioned in many responses; one local authority commented that this section appears to be a bolt-on and suggested separate guidance that integrates with GIRFEC. They said "There has been significant work already in local authorities on developing GIRFEC with good integrated assessment processes, a strong focus on outcomes in delivering the child's plan and the role of the named person. This learning could be applied by community care services".

10.11 Another main point raised by local authority respondents, along with others from different groups, was that this section needs more work. As children and young people are not covered by the other sections of the guidance, it was felt that much more detail is needed in this section. In particular, several respondents commented on the need for guidance "around how SDS will work in the wider Children and Families context." A voluntary organisation commented: "It was felt that the appearance of a children's and families section was particularly at odds with how SDS process applies across the lifespan of an individual. There were concerns due to its representation as a separate section that other sections might not directly apply. It was felt to be indicative of a lack of foresight as to how SDS processes apply equally across the lifespan."

10.12 Commenting on exclusions in the draft Regulations, several respondents felt that local authorities should be allowed some discretion for children or young people fleeing domestic abuse, or who are homeless. Similarly, children and young people living with a Shared Lives carer, kinship care or in long term foster care may need access to direct payments. This would be particularly important in the run-up to transition to adult services. Access to support and direct payments for the families of children and young people in residential care, but who go home during holiday periods was also mentioned.

10.13 A voluntary organisation commented on the need for young people approaching transition to have an indicative budget, along with information on services, to give an idea of the type and quality of care that would be accessible.

10.14 Respondents wanted to see the communication needs of each young person considered to ensure they are able to access advice and information about support and about support during transition to adult services.

10.15 There was a call for a dedicated Transition Team with a key worker available to each young person in each local authority.

10.16 A variety of other comments were made in relation to transition to adult services. There were similar queries and concerns from several respondents over "what should happen during transition to adult services where there are issues about a young person's capacity to consent when they reach 16. There needs to be more clarity about the legal framework within which decisions can be made on their behalf once they are 16." Although the guidance says that families should be informed about Power of Attorney or Guardianship, respondents pointed out that families cannot apply for Power of Attorney; the young person would have to have the capacity to grant it. Respondents went on to say: "Is it expected that in all such cases a guardianship application should be made and if so the necessary time to progress this would need to be stressed to families to minimise the risk of disruption of support and ensure that legal requirements are met. There are significant concerns that families will feel pressured into providing support."

10.17 There would be legal issues should it be deemed that Guardianship was not necessary. The young person may not be capable of taking on the role of employer. Respondents outlined the issues: "This could create legal issues for both the family and the local authority in terms of who is the lawful employer and the status if the personal assistant(s) i.e. redundancy would not automatically apply if the young person is unable to take on the role of employer".

10.18 There was a call for the rules for support for children and young people to mirror those for adults as far as possible, "to avoid rules that create additional barriers at transition" (support & information/advocacy organisation).

10.19 Transitions faced by young carers, such as from school into employment, were also mentioned; respondents wanted to see measures to ensure support for these young carers.

10.20 Respondents wanted to see more guidance on SDS support for young carers, especially if their views conflict with those of the parent; there needs to be a way to ensure their voice is heard. In addition, respondents wanted to see more guidance on situations where the family's view differs from that of the professional.

10.21 In relation to the four options in the 2013 Act that must be made available to the supported person as part of the assessment process and, in particular, the circumstances where options 1 and 2 should not be offered, several respondents again called for discretion to offer these "even where compulsory orders are in place, since there may be some useful interventions which would empower the child and the parent to improve their situation."

10.22 In cases where parents are being supported to make decisions on the choice of support, respondents saw a need for guidance for local authorities and professionals where it is believed the parent is not acting in the best interests of the child.

10.23 Similarly, where protection measures are in place there will need to be "explicit guidance to ensure that if it is deemed necessary to remove parental choice where a parent presents a risk that local authorities have a due process to follow to ensure a child's service rights are managed" (local authority).

10.24 Several respondents commented on the need for specific guidance over children who have care and support needs under Section 22 of the 1995 Act. Again, respondents wanted to see an element of discretion allowed as not all children and young people in this situation would be eligible for SDS support.

10.25 Paragraph 96 says that 'the definition of a child in need, as provided in Section 22, is a broad definition'; a respondent asked for clarity over who is actually covered. A voluntary organisation asked that the guidance includes a reminder that "the Act specifies that 'children in need' includes 'Children who have emotional, behavioural and mental health problems."

10.26 The need for young carers to be included in the definition was stressed by one voluntary organisation.

10.27 Respondents felt that there was a lack of guidance or consideration of child protection issues. The need for greater integration with child protection legislation and links with the Children's Hearings system was also highlighted; respondents said that confirmation was 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. For example, if a family is being investigated due to concerns for a child, a direct payment would not be the most appropriate option until the local authority is satisfied that it would not put the child at risk. Professional assessment and the family's assessment of need could be in conflict and professional judgement should be applied in relation to safeguarding duties". Respondents saw a need for guidance around SDS where compulsory measures or statutory orders are in place or are imposed.

10.28 Respondents commented that SDS should be used to encourage and empower both the supported young person and their families; it should not create dependency.

10.29 Respondents wanted to see accessible training for family carers and personal assistants which would be "sufficient to ensure children are not put at risk". The need for the capacity of a parent to manage a direct payment on behalf of a child to be taken into account was also mentioned.

10.30 In relation to personal assistants, several respondents expressed concern that "there is no legal requirement for parents to ensure that personal assistants are members of the PVG scheme". A CHP respondent wanted to see the guidance used "to strengthen the requirements for PVG checking for anyone caring for children (or vulnerable adults)".

10.31 There was a comment that NHS services must be fully engaged in the decision making process and several comments on the lack of mention of Education services in the guidance. One local authority said: “Given the primacy of Education in the lives of children and young people, and the fact that an education professional will act as Named Person, it is surprising that Education were not addressed in the guidance in the same way that NHS professionals have been (e.g. discussion about joint funding).” A voluntary organisation commented: “From the age of 16, a young person could be directing their own support, which brings with it significant responsibilities, and it will be important that colleagues in education are working to prepare young people who have social care needs for this, and educate them about their rights.” Another voluntary organisation suggested: “Education should take the lead in co-ordinating services as under the Education (Additional Support for Learning) (Scotland) Act as it is the responsibility of schools Named Person to coordinate young people’s transition initially. This role is not fully realised in some education departments in Scotland even though it is a duty.”

10.32 A local authority and a voluntary organisation said that Children’s Services are not ready to offer SDS to all children in need. There was a request for a lead-in time to prepare for SDS in 2015. The local authority commented: “For example, although we are working toward releasing funding from services this will be a phased approach; we are not at the stage of being able to offer a direct payment within child protection. Our recommendation is that SDS is made available to children with a disability and their families, at least in the first instance”. The support & information/advocacy organisation saw a need for urgent action:

> “[The respondent] believes the short term complexity in the implementation of SDS - combined with children and young people’s services not being prepared for SDS - may leave a number of stakeholders without a proper framework to deal with complex and sensitive situations.“

10.33 There were requests for case studies to be included in this section. Some examples of where SDS has been implemented for children without additional support needs would be beneficial. Other requests included:

- The need for access to independent advocacy.
- Clearer guidance on looked after and accommodated children.
- The need for examples, case studies and links to good practice in this section.

11 GUIDANCE - SUPPORTED DECISION-MAKING AND CIRCLES OF SUPPORT

11.1 **Section 9.2: Supported decision-making and circles of support** shows the steps that should be taken to provide assistance to a supported person to ensure they can play as full a role as possible in the decisions on their care and support. Guidance is given on:

- Assistance with understanding and/or making decisions
- Assistance with communicating decisions

11.2 This section also looks at what to do when the supported person lacks capacity, circumstances where the professional may have doubts or questions about a supported person's capacity and gives guidance on involving a proxy.

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

11.3 Sixty-eight respondents said that this section of the guidance was clear and easy to understand. Seven respondents said no and 69 did not give an answer.

Question 9b: How useful did you find this section of the guidance?

Table 11.2 Usefulness of Section 9.2 of the guidance

Respondent group	Very useful	Quite useful	Not very useful	Not at all useful	No response
Individuals (21)	3	-	1	1	16
Local authority (24)	1	16	4	-	3
Community Health Partnership (4)	-	2	1	1	
Health Board (2)	-	1	-	-	1
Voluntary sector organisation (57)	5	18	4	1	29
Private Sector organisation (2)	-	2	-	-	-
Professional or regulatory body (8)	-	4	-	-	4
Support & information/Advocacy (16)	-	7	-	-	9
Other (10)	-	4	-	-	6
Total (144)	**9**	**54**	**10**	**3**	**68**

11.4 Most of those who replied said that this section of the guidance was **quite useful** (54). Nine said it was very useful, ten that it was not very useful, three that is was not at all useful and 68 did not address this question.

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

11.5 Seventy-four respondents commented. Some respondents chose to provide general commentary; others made reference to specific paragraphs in the guidance.

11.6 A number of respondents commented that the section is clear and easy to understand or welcomed the guidance around supported decision making and the role of individuals within a circle of support. However, some respondents adopted a more qualified position and a number of key themes emerged.

11.7 A significant number of respondents felt that clarification was needed in relation to the term ‘circles of support’; for example, whether circles of support should be viewed as formal or informal structures.

11.8 There were also requests for case studies to be incorporated in this section or for a diagram to illustrate a circle of support.

11.9 There were also a small number of suggestions that this section should be incorporated into the earlier section on ‘The Supported Person’s Pathway’.

11.10 There were a number of requests for more guidance on situations where a supported person’s capacity to consent is in doubt or for there to be greater recognition that individuals will have differing levels of understanding and capacity to engage in the process of planning support.

11.11 Some respondents also commented that this section was not explicit enough, or that it does not reflect the complexity of capacity.

11.12 Linked to this issue, there were a number of references – mostly from organisations within the voluntary sector – for a need to bear in mind the principles of the Adults with Incapacity (Scotland) Act 2000 (AWI 2000) or for the guidance to be clearer about decision making responsibilities and involving people in line with AWI 2000. There were also a small number of suggestions for clear working agreements to ensure all individuals involved have a clear understanding of their role.

11.13 A number of respondents noted that people need to understand their roles and responsibilities; including the supported person, a professional involved, a guardian or attorney, a mental health officer, an advocate or wider family members. A few respondents also asked for clarification as to whether in situations where a local authority has welfare guardianship and the power to make welfare decisions, whether option 3 is automatically applied and whether this can include the local authorities’ own services.

11.14 There were some calls for the guidance to make more reference for the supported person to take as much choice and control as they can and wish to, and that they are allowed an appropriate timescale in which to make their decisions.

11.15 There were also a small number of comments that the guidance as it stands focuses on the role of the professional but with little emphasis on how an individual can be supported to make decisions. Additionally, a small number also noted that there may be a need for creative solutions and approaches.

11.16 Some respondents noted concerns over whether current information and support services will have the capacity, knowledge and training to deal with the likely increased number of referrals that may come about. Linked to this, there were also some comments on the need for access to independent advocacy, with some requests for more reference to this in the guidance.

11.17 As at some of the other questions, there were also some requests for more consideration of children and young people throughout the document. There were also some requests for more references to the legislative and policy framework or to other legislation that needs to be taken into account. This legislation included:

- Incapacity (Scotland) Act 2000;
- Section 13Z of the Social Work (Scotland) Act 1968;
- Code of Practice for Local Authorities exercising functions under the AWI (Scotland) Act 2000;
- Adult Support and Protection.

12 GUIDANCE - CARERS

12.1 **Section 9.3: Carers** looks at the assessment of the needs of carers. Support for carers, the choices that must be available to them and the provision of information and additional advice and support to carers is also examined.

12.2 The guidance presents the choices available to carers under the 2013 Act alongside examples of each choice; a case study is used for illustration.

12.3 Guidance on support to carers out-with the formal carer's assessment looks at the need for preventative support for carers.

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

12.4 Most of those who replied (68) said yes, this section of the guidance was clear and easy to understand. Six said no and 70 did not give an answer.

Question 10b: How useful did you find this section of the guidance?

12.5 Most of those who replied said that the guidance was **quite useful** (58). Fourteen said it was very useful, three said it was not very useful. Sixty-nine respondents did not address this question.

Table 12.2 Usefulness of Section 9.3 of the guidance

Respondent group	Very useful	Quite useful	Not very useful	Not at all useful	No response
Individuals (21)	2	3	-	-	16
Local authority (24)	2	17	2	-	3
Community Health Partnership (4)	-	2	1	-	1
Health Board (2)	-	1	-	-	1
Voluntary sector organisation (57)	4	26	-	-	27
Private Sector organisation (2)	1	-	-	-	1
Professional or regulatory body (8)	3	1	-	-	4
Support & information/Advocacy (16)	-	6	-	-	10
Other (10)	2	2	-	-	6
Total (144)	**14**	**58**	**3**	**0**	**69**

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

12.6 Seventy-two respondents commented on this question.

12.7 A number of respondents provided general comments on this question and two key themes emerged.

12.8 First, a number of respondents noted their support for the power to provide support to carers to assist in their caring role; for example, that this could provide a more flexible way to support carers if provided within the context of meeting positive outcomes for individuals.

12.9 Second however, there were a number of concerns over the costs of implementation and / or the lack of resources in place to support the elements outlined here; and this point was raised at a general level as well as in relation to specific paragraphs in this section of the guidance. A small number of respondents also noted that there may be inconsistent provision across different local authority areas.

12.10 A number of respondents also made reference for the guidance to take account of the needs of carers; many of whom referred to advocacy for carers as noted in the document Caring Together: The Carers Strategy for Scotland 2010-2015. Alongside this, there were a small number of requests for the guidance to be strengthened to ensure the views of carers are included early in the assessment and planning alongside consideration of the outcomes for the supported person.

12.11 There were also a few calls for reference to carers throughout the guidance, rather than simply in this section.

12.12 There were references to other legislation and information that also needs to be taken into account and these included:

- Draft Carers (Waiving of Charges for Support) Regulations;
- Community Care and Health (Scotland) Act Carers Guidance;
- The Draft Directions (The Carer's Assessment) (Scotland);
- Scottish Government Learning Strategy Keys to Life (2013);
- The Guide to Carers issued by the Mental Welfare Commission;
- Adult and Children and Family Services;
- Children and Families Bill.

12.13 There were also a small number of requests for the guidance to encompass instances where the carer and support person may have different views about the support provided to give the carer a break and there may be a conflict between providing support to the carer and enabling the supported person to exercise choice and control.

13 GUIDANCE - DIRECT PAYMENTS

13.1 **Section 9.4: Direct payments** provides further guidance on direct payments. This includes :

- The fundamental characteristics of a direct payment
- Third party direct payments
- Circumstances where the professional cannot offer a direct payment
- The choices available to a supported person under a direct payment
- The responsibilities that come with a direct payment
- Monitoring and administration of direct payments (including welfare and financial monitoring)
- Terminating and recovering direct payments

Question 11a: Was this section of the guidance clear and easy to understand?

13.2 Seventy-four respondents said yes, this section of the guidance was clear and easy to understand. Six said no and 64 did not reply.

Question 11b: How useful did you find this section of the guidance?

13.3 Fifty-two respondents said they found this section **quite useful**. Nineteen said it was very useful, eight said not at all useful, 65 did not reply.

Table 13.2 Usefulness of Section 9.4 of the guidance

Respondent group	Very useful	Quite useful	Not very useful	Not at all useful	No response
Individuals (21)	4	3	-	-	14
Local authority (24)	3	16	3	-	2
Community Health Partnership (4)	-	2	1	-	1
Health Board (2)	-	1	-	-	1
Voluntary sector organisation (57)	8	18	2	-	29
Private Sector organisation (2)	1	1	-	-	-
Professional or regulatory body (8)	1	3	-	-	4
Support & information/Advocacy (16)	1	5	1	-	9
Other (10)	1	3	1	-	5
Total (144)	**19**	**52**	**8**	**0**	**65**

Question 11c: Do you have any further comments on this section of the guidance?

13.4 Eighty-two respondents commented on this question, most respondents related their answers to specific elements of the guidance. A range of general comments were made, including a suggestion that this part should be in the section of the guidance providing the description of the four options. A small number of respondents noted that the section of the guidance was clear and easy to understand, with a good basic introduction.

13.5 Two key themes emerged. A significant number of respondents felt the guidance needs to make clear that a personal assistant cannot manage the service user's finances, only assist with this. There were also a number of calls for training / information / advice and support on managing direct payments; for example, how to get the most from a direct payment, how to employ personal assistants.

13.6 Allied to this, a number of respondents also commented that the information provided on direct payments is vague, particularly in relation to training, employment law, the avoidance of conflicts of interest and obtaining PVGs. Two respondents in the voluntary sector suggested provision of a flow chart or table showing the pathway to funding arrangements and the responsibilities of different agencies.

13.7 There were also some suggestions for links to other elements of the guidance; and reference to other legislation such as the Social Work (Scotland) Act 1968, Community Care and Health (Scotland) Act 2002, Carers (Recognition and Services) Act 1995. One local authority noted that there is a lack of clarity around third party direct payments and how these differ from Individual Service Funds.

13.8 One voluntary sector organisation commented that Regulation 5 allows for a direct payment to be paid in instalments and felt that the guidance should make reference to this.

13.9 Another theme related to the need for the guidance to recommend what constitutes a reasonable minimum period of notice for discontinuing with a direct payment, that local authorities should have discretion on when to reinstate this and that an individual should have the right to challenge a local authority decision to terminate a direct payment. A small number of respondents commented that the financial penalties of misuse might be a deterrent to selecting the option of having a direct payment. There were also a small number of comments that direct payments should be available to all individuals, with no exclusions

Third party direct payments

13.10 The key theme emerging in relation to this section of the guidance was the need for some form of clear contract or mandate to ensure that all involved are aware of their role and responsibilities, and to ensure full protection of the supported person. For example, where a third party has chosen to manage the financial responsibilities of the direct payment on behalf of a supported person.

13.11 Allied to this, there were some requests for local authorities to be given discretionary power. For example, to help decide eligibility for the direct payment in instances where there could be a conflict of interest; or if provision of a direct payment could lead to risk to children, adults or the public.

13.12 There were some requests for clarification and guidance on specific points such as more explanation on the roles of a supported person and a third party; or for the guidance to be more explicit in supporting the role of professional assessment and judgement in agreeing to a third party arrangement.

14 GUIDANCE - WIDER LEGAL DUTIES AND STRATEGIC RESPONSIBILITIES

14.1 **Section 9.5: Wider legal duties and strategic responsibilities.** In this section, the guidance looks at the relationship between the 2013 Act and a wide range of aspects of care.

14.2 A number of specific issues were highlighted in the consultation. In relation to the relationship between the 2013 Act and **re-ablement** (a short term package of support) and **intermediate care** (support during transitions), the consultation explains that these are viewed as part of the assessment process and are not, therefore, covered by the duties to offer the various options for receiving support (which only apply to support following assessment). Respondents were asked whether this should be set out in regulations, or whether they felt the options should be offered in these circumstance.

14.3 In relation to **other forms of social welfare support such as assistance to people fleeing domestic abuse, assistance to address homelessness or drug and alcohol addiction**, respondents were asked their views on whether or not it would be appropriate to offer the various options for receiving support in these cases.

Question 12a: Was this section of the guidance clear and easy to understand?

14.4 Sixty-eight respondents said that this section of the guidance was clear and easy to understand. Ten felt it was not and 66 did not reply.

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

14.5 As can be seen in the table below, most of those who replied said that this section of the guidance was **quite useful** (56). Thirteen respondents said it was very useful, six said it was not very useful and one individual said it was not at all useful.

Table 14.2 Usefulness of Section 9.5 of the guidance

Respondent group	Very useful	Quite useful	Not very useful	Not at all useful	No response
Individuals (21)	4	1	-	1	15
Local authority (24)	4	13	5	-	2
Community Health Partnership (4)	-	3	-	-	1
Health Board (2)	-	1	-	-	1
Voluntary sector organisation (57)	3	25	1	-	28
Private Sector organisation (2)	1	1	-	-	-
Professional or regulatory body (8)	-	4	-	-	4
Support & information/Advocacy (16)	-	5	-	-	11
Other (10)	1	3	-	-	6
Total (144)	**13**	**56**	**6**	**1**	**68**

Question 12c: Do you have any further comments on this section of the guidance?

14.6 Sixty-four respondents commented on this question. A small number of these made general comments in relation to this question, although most respondents opted to relate answers to specific elements of the guidance. These comments are outlined in the following paragraphs.

Direct Payments

14.7 A number of respondents made comments about direct payments, although this is not a specific section within this part of the guidance.

14.8 The key comment in relation to direct payments was that service users need to be assessed on an individual basis and that local authorities should have the discretion to offer the four options as outlined, on a case by case basis. One or two of these also noted that it could be discriminatory or stigmatic to prevent some service users from accessing the four SDS options.

14.9 There was a general view that the starting point should be one of inclusivity for all, with restrictions only being imposed in light of risk assessment. Respondents queried why those who are homeless or fleeing domestic abuse would not be offered a direct payment and felt that this goes against what is written in the guidance.

14.10 A number of key themes emerged to this element in the guidance. First, a number of respondents noted that there needs to be more detail provided, more clarity and to include information in relation to safeguards, both from the perspective of the service user and for personal assistants (PAs). Linked to this, there were also concerns over the responsibilities of a service user as an employer and the need for them to understand their employer responsibilities. As such, a number of respondents called for much clearer guidance on safeguarding duties and noted that there could be a conflict between this and other legislation such as Adult Support and Protection legislation and Child Protection legislation, so that choice and control could be supported against other wider duties.

14.11 Second, there were suggestions from a number of respondents – mostly local authorities and community health partnerships – that there should be more discretion for local authorities to restrict access to certain self-directed support options if an individual or member of the general public could be at risk. Once a service user takes on the role of employer, local authorities are not able to share information with a PA and monitor the relationship between service user and PA.

14.12 A few respondents also commented that the same issues also relate to child protection but that this is not addressed in the draft Guidance and Regulations.

14.13 A significant number of respondents provided commentary on re-ablement and intermediate care specifically; a number of whom welcomed the definition of re-ablement and intermediate care or simply noted that these sections are helpful. There were some mixed views as to whether SDS options should be available here; with some respondents noting they should not be, while others felt that a wide range of choice should be available to service users and / or that this may complement existing packages provided via SDS options. There were a small number of suggestions that options 1 and 2 for re-ablement and intermediate care should be a power available to local authorities.

14.14 There were also some comments that if SDS is already in place, there will be a need to keep this alongside any re-ablement to help keep continuity of carers and avoid any legislation issues. Linked to this, there were a small number of requests from local authorities for the guidance to make reference to how it anticipates re-ablement support will interface with existing SDS support packages, especially in relation to the employment of personal assistants.

14.15 One key comment emerged in relation to residential care. This was that all SDS options should be available to all of those eligible for social care or support, that those in residential care should have the right to choose the support option they want or that residential care should not be treated differently from other services. Some respondents noted that the Act should be as inclusive as possible, and therefore should not disallow eligibility for those in residential care. This is also perceived by a small number as being against equality and human rights legislation and inherently discriminatory.

14.16 The key comment to emerge in relation to charging specifically was that it is unfair to charge service users for social care or support services, particularly in the light of changes that are also being introduced with welfare reform; with some additional comments that this could be seen as discriminatory.

14.17 There were also a small number of references to the need for local authorities to ensure a consistent charging policy and take cognisance of the Equality Act 2010.

14.18 In relation to equipment and adaptations, some respondents asked for more clarity on what is meant by housing adaptation, while others asked for guidance on how housing adaptations impact on current funding sources and obligations, with a need for the guidance to show how this will apply to owner-occupiers and landlords.

14.19 There were also some comments on the need for greater detail on how SDS legislation will interact with other legislation including housing legislation; and for recommendations on ownership, maintenance and repair or equipment purchased using direct payments (for example, to make clear in the guidance that equipment purchased must meet assessed needs safely and appropriately).

14.20 There were a small number of comments that self-assessment is not appropriate for anything beyond superficial design details and decoration, with one respondent calling for reference to professional guidance being sought from relevant medical specialists, for example, if a service user is considering a stair lift.

Other forms of social welfare

14.21 The key theme emerging to this part of the guidance was that local authorities should be able to exercise discretion or professional judgement or that a power should be conferred on local authorities to offer direct payments, rather than a duty.

14.22 There were some specific requests for reference to links with other forms of social welfare support and children and families support.

14.23 In response to this question, there were a small number of suggestions to consult with service users, and one respondent commented on the need for the Care Inspectorate's role and responsibilities to be referenced at relevant points in the guidance.

14.24 Finally, there were some other references to other legislation and the need for the guidance to take cognisance of this. Other legislation included:

- The Mental Health (Care and Treatment) Act 2003 Section 25;
- Social Work (Scotland) Act 1968 – asylum seekers;
- Adults with Incapacity (Scotland) Act 1968.

14.25 There were also a small number of comments that there also needs to be consideration to the impact of current welfare reform.

15 THE GUIDANCE DOCUMENT AS A WHOLE

15.1 The consultation invited respondents to give their views on, for example, whether there are any gaps in the guidance or whether any major changes are needed.

15.2 Respondents were also asked for any comments on the style and layout of the guidance, or the language used in the guidance. A majority of comments made were very specific comments, suggestions or queries about wording, omissions or additions; most of which have already been covered in earlier chapters of this report.

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

15.3 Sixty-five respondents commented on this question with several welcoming the opportunity to respond to the consultation and/or voicing their commitment to the implementation of self-directed support. Most of the themes that emerged from the general comments question were similar to comments noted earlier. The main themes are outlined below.

Layout and style:

- Document is seen as lengthy and complicated; there were some suggestions that it should be shortened by moving some of the current content, such as practice examples, to appendices.
- For the professional audiences, the guidance was perceived to be largely comprehensive and easy to read.
- Despite some comments that the document as it stands is too long, there were requests for additional case studies to be included throughout the guidance.
- 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.
- Regardless of who the guidance should be aimed at, many respondents felt the guidance as it stands is not relevant to service users, with a number commenting that the language used is inappropriate and not accessible to service users.

Content:

- A number of respondents noted 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 how it should be put into practice.
- There were also some perceptions that the guidance focuses on social care, while largely ignoring Health and there were requests for the guidance to better reflect the integration of health and social care services, with a duty on Health in the same way as there is on social care.
- While there was broad support for the principles of inclusivity, there were some comments that this guidance is too adult-focused.

- There were also some calls for reference to carers throughout, rather than simply being in one section of the guidance. There was also a request for the guidance to include detail on employing family carers.
- There were a small number of comments that this guidance focuses too narrowly on specific groups of individuals such as the disabled, while not focusing enough on some other groups such as those with mental health issues, invisible and visible disabilities, those with dementia and so on.
- A number of respondents also noted the need to ensure that there is greater consideration of the broad legislative context, so that the guidance links not only to other relevant legislation but also to other relevant strategies, standards and codes of practice. Additionally, to ensure the guidance is up-to-date in relation to the integration of health and social care.
- There were also concerns over the need for users of direct payments or their carers to have an understanding of what it entails to be an employer. While the guidance is not expected to provide full details of employment legislation, there is a need for links to documentation that clearly explains about issues such as being an employer, how to obtain a PVG check and so on.

Timings:

- Another theme to emerge in the general comments was on timings; respondents wanted to see more detail on timings within the document.
- In relation to the roll-out of SDS, there were calls for this to be gradual and a query as to when the finalised guidance will be available. There was some concern that the proposed publication date is too close to the implementation date.

16 THE COSTS AND BENEFITS ARISING FROM THIS GUIDANCE

16.1 Respondents were asked for any comment in relation to costs and benefits related to the requirements set out in the guidance. Specifically, respondents were asked whether they could identify any financial costs or benefits to individuals, local authorities, health boards, providers or any other person or organisation affected by the guidance.

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

16.2 Fifty-two respondents, across all respondent groups, commented and a key theme from a significant minority of respondents was concern over additional costs for local authorities. Examples included costs such as upgraded financial recording systems, the potential for bad debt, overall management of the new scheme or the need for more training and support for staff. There were also concerns from a few respondents that the waiving of charges for short breaks would have significant implications for local authorities as this effectively translates to a budget cut. There were also a small number of comments that changes from block to individualised invoicing would be costly.

16.3 Allied to concerns over additional costs to local authorities, there were also some concerns of additional costs to service providers and service users. For example, there will be additional administrative costs for service providers and increased developmental costs as they would have to remodel services under self-directed support. Some commented that some service providers could have their businesses destabilised or that there would be pressures on them from local authorities to maintain previous levels of support on lower budgets.

16.4 A number of respondents made some form of reference to resources under self-directed support. Again, concerns took a number of different forms, with some references to the need for training staff or other workforce development costs, changes to infrastructure costs, an increased need for assessment, care and support planning and review. A small number of respondents had concerns over a lack of resource allocation to local authorities and / or health boards at a time of declining budgets. Allied to this, there were some suggestions that transitional funding should be extended from 2015 when it is currently due to end or that bridging funds should be available to support transition.

16.5 A small number of respondents also pointed to a need for information or guidance for all audiences affected by the implementation of self-directed support (service users, service providers and local authorities).

16.6 While there were some comments in support of the introduction of self-directed support in terms of its aims and underlying principles, there were concerns about its implementation, with a number of organisations commenting that it is difficult to estimate the longer term financial implications or that the real costs of implementing SDS are still too uncertain.

17 THE EQUALITY AND HUMAN RIGHTS IMPACTS OF THE GUIDANCE

17.1 The final part of the consultation in relation to the guidance asked respondents for views on the impact of the guidance on specific equality categories or on human rights.

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

- **age;**
- **disability;**
- **gender;**
- **lesbian, gay, bisexual and transgender;**
- **race; and**
- **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.

17.2 Forty-three respondents commented on this question. The single largest comment, from around half of these respondents, was that this will have no adverse equality impacts or that it fulfils obligations in relation to equality. A few respondents simply commented that there is a need to consider all the protected characteristics as outlined in the Equality Act 2010 or that there is a need to ensure that service providers and local authority staff can recognise and address the ways in which protected groups can have additional risks and vulnerabilities.

17.3 A small number of respondents commented that they were supportive of the move towards giving service users more choice and control over the support they receive or that they believe in equal rights for all. However, there were also a small number of comments on the need to ensure consistent application, close monitoring and review to ensure the guidance is applied equally to all groups, with one Professional / Regulatory organisation suggesting a need for consultation with all equality groups.

17.4 There were a few suggestions made as to further actions and these included:

- A panel to oversee SDS assessments and support plans.
- The guidance should ensure that the Duty of Care Waiver should not prevent natural risk taking behaviour on the part of young people or adults.
- Reference to carers throughout the documentation.
- Review of references to disability throughout the documentation.
- Clarity over the flexibility of employing services from organisations in the same way as with local authorities.

17.5 A few respondents commented that the current format of the guidance is not suitable for individuals with communications or learning difficulties or that alternative guidance should be available for these groups.

17.6 A voluntary organisation wanted to see "a specific action on ensuring that assessments are culturally competent to ensure that the needs of equality groups are accurately captured and reflected in the final assessment and outcomes for the individual" .

17.7 A small number of concerns were noted by respondents and these included:

- The potential for local diversity to be affected by geographical location or social poverty.
- The potential for inconsistent application across Scotland.
- A need to ensure that service providers are suitably trained to deal with people with protected characteristics.
- The potential of a negative impact on those in older age groups until further clarity is provided on exemptions from SDS and charging policy.

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

17.8 Forty respondents commented on this question. A significant minority commented that self-directed support will enable individuals to have a better quality of life in terms of directing their own support needs or that SDS will enhance human rights. That said, a similar proportion also raised issues over safeguarding in terms of the human rights of individuals who could be at risk. Furthermore, one or two respondents also noted that if the guidance is not applied properly across all groups, this could have a negative impact on human rights.

17.9 A few concerns were noted by respondents and these included:

- The need for the draft Regulations and Guidance to be accessible and communicated in a way that is easy to understand.
- A potential for conflict between the cost of services and provision of these services.
- All local authority staff need to be knowledgeable about service users and their needs.
- The exclusion of some people such as homeless individuals from being recipients of a direct payment would be in contravention of their human rights;
- Potential tension between statutory duties contained within the 2013 Act and wider statutory duties, particularly in relation to duty of care and protection issues.

17.10 A small number of respondents referred to the need to consider the guidance and Regulations in the light of other legislation. This included obligations under Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 6(1) of Schedule 1 of the Human Rights Act 1998, Article 19 of the United Nations Convention on the Rights of Persons with Disabilities; and the United Nations Convention of the Rights of the Child.

18 DRAFT REGULATIONS

18.1 A separate consultation paper looked at draft Regulations to accompany the 2013 Act; these deal specifically with direct payments. This document explained the draft Regulations and asked for views on a series of questions.

Part 2 of the draft Regulations

18.2 In Part 2 of the Regulations, five regulations set out the requirements in relation to:

- Means testing (Regulation 3)
- How charges should be recovered (Regulation 4)
- Payment in instalments (Regulation 5)
- Payment to a third party (Regulation 6)
- Terminating payments (Regulation 7)

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

18.3 Seventy-six respondents provided commentary to this question; some were general comments about Part 2 of the draft Regulations; some were comments relating to specific Regulations. Of those providing general commentary, a small number simply noted they were happy with Part 2 of the draft Regulations or that it is helpful in taking forward approaches to the calculation, payment and termination of direct payments. There were a small number of calls for:

- All processes to be done openly and transparently.
- For information on this to be accessible to all.
- A need for advocacy support to help people understand decisions being made by local authorities.
- A consistent approach across local authorities.
- An easy read version that is clear and understandable to all.
- Bank payments should be made net of any charges.

18.4 **Regulation 3** sets out the administrative arrangements for any means testing in relation to the direct payment – i.e. the arrangements for the assessment of a person’s ability to pay a charge with respect to their direct payment.

18.5 Of the respondents commenting on this Regulation specifically, some simply voiced their agreement with means testing.

18.6 Three key themes also emerged, mostly from voluntary sector organisations. First, a need for a maximum timescale within which local authorities can carry out a means test after a direct payment has been made, which would help to minimise repayment requirements. One of these respondents also requested that this be highlighted in the guidance in Sections 4 and 5. Second, and allied to this point, there were some requests for means testing to be carried out prior to the direct payment being made so that there is no need for any service users to have to make a repayment. Third, comments that the Guidance and draft Regulations do not say who collects any charge made by a local authority, which can be confusing to individuals who are supported. A small number of respondents also commented that if a user only has state benefits, they would be given automatic exemption from any charges.

18.7 **Regulation 4** sets out the way in which any charges should be recovered – requiring the authority to make any payment "net" (i.e. with the person's charge recovered "at source" before the payment is made) except where the service user requests that the payment be paid gross (i.e. where the person is provided with their payment in full and invoiced for their charge at the end of the relevant period).

18.8 A small number of respondents welcomed the wording and clarity of this Regulation. However, the key theme emerging at this question – mentioned by most responding specifically on this Regulation – was a desire to withdraw the option for a service user to request payment to be paid in gross; these comments were made primarily by local authorities. This is perceived to add to the administrative burden of local authorities and potentially lead to unpaid client contributions.

18.9 **Regulation 5** establishes that a direct payment can be paid in instalments (i.e. in a series of separate payments as opposed to one single payment – though this can also be done).

18.10 Only a very small number of respondents made any specific comments about Regulation 5. A small number noted they like the flexibility offered by this, although there were also some comments that it could be confusing. One example of this was how to manage access or use of direct payments for people with capacity issues.

18.11 **Regulation 6** establishes that a direct payment can be paid to a third party to manage the day-to-day practicalities under the direction of the supported person.

18.12 As with Regulation 5, only a small number of respondents made much by way of comments to Regulation 6. The greatest number of comments welcomed this Regulation. There were a few concerns that carers who look after a partner may have their income taken into account or that this takes no account of whether the proposed third party represents a risk to the individual or the local authority; leading to a request from one respondent for further clarification over how this would work.

18.13 **Regulation 7** sets out an exhaustive list of the circumstances under which an authority can terminate a direct payment. These are where the person has become ineligible, where the payment has been used for purposes out-with the person's support plan, where it has been used to secure the provision of support by a family member in circumstances where the family member is not permitted to provide such support or where the money has been used unlawfully. In addition, Regulation 7 imposes certain requirements on the authority when they decide to terminate the direct payment, such as the requirement to inform the person as to the reason why the payment is terminated and the date on which it is to be terminated.

18.14 Of the respondents providing specific commentary on Regulation 7, the single largest comment was that this is clearly written and welcomed, with some general agreement on the need for payments to be stopped if they are not used for their intended purpose or are misused in some way. Additionally, two local authorities requested that they should be given discretion to terminate a direct payment if an individual does not provide access to information needed for financial or wellbeing monitoring. A few comments were made in relation to the termination process and these included:

- Written notice should include information on other options available to the individual and reasons for termination.
- A need to allow the necessary time to secure alternative care, particularly for any individuals with complex social and health care needs.
- The need for a formal appeals procedure.
- Support offered via advocacy organisations.
- Any notification should also be issued to any third party receiving payments on behalf of someone else.

Part 3 of the draft Regulations

18.15 Part 3 of the Regulations sets out the circumstances where disabled or cared-for adults and children may use their direct payment to pay a family member to provide support (Regulation 9). These circumstances are:

- the family member and direct payment user agree to the family member providing the support;
- the family member is capable of meeting the direct payment user's assessed need; and
- a specific factor applies (for example, limited choice or the type of care required).

18.16 Part 3 also sets out the circumstances where a family member may not provide support under a direct payment (Regulation 10):

- the local authority determines that either the family member or the direct payment user is under undue pressure to agree to the family member providing support; or
- the family member is a guardian, continuing attorney or welfare attorney with power to make decisions as regards the support to be provided through the direct payment.

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

18.17 Ninety-four respondents commented on Part 3 of the draft Regulations; some providing general commentary, while others made reference to specific elements of the draft Regulations.

18.18 **Regulation 9** Appropriate choices. Three key themes emerged at this question. First, that the employment of close relatives should remain at the discretion of the professionals involved in the case in order to ensure an appropriate balance between risk and choice; this comment came primarily from local authorities.

18.19 Second, a number of respondents noted that there will be some instances where a family member will be the most appropriate person to provide support and gave examples of specific instances such as in rural areas where there may be little choice of service provider or where intimate care is needed. That said, some respondents qualified their comment by noting that there would still need to be regular and robust monitoring of the service user being supported by a family member or that the local authority will need to ensure that the direct payment user is not under undue pressure from a family member.

18.20 Thirdly, a number of respondents simply noted their agreement with the list at Regulation 9. As one voluntary organisation noted:

> "We find the list of factors setting out the circumstances (Regulation 9 Part 3) helpful and are in broad agreement with them. We believe their inclusion will provide greater transparency in decision making and significantly reduce local variations in practice which have, to date, relied upon individual interpretations of 'exceptional' circumstances."

18.21 Views on the use of the terms 'appropriate circumstances' and 'exceptional circumstances' varied, with some respondents in favour of the former; while some respondents, many of which were local authorities, requested a continuation of the current situation whereby the existing arrangements of employment of close relatives in exceptional circumstances is used. A small number of respondents felt that the change from 'exceptional' to 'appropriate' would increase choice and flexibility in the delivery of care.

18.22 A small number of respondents noted the importance of ensuring that the direct payment user will be able to access advocacy, support and information services to help them make informed choices. There were also some calls for an appeals and review process to be in place and a system that offers a capacity to individuals to challenge the decisions taken by a local authority. A few respondents also called for a duty to be placed on local authorities to inform direct payment recipients of the option of employing a family member.

18.23 A few respondents commented that the draft Regulations for employing relatives will be difficult to manage and monitor and noted the complex issues involved and the potential for confusion of roles and responsibilities. There were also a number of disadvantages identified and these included:

- The potential for substantial increased costs to local authorities.
- Employment of close family relatives can change the nature of the relationship between individuals in a detrimental manner.
- Concerns over the financial safeguarding of children and young people, with requests for information on how the Scottish Government intends to ensure adequate safeguards will be in place.

- Concerns over the use of unregulated staff without PVGs.

18.24 Most of the comments made in relation to Part 3 of the Regulations were made in reference to Regulation 9 and there were only a few direct comments on Regulation 10 (inappropriate choices). These included concerns of deterring family members from being Personal Assistants (PAs) when they might be the most appropriate person to take on this role; or that this Regulation could mean that a person trusted by a service user is not allowed to be their PA, despite the fact that they are better placed than another family member who might exert undue influence. One respondent commented that the safeguards set out in Regulation 10 are not a suitable substitute for the robust regulation of carers and other employed staff.

Regulation 11: People who are not eligible for direct payments

18.25 Regulation 11 gives descriptions of people who are ineligible for a direct payment because they are subject to a particular criminal justice order.

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?

18.26 Fifty-nine respondents provided commentary at this question, with around half of them disagreeing with the exclusions listed in Regulation 11 being imposed. Their key reason for this was that any exclusion from direct payments should be based on assessment, support planning and professional judgement, rather than imposing a blanket restriction. One or two respondents also queried whether someone would be banned forever or if a time limit would be imposed on making a direct payment.

18.27 A number of these respondents also commented that Adult Support and Protection and Child Protection duties should take precedence over the duty to offer a direct payment; with one local authority noting that this fails to properly acknowledge the over-riding statutory duty of care that falls to local authorities. In the words of another local authority:

> “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 statutory roles. There are significant concerns over the legal position for professionals and local authorities.”

18.28 A smaller number of respondents broadly agreed with the exclusions noted in Regulation 11, albeit that some also made qualifying statements about the need for discretion as to when a direct payment can be made, who to and under what circumstances.

18.29 A small number of other groups of people were suggested as needing to be exempt from direct payment under Regulation 11, and these included:

- People who misuse drugs and/or alcohol or have a gambling addiction and are not subject to any of the orders in Regulation 11, but are very likely to misuse money made available to them through a direct payment.
- People who are subject to no criminal order, but who could present a real risk to others and therefore should not be put in a position where they could employ other people through a direct payment.
- People who may be put under pressure by relatives or others to choose a direct payment.
- People who may have the capacity to exercise informed choice and select a direct payment, but lack the understanding and skills to undertake the duties and responsibilities of an employer.
- Parents with drug and/or alcohol addictions who may choose a direct payment as the mechanism to support a disabled child.
- Undischarged bankrupts or those guilty of financial misappropriation.
- Those convicted of drugs offences.
- People subject to compulsory orders and compulsory treatment orders.
- Children on the Child Protection Register (services should continue to be under control of local authority).

18.30 One respondent also suggested that PVG checks should be carried out on 3rd parties who are running a package on behalf of an individual.

18.31 Finally, there were a small number of queries as to the reference to Regulation 8(c) which is made at Regulation 11(1)(e).

Regulation 12: Restricting access to direct payments

18.32 Regulation 12 details services for which direct payments are not available:

- support for individuals who are homeless as defined in Part II of the Housing (Scotland) Act 1987;
- support for individuals who are fleeing domestic abuse;
- support for individuals in relation to drug or alcohol dependency;
- the provision of residential accommodation, with or without nursing, for a period in excess of four consecutive weeks in any period of twelve months.

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?

18.33 Eighty-two respondents provided commentary to this question. A key theme emerging, often from voluntary sector organisations, was that there should be no restriction on access to direct payments for any groups; rather that each individual should be assessed on their own circumstances. Allied to this, a number of respondents felt that local authorities should apply proportionality and professional judgement when assessing an individual's suitability for self-directed support options. As one local authority noted:

> "The application of risk assessment and risk management is essential to ensure that the level of risk to the individual, family or wider community is acceptable."

18.34 Some of these respondents also noted that local authorities should not be required by law to offer all four self-directed support options to these groups of individuals but neither should they be prevented from it. A number of these respondents noted that power should be conferred on local authorities to offer self-directed support, rather than a duty. As one local authority commented:

> "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 e.g. 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."

18.35 A small number of respondents also commented that the underlying reasons for a person's situation (homelessness, fleeing domestic abuse etc.) should be examined as this may be the outcome of other underlying social or healthcare needs. A few respondents also noted that it should be possible to offer a direct payment if an individual can be supported to help them manage this payment and that options for managing a direct payment in the best interests of a client should be explored.

18.36 Some respondents called for greater clarification or guidance to accompany this provision. For example, there were a small number of comments that the documentation does not make clear why individuals who are homeless or fleeing domestic abuse are not to be offered direct payments. As one local authority noted:

> "It is more understandable why those who require support in relation to addictions are not to be offered direct payments, but it may be more suitable to look at assessments on an individual basis rather than imposing a blanket rule. Direct payments will require records to be kept of how the money is used, and for support that will be paid for through the payment to be arranged before the payment is received – any inconsistencies would soon be noticed. As there are no such restrictions on a carer receiving a direct payment when they look after someone with a drug or alcohol addiction, we would welcome further clarity on the reasons behind this restriction."

18.37 Another respondent queried whether individuals with co-morbity would be exempt from receiving a direct payment, as part of their support package may be related to their addictions. A small number of individuals suggested there might be ways of providing help in some other form than a direct payment and that all options for specialist help and support need to be examined. There were also a small number of queries as to how long someone would have to be free of an addiction before they could qualify for a direct payment.

18.38 Only a small number of respondents agreed with these restrictions. One voluntary sector organisation commented that:

> “Restricting access to direct payments for people in crisis would significantly reduce the financial worries of support providers looking to offer services to people facing these issues. We would expect that unrestricted access to direct payments for people in these situations would result in a loss of income for support providers, and would therefore damage providers’ financial sustainability.”

18.39 Conversely, there were concerns from a small number of respondents that this guidance may be discriminatory.

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.

18.40 This question attracted comments from 70 respondents. There was only limited support for restricting access to direct payments in relation to the provision of long-term residential care, with a majority of respondents, many from within the voluntary sector, preferring access to direct payments for all individuals. This was primarily to ensure individual choice and control for all individuals. It was also noted by some respondents that restricting access to direct payment was in contravention of the principles of choice, greater independence and fulfilling lives. As noted by two organisations:

> “Decisions on access to direct payments should relate to the person’s ability to manage the payment (with support as appropriate) and not based on any other factor.” (other)

> “A direct payment would give the residential resident more choice and control” (voluntary sector)

18.41 That said, a number of organisations added the proviso that if residents are self-funding, a residential care home might charge a different and higher rate than that negotiated by their local authority, or that self-funding individuals could be liable to top up fees without agreement of a level of protection. This comment came primarily from respondents within local authorities. Two respondents who were supportive of direct payments to individuals in residential homes provided good practice examples of alternative models such as mixed support packages.

18.42 A minority of respondents were in support of restricted access and commented they were not aware of a demand for direct payments being available for residential care, albeit that a small number of these respondents also noted that a degree of flexibility may be required to allow choice to residents.

18.43 A number of respondents, mainly from the voluntary sector, commented on logistical issues and had concerns that direct payments to individuals in residential care could lead to destabilising the residential care market. There were also some queries over how this could be managed; for example, there might need to be some complex funding arrangements involving the national care home contract, free personal care and NHS funding. There were also one or two concerns over how secure payments to residential care homes would be if the money is in the hands of the service provider rather than the local authority.

18.44 Other suggestions made by very small numbers of respondents to this question included a need for guidance:

- For professionals on how personal budgets can be made to work.
- On how nominal costs for residential care would be calculated for individual service funds or budgets.
- What is considered to be ‘residential care’ in relation to Children’s Services; with two respondents suggesting that it might be better to use the Individual Service Fund for younger adults.
- Whether residential care would be excluded from all for self-directed support options.

18.45 A small number of respondents noted that there is a need to also give consideration to support to carers. One organisation also noted that it is unnecessary to offer the option of gross as well as net direct payments.

18.46 Finally, to this question, there were a small number of suggestions that service users should be consulted to ascertain their preferences on this issue.

Support for children and families

18.47 The consultation explains that the duty on local authorities in relation to the 4 options of self-directed support applies to any support provided under Section 22 of the Children (Scotland) Act 1995. Section 22 covers a wide range of support and the consultation asked for views on whether there should be any exceptions.

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?

18.48 Fifty-nine respondents provided commentary to this question. A significant number of those commenting, many from voluntary sector organisations, noted agreement that the Regulations should not specify circumstances where direct payments are unavailable for children, young people or their families. However, a significant number of respondents (many from local authorities) noted that more weight should be given to professional judgement, assessment and support planning so that maximum flexibility can be achieved in the best interests of the child and their family. A small number of respondents simply commented that the welfare of the child is paramount and that all children should be eligible for self-directed support. One local authority commented:

> “[We] would suggest that, rather than placing specific restrictions on the choice of support in relation to children and families support, it would perhaps be more effective to give the local authority the professional discretionary power to determine when a direct payment or other self-directed support option was appropriate – this would allow professionals the flexibility to work with children and their families to plan support which is based on their individual assessed needs, outcomes and circumstances but also to respond to issues relating to child protection and compulsory measures of care.”

18.49 While flexibility and professional judgement were seen to be important by a number of respondents, there were also some comments that there would be specific circumstances where it might not be appropriate for a direct payment to be made; for example, if there is a level of risk posed to the supported person by take up of a direct payment and the need for financial safeguarding in these situations.

18.50 A small number of respondents noted the need for these Regulations to take into account other legislation such as the Children and Young People’s Bill or approaches such as GIRFEC.

18.51 Once again, there were also some requests for clarity around some of the issues, such as instances where a direct payment would be unavailable or whether the duty should extend to services put in place, as agreed within a multi-agency child protection plan. There were also suggestions from a small number of respondents that there is a need to conduct further work with stakeholders.

Other comments on the draft Regulations

18.52 The consultation invited respondents to give their views on, for example, whether there are any gaps in the Regulations or whether any major changes are needed.

18.53 Respondents were also asked whether there any topics that are more appropriate for statutory guidance rather than Regulations.

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

18.54 Respondents were asked for any comment in relation to costs and benefits related to the Regulations; and 22 responded to this question. Most of the comments made noted concerns over various aspects of the draft Regulations and these included:

- How to ensure the safety and well-being of individuals who employ individual carers and / or whether consideration should be given to whether PVG checks should be mandatory and who would be responsible for checking these; and how to consider unregulated support such as time banks.
- Whether there should be a limit on how large a direct payment can be, particularly given that some direct payments could be large relative to family incomes.
- Timescales for implementation, particularly given concerns over growing demands for services; a request for clarification as to the expected timescale for implementation of self-directed support through the normal review rotation for the supported person.
- Queries over eligibility for direct payments in relation to adults with incapacity such as dementia or those who have degenerative neurological conditions which have periods of remission.
- Concerns over individuals in residential care.

18.55 A small number of respondents made suggestions as to the implementation of self-directed support and these included:

- Applications for self-directed support for children would be better considered if as an outcome of assessment under Section 23 of the Children (Scotland) Act 1995. A local authority commented:

  > "It is felt that the application of SDS for children would be better considered if is an outcome of assessment under section 23 Children (Scotland) Act 1995. It is felt that this would better capture the children for whom it is most appropriate i.e. children affected by disability and young carers."

- A duty should be placed on local authorities to inform direct payment recipients of the option to employ a family member.
- The definition given should include 'appropriate circumstances rather than using the term 'exceptional'.
- An explanation of eligible is needed at the start of the document.
- Support will be needed to help some individuals understand this document.
- Where it says "The council must tell the person in writing and in any other format that the person needs" it should also say 'to allow the person to understand'.

The costs and benefits arising from these Regulations

18.56 Respondents were asked for any comment in relation to costs and benefits related to the Regulations.

18.57 Specifically, respondents were asked whether they could identify any financial costs or benefits to individuals, local authorities, health boards, providers or any other person or organisation affected by the Regulations.

Question 8 : Do you have any comments on the financial costs or benefits of the Regulations?

18.58 Thirty-seven respondents provided commentary to this question, with a small number reiterating their support for the aims of self-directed support and its underlying principles.

18.59 Most of the comments made related to financial costs associated with the introduction of self-directed support, and most comments were made either by local authorities or by voluntary sector organisations. Local authorities and service providers had concerns over additional financial costs. These included administration costs, the need for additional staff training and changes to procedures and processes. Additionally there were some concerns from service providers that carer's services and organisations would struggle to keep up with demand for up-to-date and accurate information or the provision of adequate services. Some respondents had concerns over a risk of delays in payments or a failure on the part of some service users to pay.

18.60 Another three key issues were noted by some of the local authorities responding to this question. First, the potential for financial implications because of the regulations in relation to Carers' support and waiving charges. Second, while Scottish Government bridging finance is welcomed, there are concerns that when this ceases in 2015, there will be a need for further transformation funding. Third, concerns over additional costs specifically in relation to family members providing care.

18.61 A small number of local authorities also noted that it is difficult at this point in time to assess the cost implications of self-directed support or that demands for cost reductions or efficiency savings in the current economic climate will be difficult to meet.

The equality and human rights impacts of the Regulations

18.62 The final part of the consultation in relation to the draft Regulations asked respondents for views on the impact of the guidance on specific equality categories or on human rights.

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

- **age;**
- **disability;**
- **gender;**
- **lesbian, gay, bisexual and transgender;**
- **race; and**
- **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.

18.63 Only a small number of respondents (22) commented at this question, with the largest single comment being that there were no equality issues in the guidance or that the guidance fulfils its obligations in relation to equality. That said, there were also a few general comments about the need to ensure consideration of all the protected characteristics as outlined in the Equality Act 2010.

18.64 There were a small number of comments that the Easy Read version of the consultation paper was not appropriate for many with protected characteristics, with examples being given of those with intellectual impairments or learning disabilities. Furthermore, there was a suggestion from one professional / regulatory organisation for a full consultation with equality groups representing all protected characteristics to assess whether or not there are barriers to the regulations as they currently stand.

18.65 There were very few comments about specific protected characteristics, but of the small number of comments made, most focused on individuals with disability rather than any of the other protected characteristics; with concerns over how these regulations and the current welfare reform would impact negatively on disabled individuals. One local authority requested further analysis in the assessment of the impact of residential care and noted concern over the provision of services in rural areas.

Question 9 (b): Do you have any views on the impact of the Regulations on human rights?

18.66 As with the previous question, a relatively small number of respondents (23) made any comment. Of those who did comment, around a quarter noted that the guidance fulfils its obligations in relation to human rights, that SDS is a way of protecting human rights, or that in theory, SDS should increase the choice of an individual, offering them more control and independence in managing their life.

18.67 However, over half of these respondents noted concerns over the impact of these regulations on promoting human rights. Some quoted Article 19 of The United Nations Convention on the Rights of Disabled People (UNCRPD) which recognises the role of community care and support in the lives of disabled people. It says ‘disabled people have a right to live in the community, with the support they need and can make choices like other people do’. In the light of this, there were a small number of comments that it is unfair that users of community care or support have to pay towards it. Another two respondents commented that the blanket exclusion of Regulation 11 may go against international human rights law and standards, with an allied concern that some individuals may not be able to access the support they need.

18.68 Some other legislation was also referred to as being of relevance to these regulations; this included Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) or Articles 3, 5, 6 and 8 of the Human Rights Act 1998. For example, two respondents noted that there is no suitable procedure for appealing against decisions and this is a violation of Article 6 of Schedule 1 of the Human Rights Act 1998.

APPENDIX 1: LIST OF ORGANISATIONS

Organisation name
Aberdeen City Council
Aberdeenshire Council
Aberlour Child Care Trust
Action for Children
ACVO (Aberdeen Council of Voluntary Organisations)
ADSW
Alliance
Alzheimer Scotland
Angus Council
ARC Scotland - Scottish Transitions Forum
Audit Scotland
Ayrshire Independent Living Network
Barnardo's
Borders Independent Advocacy Service
British Red Cross
Camphill Scotland
Capability Scotland
Carers Scotland
Carers Trust
Children in Scotland
Chosen Carers Ltd
City of Edinburgh Council
Clackmannanshire & Stirling Shared Social Services
Coalition of Carers in Scotland
Collaborative Inquiry Group
College of Occupational Therapists
Cornerstone
COSLA
Crossreach
Discoveries project (A consortium of ARK Housing Association, Edinburgh Development Group, Thistle Foundation, Kindred and The Action Group)
Drugs Action
Dumfries and Galloway Council
Dundee City Council
East and Midlothian Adult Protection Committee
East Ayrshire Council
East Dunbartonshire Council
East Lothian Council
East Renfrewshire Community Health & Care Partnership
EAT
ELCAP
ENABLE Scotland
Encompass

Falkirk Council
Fife Council
Freespace
Getting There
Glasgow Centre for Inclusive Living
Glasgow City Council
Glasgow Disability Alliance
Grampian Employment Opportunities
Highlands Sensory Project
in Control Scotland
Inclusion Scotland
Independent Living in Scotland
Inspire (Partnership Through Life)
Inverclyde CHCP
Keys to Inclusion
Law Society of Scotland
Learning Disability Alliance Scotland
Leonard Cheshire Disability
Lothian Centre for Inclusive Living
Lothian Centre for Inclusive Living (Group discussions)
Low Incomes Tax Reform Group
MECOPP (Minority Ethnic Carers of Older People Project)
Mental Health Aberdeen
Midlothian Council
MND Scotland
Moray Council
Multiple Sclerosis Society
National Carer Organisations
National Deaf Children's Society
NHS Ayrshire and Arran
NHS Grampian
NHS Highland and Highland Council
NHS Lothian
North Argyll Carers Centre
North Ayrshire Council
North Lanarkshire Council
NSPCC
Office of the Public Guardian
Orkney Islands Council, Orkney Health & Care
PAMIS
Parkinson's UK
Penumbra
People First (Cambuslang group)
People First (East Kilbride group)
People First (Stonehouse group)
People First (Stonehouse Lifestyles group)
Perth and Kinross Council

Providers and Personalisation AND Coalition of Care and Support Providers in Scotland AND Housing Support Enabling Unit
Quarriers
RCPsych in Scotland
Renfrewshire Council
RNIB Scotland
Royal College of Nursing
Scottish Association for Mental Health (SAMH)
Scottish Autism
Scottish Borders Council
Scottish Care
Scottish Consortium for Learning Disability
Scottish Council on Deafness
Scottish Disability Equality Forum
Scottish Drugs Forum
Scottish Federation of Housing Associations
Scottish Independent Advocacy Alliance
Scottish Social Services Council (SSSC)
SCVO
Self Directed Support Scotland
Signpost part of Highland Third Sector Partnership
South Ayrshire Council
SPAEN
Sub Group 2 of the National Autism Reference Group
The Action Group
The Care Inspectorate
The Scottish Public Services Ombudsman
The Scottish Young Carers Services Alliance
Together for Short Lives
Turning Point Scotland
UNISON
Voice of Carers Across Lothian (VOCAL)
West Dunbartonshire CHCP
West Lothian Council
YouthLink Scotland

21 responses from individuals

Social Research series
ISSN 2045-6964
ISBN 978-1-78412-012-2
web only publication

www.scotland.gov.uk/socialresearch

APS Group Scotland
DPPAS18579 (11/13)