

**DUNDEE CITY COUNCIL**

**REPORT TO: SOCIAL WORK AND HEALTH COMMITTEE – 23 SEPTEMBER 2013**

**REPORT ON: SOCIAL CARE (SELF-DIRECTED SUPPORT) (SCOTLAND) ACT 2013 – DRAFT REGULATIONS AND GUIDANCE**

**REPORT BY: DIRECTOR OF SOCIAL WORK**

**REPORT NO: 334- 2013**

**1.0 PURPOSE OF REPORT**

This report provides elected members with information about the Social Work Department Officers' response to the draft Regulations and Guidance issued by the Scottish Government, to support the Social Care (Self Directed Support) (Scotland) Act 2013. Reference is made to Article III of the minute of meeting of Social Work and Health Committee held on 23rd April 2012 wherein report 172-2012 was submitted in relation to Social Care (Self-Directed Support) (Scotland) Bill - Call for Written Views and Implementation Arrangements for Personalised Services.

**2.0 RECOMMENDATIONS**

It is recommended that the Committee:

- 2.1 To note the recently submitted Social Work Department Officers' response to the Scottish Government's consultation on the draft Regulations and Guidance to support the Social Care (Self Directed Support) (Scotland) Act 2013, as appended to the report.
- 2.2 Instruct the Director of Social Work to provide information to Committee on any subsequent implications arising from the finalised regulations and guidance.

**3.0 FINANCIAL IMPLICATIONS**

- 3.1 Provision for any financial implications associated with the Social Care (Self Directed Support) (Scotland) Act 2013 has been set out within the associated Financial Memorandum by the Scottish Government. Any direct financial implications resulting from the implementation of the Act will be reported to Committee at a later date.

**4.0 MAIN TEXT**

**4.1 Social Care (Self Directed Support) (Scotland) Act 2013**

As previously reported Self Directed Support provides individuals, assessed as having eligible social care needs, with a range of choice options for how their care and support arrangements can be delivered to meet their agreed outcomes.

Self Directed Support involves identifying a budget for the individual's support and it encourages them to consider and decide how much ongoing control and responsibility they want over their own support arrangements. It is an approach which is designed to bring about independence and choice for people with care or support needs.

#### 4.2 **Options available through the 2013 Act are as follows:**

- Option 1 will mean that the person, following an assessment, will receive a direct payment from the local authority. This will enable the person to arrange their own supports/services in order to meet their needs. This option offers people the most choice and control over how their support is delivered.
- Option 2 will mean that the person in need of support, following assessment, will have an identified individual budget for the provision of their support made known to them by the local authority. The person can then choose who they want to deliver their support and the local authority will make the arrangement for the support/services on behalf of the person. This option offers people some choice and control, but less responsibility for arranging how their support is delivered.
- Option 3 will mean that the person in need, following an assessment, will have their support arranged and delivered by the local authority. This might mean that the person will have limited choice and control over how their support is delivered, but with no responsibility for arranging how their support is delivered.
- Option 4 will mean that the person in need, following an assessment, can have a mixture of the above options in order to meet their assessed needs.

4.3 The Social Care (Self-Directed Support) (Scotland) Bill was first brought before elected members reference is made to Article II of the minute of meeting of Social Work and Health Committee held on 28<sup>th</sup> June 2010 wherein report 359-2010 was submitted in relation to Self Directed Support – Development of Personalised Services and thereafter on 23<sup>rd</sup> May 2011: reference is made to Article V of the minute of meeting of Social Work and Health Committee held on 23<sup>rd</sup> May 2011 wherein report 252-2011 was submitted in relation to Self Directed Support: Draft Bill and Development of Personalised Services and latterly reference is made to Article III of the minute of meeting of Social Work and Health Committee held on 23<sup>rd</sup> April 2012 wherein report 172-2012 was submitted in relation to Social Care (Self-Directed Support) (Scotland) Bill - Call for Written Views and Implementation Arrangements for Personalised Services.

4.4 The Social Care (Self Directed Support) (Scotland) Bill was launched on the 1<sup>st</sup> March 2012 and received Royal assent on 10<sup>th</sup> January 2013. During the Bill's passage through the Scottish Parliament, a commitment was given by Scottish Ministers to develop Regulations to support the Social Care (Self Directed Support) (Scotland) Act 2013 along with related statutory Guidance.

4.5 The draft Regulations, to accompany the Social Care (Self Directed Support) (Scotland) Act 2013, deal specifically with direct payments, which is option one within the 2013 Act.

#### 4.6 **Background to the Consultation on the Draft Regulations and Guidance**

On 17<sup>th</sup> April 2013 the Scottish Government published both draft Regulations and Guidance. Views on the content, purpose and effect of the draft Regulations have been sought. The draft Regulations relates specifically to Option 1 (Direct Payment) within the Social Care (Self Directed Support) (Scotland) Act 2013.

4.7 All submissions in response to the draft Regulations and Guidance were required to be lodged with the Scottish Government by 10<sup>th</sup> July.

#### 4.8 **Consultation Arrangements**

During the consultation period, the Social Work Department, on behalf of the Council, facilitated discussions on both the draft Regulations and Guidance with a range of focus groups. These focus groups included Carers and Service Users as well as representatives from Care Management groups, Legal Services section, Contracts, Finance and Welfare Rights section, Children's Services and Housing Department

4.9 Each group was asked to consider the general questions set out in the consultation documents and questions specific to their area of interest. Views from these groups helped to form the Social Work Department's response to the consultation.

#### 4.10 **Scope of Draft Regulations**

The draft, as previously noted, principally focus on the arrangements supporting direct payments. The draft Regulations pay particular attention to the following areas:

- Calculation, payment and termination of direct payments.(page 25)
- Relaxation of current restrictions on who can be employed through a direct payment (provision of support delivered by family members).(pages 25/6)
- Circumstances in which direct payments would not be available (exemptions and the over-riding statutory duty of care to protect an individual and/or the community).(page 26)
- Residential Care. (page 27)
- Waiving of charges for carers. (page 24)

A detailed response to each of these areas is contained within the appended report.

#### 4.11 **Scope of Draft Guidance**

The draft Guidance focus on the values, principal legal duties and powers associated with social care assessment, support planning and review. The draft Guidance was developed by Scottish Government with contributions from a variety of statutory and non statutory partners. The draft Guidance is very broad and detailed and covers adults, children and both young and adult carers. The draft Guidance is also only one in a number of other guidance documents being planned by the Scottish Government to support the implementation of Self Directed Support. The other guidance documents which have yet to be produced are aimed at Providers, Practitioners, Commissioners and Citizens.

4.12 The draft Guidance to support the Social Care (Self Directed Support) (Scotland) Act 2013 pays particular attention to the following areas:

- Eligibility and assessment. (pages 6/7)
- Support planning.(pages 8/9)
- Establishing a fair and transparent resource release system. (page 9)
- Identifying the indicative budget as early as possible following the assessment and agreement of eligible needs.(page 9)
- The role of the NHS professional.(page 12/13)
- Children and Families.(pages 13/14/15)
- Carers.)pages 17/18)
- Protection and statutory duty of care.(pages 9/10)
- Facilitating genuine choice for individuals (role of independent advocacy). (page 11)

A detailed response to each of these areas is contained within the appended report.

4.13 The Scottish Government have advised that following the consultation closing date, all responses will be analysed and considered along with any other available evidence to help recommend any further amendments or additions to the regulations and guidance.

4.14 It is anticipated that the Scottish Government will introduce the new regulations and guidance to the parliament in the autumn, with a view to issuing them in January 2014 ahead of a commencement date of 1st April 2014.

## **5.0 POLICY IMPLICATIONS**

5.1 This Report has been screened for any policy implications in respect of Sustainability, Strategic Environmental Assessment, Anti-Poverty, Equality Impact Assessment and Risk Management. There are no major issues.

5.2 An Equality Impact Assessment is attached to this report.

## **6.0 CONSULTATIONS**

6.1 The Chief Executive, Director of Corporate Services and Head of Democratic and Legal Services have been consulted in preparation of this report.

## **7.0 BACKGROUND PAPERS**

7.1 Draft Self Directed Support (Direct Payments) (Scotland) Regulations 2013.

7.2 Draft Statutory Guidance on Care and Support 2013.

**JENNIFER G TOCHER**  
**DIRECTOR OF SOCIAL WORK**

**DATE: 23 AUGUST 2013**

Dear Sir/Madam

## **SELF-DIRECTED SUPPORT: CONSULTATION ON DRAFT STATUTORY GUIDANCE ON CARE AND SUPPORT**

### **Responding to this consultation paper**

We are inviting written responses to this consultation paper by **10 July 2013**. **Please send your response with the completed Respondent Information Form** (see "Handling your Response" below) to:

E-mail to: [selfdirectedsupport@scotland.gsi.gov.uk](mailto:selfdirectedsupport@scotland.gsi.gov.uk)

or

Adam Milne  
Self-directed support Team,  
Room 2ER,  
St Andrew's House,  
Regent Road,  
Edinburgh,  
EH1 3DG

If you have any queries please contact Adam Milne on 0131 244 5455

We would be grateful if you would use the consultation questionnaire provided as part of the Respondent Information Form or could clearly indicate in your response which questions or parts of the consultation paper you are responding to as this will aid our analysis of the responses received.

This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at <http://www.scotland.gov.uk/consultations>.

The Scottish Government has an email alert system for consultations, <http://register.scotland.gov.uk>. This system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new consultations (including web links). It complements, but in no way replaces SG distribution lists, and is designed to allow stakeholders to keep up to date with all SG consultation activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

## **Handling your response**

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the Respondent Information Form attached to this letter as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly. All respondents should be aware that the Scottish Government are subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

## **Next steps in the process**

Where respondents have given permission for their response to be made public and after we have checked that they contain no potentially defamatory material, responses will be made available to the public in the Scottish Government Library, and on the Scottish Government consultation web pages by **7 August 2013**. You can make arrangements to view responses by contacting the SG Library on 0131 244 4552. Responses can be copied and sent to you, but a charge may be made for this service.

## **What happens next?**

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us consider any amendments or additions to the guidance. We aim to issue a report on this consultation process along with our response to it during Autumn 2013.

## **Comments and complaints**

If you have any comments about how this consultation exercise has been conducted, please send them to the address given above.

Yours sincerely

Adam Milne  
Scottish Government  
Self-directed Support Team

# A public consultation on draft regulations and statutory guidance to accompany the Social Care (Self-directed Support) (Scotland) Act 2013



## RESPONDENT INFORMATION FORM

**Please Note** this form **must** be returned with your response to ensure that we handle your response appropriately

### 1. Name/Organisation

#### Organisation Name

Dundee City Council

Title Mr  Ms  Mrs  Miss  Dr  Please tick as appropriate

#### Surname

Smith Hope

#### Forename

Avril

### 2. Postal Address

Social Work Office

Jack Martin Way

Claverhouse

Dundee

Postcode DD4  
9FF

Phone 01382  
438308

Email  
avril.smithhope@dundeecity.gov.uk

### 3. Permissions - I am responding as...

Individual

Group/Organisation

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate

Yes  No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick ONE of the following boxes

Please tick as appropriate

Yes  No

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

Yes

No

#### 4. Additional information – I am responding as:

Please tick as appropriate

1. Member of the public	<input type="checkbox"/>
2. Individual health/social care professional	<input type="checkbox"/>
3. Central government	<input type="checkbox"/>
4. Local authority	<input type="checkbox"/>
5. Community Health Partnership	<input type="checkbox"/>
6. Health Board	<input type="checkbox"/>
7. Support & information or advocacy organisation	<input type="checkbox"/>
8. Voluntary sector organisation	<input type="checkbox"/>
9. Private Sector organisation (e.g. private social care and support provider)	<input type="checkbox"/>
10. Professional or regulatory body	<input type="checkbox"/>



11. Academic institution	<input type="checkbox"/>
12. Other – please specify	

## Consultation Questionnaire

### Draft Statutory Guidance on Care and Support

#### Consultation Questions

Section 2 : Supported Person’s Pathway

**Question 1a: Was this section of the guidance clear and easy to understand? (please tick)**

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

**Question 1b: How useful did you find this section of the guidance? (please tick)**

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

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

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

We would have anticipated that this section would have placed a significant emphasises on outcomes and were concerned that this was not apparent particularly within Step 4: Support Planning and Step 7: Monitoring and Review.

We would also welcome clarification as to what constitutes “initial screening” as according to the guidance this would lead to a determination on whether the person should progress to a formal decision on their eligibility for support. Eligibility for support would come after assessment, not before. And, assessment could conclude that whilst the person does have support needs, this does not mean that they have needs which the social work department would be responsible for meeting under eligibility criteria, and as such social work would sign post to other local or national agencies or services.

Given self directed support is primarily about the supported person we would also suggest that table 2 should have their role described as the starting point.

## **Draft Statutory Guidance on Care and Support**

### **Consultation Questions**

Section 3: Values and Principles

**Question 2a: Was this section of the guidance clear and easy to understand? (please tick)**

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

**Question 2b: How useful did you find this section of the guidance? (please tick)**

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

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

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

Overall, this section is a useful aide memoire on the underpinning values and principles of self directed support. However, we would propose that the following suggestion would strengthen this section.

#### **Table 3**

We suggest that within the principle of collaboration there should be reference to transparency from the perspective of the supported person, their carer if pertinent and the professional.

## **Draft Statutory Guidance on Care and Support**

### **Consultation Questions**

Section 4: Eligibility and Assessment

**Question 3a: Was this section of the guidance clear and easy to understand? (please tick)**

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

**Question 3b: How useful did you find this section of the guidance?  
(please tick)**

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

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

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

We would suggest that this section would be clearer if eligibility and assessment were separated and seen as two distinct albeit related topics with assessment being before eligibility.

We specifically recommend that the following points are considered:

- Paragraph 18, first bullet point – the purpose of assessment is to determine whether the person is a person in need. We therefore suggest that this should read '*The first purpose of assessment is to identify the person's needs with a view to determining whether the relevant authority has an obligation to meet those needs.*' If this was accepted then paragraph 19 could therefore be deleted.
- Paragraph 20 should be moved to the newly created section on Eligibility Criteria
- Paragraph 22 – we recommend that “current” is inserted after “the”
- Paragraph 24 – achieving all that is set out in this paragraph will be extremely challenging, if at all possible, for local authorities in the midst of the current spending review, fiscal pressures and overarching policies including Welfare Reform. It should be recognised that local authorities require the autonomy to make strategic decisions around eligibility frameworks and commissioning decisions and that they may not be able to achieve some of the more aspirational elements within the partnership model being stated in this paragraph.
- Paragraph 38 – this paragraph would in our opinion sit better at the start of the section on the “Supported Person’s Pathway.” We also recommend that the words '*often from a provider*' is removed from the first sentence since support may come from a variety of sources. We also strongly recommend that the wording “*further assessment*” is replaced by *statutory assessment*.

Our final observation on this section is that it makes no reference at all to children and families and as such requires to be amended. If this section is specific to only adults, then this should be made explicit early in the section there should be a section link to children and families where these matters would be covered.

## **Draft Statutory Guidance on Care and Support**

### **Consultation Questions**

#### Section 5: Support Planning

This section of the guidance covered:

- general guidance on support planning
- risk
- resources
- the choices that must be made available to the supported person and
- information and support

**Question 4a: Was this section of the guidance clear and easy to understand? (please tick)**

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

**Question 4b: How useful did you find this section of the guidance? (please tick)**

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

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

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

Support planning and processes:

Overall we thought that this section provided helpful guidance. However we have the following specific comments:

**Table 6:**

- We would propose that the “key ingredients” set out in table 6 would be enriched by a focus on as to how the supported person will communicate their support needs, outcomes and personal preferences.

**Risk:**

The matters highlighted with risk assessment and risk management, as set out in the guidance are helpful as noted above. It is good to see an acknowledgement that at times the supported person might not always recognise or appreciate risks associated with their care and support arrangements. And whilst we agree that the principles of involvement, informed choice and collaboration are helpful aids in determining how individual risks should be managed, it does not always follow that mutual agreement will be reached. We would therefore recommend that the guidance:

- makes specific reference to the role of advocacy for the supported person where agreement has not been reached
- recommends that the basis of any disagreement is fully documented

We submit that enabling risk can be a complex process for all involved and as such we would also want the guidance to recognise that in situations where there is a degree of uncertainty about the supported person's capacity to understand risk and/or their ability and willingness to manage this, professionals must be able to exercise discretion. Consideration should also be given to encompassing situations where there are concerns about risks that parents may take in relation to caring for their child.

**Resources:**

We are in agreement with the statement that any resource allocations systems are not a substitution for the skilled judgement of a social work or health professional. We would also concur that the allocation of resource requires to be both fair and transparent. However, we would wish further discussion on the weight placed on involving service user and carer groups in developing methodology to define or determine budgets for individuals.

**Paragraph 52:**

We would recommend that the sentences *'Self-directed support is not about cutting people loose or leaving them to get by on their own. It is not simply about "the money" or providing that money to the person.'* be deleted, as they do not add anything to this section.

**Paragraphs 64, 65 &66:**

The professional discretion described in these paragraphs relates to the individual's assessed need and their chosen option for support. There are a number of issues with this in relation to Option 1.

Local authorities have wider duties in relation to safeguarding, including community safety. We often work closely with individuals to develop support in situations where they present potential risk to other people, but are not subject to any of the compulsory orders under Regulation 11 of Part 4 of the Act. In such circumstances as these, our concerns about the use of Option 1

would not be related to the assessed need of the individual, but rather the safety of others they may recruit to assist with their support. Professional discretion around how this is managed is imperative.

We would also want to highlight that there will be some adults who despite having the capacity to consent to a particular option, will struggle to understand and effectively discharge their responsibilities as employers. For example, although the support chosen may be adequate to meet their agreed outcomes, should difficulties arise in relation to their role as an employer, there will be no legal protection for them, within employment law, if they have failed to comply with legislation. This would potentially leave vulnerable adults exposed to legal issues they would have difficulty understanding. It could also mean that professionals could be open to criticism for agreeing to such arrangements when it was clear the individual would not be able to understand and exercise their responsibility as an employer. Similar concerns apply where parents, whose lifestyles may cause some concern, decide to take Option, 1 to secure support for a child.

We would also submit that professional judgement has an important role to play and that any issues relating to compliance with Adult Support and Protection and Child Protection duties should always take precedence. This requires to be extended to individuals being placed in an employer/employee relationship, which they would have difficulty understanding and/or managing. We believe that the Guidance and Regulations should provide clarification on this matter.

**Paragraph 70**

Reference should be to Section 9 of the Act – not Section 8

**Draft Statutory Guidance on Care and Support**

**Consultation Questions**

Section 6: Monitoring and Review

**Question 5a: Was this section of the guidance clear and easy to understand? (please tick)**

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

**Question 5b: How useful did you find this section of the guidance? (please tick)**

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

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

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

Although this section is headed Monitoring and Review it makes no reference at all to monitoring functions and what is anticipated or expected.

We recommend that paragraph 80 should reflect the fact that for some individuals their review may be initiated for a range of reasons including:

- o change of circumstances
- o change of needs/outcomes
- o issues around management of support, including finances and
- o planned review

There is also the potential that a financial review may also be required for Option 2, in circumstances where there is concern that the budget is not being effectively managed on behalf of the supported person, by a third party.

**Draft Statutory Guidance on Care and Support**

**Consultation Questions**

Section 7: Facilitating genuine choice for individuals

**Question 6a: Was this section of the guidance clear and easy to understand? (please tick)**

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

**Question 6b: How useful did you find this section of the guidance? (please tick)**

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

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

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

This information contained in this section is relatively useful. It promotes and if applied would strengthen the principles of partnership work in the broadest sense. It provides opportunities to further support the development of community capacity building initiatives and the creation of micro providers, led by demand from individuals and communities. As such, we would suggest that part 3 in table 8, could have a better asset based focus as opposed to gaps and deficits.

We also noted that within this section there was no reference to Personal Assistants.

## **Draft Statutory Guidance on Care and Support**

### **Consultation Questions**

#### **Section 8: The role of the NHS professional**

**Question 7a: Was this section of the guidance clear and easy to understand? (please tick)**

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

**Question 7b: How useful did you find this section of the guidance? (please tick)**

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

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

*Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you'd like to make that are more appropriate for statutory guidance rather than Regulations?*

We feel that this section could be further strengthened by including reflecting on some of the emerging evidence that positively reflects that the integration of Health and Social Care, partnership working and pooling financial resources can deliver on good quality outcomes for individuals.

We also suggest that the Health and Social Care Integration agenda should be explicitly referred to in the Guidance. 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

#### **Paragraph 84**

We recommend that the statement which suggests that health funded support could replace social care requires further clarification.

Also, we submit that there should be reference in this overall section to the agenda for personalised health care and reference to the equality strategy would also be useful.

#### **Paragraph 85**

We recommend that the brackets around “and senior managers” should be removed as it infers that their role is less valued. We also suggest that there should be clear reference to both multi-agency assessments and NHS Continuing Care.

Our observation on case study 1, page 42, paragraph 3 is that the statement ‘*from a local care agency*’ requires to be deleted as in relation to the employment of a personal assistant, this could unhelpfully create confusion.

#### **Paragraph 87**

We would submit that bullet point 2, should read ‘*They can arrange for the transfer of funding from the NHS to the local authority in order to pay for aspects of health care provision*’.

## **Draft Statutory Guidance on Care and Support**

### **Consultation Questions**

#### Section 9.1: Children and Families

**Question 8a: Was this section of the guidance clear and easy to understand? (Please tick)**

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

**Question 8b: How useful did you find this section of the guidance? (please tick)**

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

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

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

We strongly suggest that this section of the Guidance requires to be further developed specifically in relation to the interface between self directed support the challenges and opportunities within the wider Children and Families context.

As noted within our response to the draft regulations we would recognise that the exclusions as set out in the draft Regulations, for direct payments, are broadly appropriate. However, we suggest that professional judgement and the requirement for professional discretion to be used, does require to be acknowledged and accepted. We would submit that the use of professional discretion could be effectively applied for children/young people who are in long term foster placements or living with a Shared Lives carer to enable access to direct payment. Again if professional judgement was applied this could be helpful in some circumstances. It is also worth considering the interface with Kinship care. This approach could be used at an early stage to assist young people who are preparing to leave care.

We also recognise that there will be some young people who are 'looked after' on a part time basis. For example, if they attend term time residential placements. It would be important that families are able to access self directed support options during holiday periods to ensure that the young person is appropriately supported.

The concept of 'children in need' is so broad that we would suggest that self directed support options could be useful in a variety of circumstances. For example, to work with families to try to prevent children from being 'accommodated'.

The Guidance asks whether there are circumstances where Options 1 or 2 should never be offered. We would suggest that professional discretion is applied on whether these options should be offered, even where compulsory orders are in place, since there may be some useful interventions which would empower the child/young person and the parent to improve their situation.

We would recommend that there needs to be much more clarity within the Guidance as to the interface between the legislation for self directed support and child protection. For example, even where it would appear that all four self directed support options could be offered it must be stipulated that child protection concerns will always take precedence over the options for self directed support. A practical example could be that where 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 would need to be applied in relation to safeguarding duties. Links and interface with other bodies involved in child protection need to be clearer. For example, the Children's' Hearing system.

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

Where a self directed support arrangement is in place and compulsory measures are subsequently applied, there may be a need for transitional arrangements to be agreed. For example, where there are issues of neglect and the parent is not engaging in the implementation of the Child's Plan.

Self directed support should be used to encourage and empower both parent and child and not be used to create dependency. For example, it may well be inappropriate to provide a taxi, because the parent is not getting the child ready for school on time. There needs to be recognition that often the support provided is to support the parent to parent the child appropriately, rather than services directed to the child.

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

Training for family carers and personal assistants needs to be accessible and sufficient to ensure children are not put at risk. As noted in our response to the draft regulations, the current PVG regulations are a concern, as there is no legal requirement for parents to ensure that personal assistants are members of the PVG scheme. And, whilst we recognise that PVG checks are only part of safe recruitment, we would strongly advocate that they are an integral part of self directed support and that there has been a missed opportunity to include powers to the local authority to ensure that personal assistants are members of the scheme.

Further and more explicit guidance on how self directed support can be applied to support young carers, who are providing support for a parent or guardian, would be welcomed as the parent's view of needs may be in conflict with those of the child.

Young adult carers can find the transition from school into employment or further education difficult as they don't always have the support they need to guide them through this. Many young carers' aspirations for employment or education are very low, because of the responsibility they feel towards their caring role. They therefore find it difficult to envisage a life outside of caring. Some exploration of how to ensure the young carer's voice is heard in relation potential support and to the four self directed support options would

be welcomed.

There are also pertinent issues associated with the transition from children's services to adult services. For example, when the young person lacks capacity to consent, but the parent has been using a direct payment to employ staff. A guardianship application would need to be made in order to ensure that the support arrangements continue. In circumstances where the young person has reduced capacity and Guardianship is not deemed necessary, there may be difficulty if it were considered that the young person was unable to fulfil the responsibilities associated with being an employer. Alternative management/support arrangements would need to be considered and put in place to minimise the risk of any potential legal issues for both the family and the local authority in relation to who would be deemed as being the lawful employer. Although transitional arrangements should address issues and concerns, discussion and planning arrangements will require to be initiated at an early stage. Further consideration of the legal issues surrounding this would be helpful.

## **Draft Statutory Guidance on Care and Support**

### **Consultation Questions**

#### Section 9.2: Supported decision-making and circles of support

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

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

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

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

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

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

There needs to be recognition that people have very different levels of understanding and capacity to engage in the process of assessment, making informed choice and exercising control over how their care and support arrangements will be delivered.

Where there are others who can support the individual in their decision making, a clear understanding of what their role would, or could be, in

relation to the assistance with managing the support is required. For example some people who can make decisions on how they want their support to be provided, may not be able to understand the complexities involved in employing staff. This is more than just the administrative responsibility and requires some level of understanding of employment law, health and safety etc. The person in receipt of the direct payment would become the employer and so their capacity to understand and exercise their responsibilities needs to be taken into account. The timescale for enabling this kind of support is important. Careful planning leads to a more successful outcomes and the process should not be rushed. Further guidance is needed in relation to people whose capacity to consent is in doubt.

Where the local authority has welfare guardianship and has the power to make welfare decisions there should be clarity about whether option 3 is automatically applied and that this can include, where appropriate, the provision of the local authorities own services.

## **Draft Statutory Guidance on Care and Support**

### **Consultation Questions**

#### Section 9.3: Carers

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

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

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

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

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

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

We are generally very supportive of the power to provide support to carers to assist them in their caring role and believe this will afford flexibility to local authorities, particularly to support carers where the supported person declines support from others.

We note that the guidance does not address the issue central to the intention to relax the rules on employing family members through a direct payment. This raises a number of issues and as previously noted we would strongly advocate that this should continue to be at the discretion of the local authority.

If the current regulations were amended we would require further clarification within the guidance as to how this would be applied in practice. For example:

- How would a carer's assessment apply to family members who are providing both paid and unpaid support?
- How would the paid support be viewed in relation to provision of short breaks/respite for carers?
- How would we respond to situations where it was evident that the carer was not accessing appropriate breaks from their role as paid carer, for example, if the carer asserts that they are providing the support on an unpaid basis while on paid annual leave? This would effectively mean that family carers would not be taking the statutory breaks required under employment law and that ultimately could affect the quality of both the paid and unpaid support. In addition this could also have a negative impact on the outcomes for both the supported person and the carer. However, we recognise that this would be very difficult to monitor and review and where required effect change when there is clear resistance from the individuals concerned.
- What plans should be put in place to cover sickness, annual leave etc. when the supported person and the carer decline to build into the support package contingency plan or back up support arrangements?

It would be helpful if the guidance provided a focus on the role of advocacy services when family members are employed to provide paid care as these issues can make the support provision to family carers' complex and there is a clear confusion of roles.

We would welcome further clarity around how self directed support would apply to young carers, particularly around option 1 where the young carer is under 18 years.

**Paragraph 120:**

Bullet point 5 – people who provide advocacy should not be referred to as 'supported persons'

**Paragraph 125**

A third party should not be referred to as a supported person as this creates confusion.

## Draft Statutory Guidance on Care and Support

### Consultation Questions

#### Section 9.4: Direct payments

**Question 11a: Was this section of the guidance clear and easy to understand? (please tick)**

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

**Question 11b: How useful did you find this section of the guidance? (please tick)**

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

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

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

We suggest that third party payments could effectively support more individuals to elect option 1, direct payment. However, our view would be that for this to be a positive arrangement it would be crucial that the roles of both the supported person and the third party are made explicitly clear and that there is evidence that all parties understand their responsibilities. This could realistically be achieved through the requirement of a signed mandate being put in place as this could effectively prevent difficulties arising later on. We would also advocate that there would be a need for some professional discretion to be applied, if it appeared that there was undue pressure being applied in relation to the financial management arrangements. For example in situations where a family member or friend is eager to manage the finances, but are known to have issues of addiction/gambling. Finally, it should also be explicit that a personal assistant employed to provide support, should not be appointed to manage the finances.

#### **Paragraph 127:**

We recommend that this should read as 'eligible need' and not 'assessed need' and that the bullet points are not particularly helpful here, as they seem to give a narrow view of what a direct payment can be used to achieve. They could without detracting from the guidance be removed. However, if they were to remain then we would recommend the following:

**Paragraph 127, bullet point 4:**

We recommend that 'holiday' is replaced by the term short break; otherwise this raises expectations about the agreed use of a direct payment.

**Paragraph 124 and 130:**

We suggest that the narrative in these paragraphs is contradictory with respect to explaining what the responsibilities of being an employer entail. We would also stress that specialist advice is required for those who want to become an employer and that this is not the responsibility of the social worker/care manager. Their role would be to refer the supported person to an organisation or team that can provide the relevant advice or support.

We advocate that in situations where a direct payment has been terminated by the local authority due to misuse for example, the local authority would have the discretion as to whether to reinstate the direct payment or not and that this point requires to be enconced within the guidance.

**Paragraph 138:**

We agree with the information set out in this paragraph; however we would advocate that this paragraph is equally applicable where health contributes to the overall care and support package. As it stands, the inference in the paragraph is that it applies only to social work responsibilities.

**Draft Statutory Guidance on Care and Support**

Section 9.5: Wider legal duties and strategic responsibilities

**Question 12a: Was this section of the guidance clear and easy to understand? (please tick)**

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

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

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



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

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

We have the following comments to make with regards to this section:

**Adult Support and Protection**

The implementation of the Adult Support and Protection legislation has resulted in a substantial increase in the volume of work undertaken by local authorities. Our view is that the draft guidance requires to be better defined and explicit in relation to the interface between self directed support, particularly with direct payments, and Adult Support and Protection legislation. Both of these confer statutory duties on local authorities, which could be seen to be conflicting. Adult Support and Protection applies to all citizens in circumstances where they could be viewed as being vulnerable. Local authorities often support individuals whose behaviour could be perceived as presenting a risk to others and as such we would want to exercise our safeguarding duties in respect of all citizens. This could mean we would want to exercise discretion in relation to the provision of direct payments where the employment of personal assistants was the preferred choice.

The application of self directed support options, and in particular direct payments, is a legal duty with only a small number of exclusions relating to compulsory orders. Local authorities work with significant numbers of people for whom access to a direct payment, especially to employ personal assistants, could be perceived as risky and ill advised. Discretion on the method of support appears to be restricted to the needs of the supported person. The proposed regulations do not afford any discretion to professionals to restrict the option to employ personal assistants when there is evidence of potential risk of harm. The supported person takes on the role of employer and the authority's ability to share information with personal assistants and monitor that relationship is limited, not only in practice but in law.

Local authorities may also refer individuals to independent support organisations to support them in their preparation to become employers. Sharing of information in these circumstances could be a difficult issue. Professionals could not realistically ignore the existence of significant risk and would be in breach of wider duties in relation to safeguarding. The same concerns would also apply to child protection issues, but the draft guidance and regulations don't appear to address this. We would therefore suggest that much clearer guidance in relation to prioritising safeguarding duties, in relation to the duties under self directed support, and the legal implications of these, are essential.

### **Re-ablement & Intermediate care:**

It is helpful that the guidance clearly sets out that self directed support is not applicable to re-enablement. However, we would suggest that where a self directed support option is already in place and the supported person requires re-ablement services, or indeed intermediate care, then it would be important to consider whether these service options could be provided in conjunction with and arguably be complimentary to the support already in situ. This would be especially important in situations where personal assistants are employed and the supported person has to meet employer responsibilities.

### **Equipment & adaptations:**

Our view is that this section of the guidance is not terribly well detailed and as it now includes housing adaptations, there was an expectation that there would be more information on how this impacts on other funding sources and obligations, for example housing.

We note that although the current direct payment regulations and guidance include information on matters including ownership, repair and maintenance, this has been omitted in the draft guidance. Along with many other local authorities we appropriately recycle equipment, which is no longer required by the supported person to whom it was issued. On this basis we would therefore strongly advocate that this practice should be encouraged to continue as to stop it, would incur substantial cost.

We also recommend that the guidance should make it clear that equipment purchased must meet the assessed need of the supported person both safely and appropriately. Clarity on how this will apply to owner occupiers and landlords is needed.

### **Self-assessment:**

As housing adaptations require professional occupational therapy and skilled architectural input we would recommend that self assessment in such instances would not be appropriate for anything beyond superficial design details and decoration.

### **Other forms of social welfare:**

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

## **Draft Statutory Guidance on Care and Support**

### **Consultation Questions – General Questions**

#### The Guidance document as a whole

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

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

Dundee City Council has embraced the opportunity to comment on both the self directed support draft regulations and guidance. As a Council we have been unwavering in our efforts to learn from test sites, share our knowledge with other local authorities and our wider partners including our Health and 3<sup>rd</sup> Sector colleagues.

#### **Timescales:**

Dundee City Council is committed to the implementation and roll out of self directed support. However we also recognise that in order to see through full implementation of self directed support, time is of the essence and we would suggest that to effectively achieve the cultural shift across all the groups who will be eligible for self directed support and our partners consideration to timescales is required. We say this not as a delaying tactic, but as an enabling strategy setting out a strong, transparent and consistent implementation approach. This request is strengthened by the evidence from the self directed support test sites which have demonstrated that achieving positive change is a lengthy process for authorities. Given that the final guidance and regulations are not expected to be published until much later in the process, we would advocate that this should be taken into account, particularly for new groups.

#### **Other matters – family members as paid carers:**

The employment of family carers is not addressed in the guidance despite the fact that there is a material shift in emphasis within the draft regulations. This is a significant gap and does not seem to recognise the potential and often complex shift in family dynamics that this could produce within family relationships.

It also has the potential to change the dynamic of how society views family carers in relation to what support the state provides and what a family may choose to provide as part of their familial role.

The process of assessment for both carers and the people they support can be complex and difficult and there are sometimes conflicting views about

how outcomes should or could be met. It is often difficult to ascertain whether pressure is being applied, either to a carer or the person they support by the other party. This is even more difficult when the carer takes on a paid role. In some families this arrangement may well work well, but the proposed change to regulations will make it much more difficult for professionals to exercise discretion in order to protect the interests of either carer or supported person.

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

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

#### The costs and benefits arising from this guidance

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

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

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

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

Renouncing charges for short breaks will, without a doubt, have significant implications across Scotland. Income from charges applied to short breaks is substantial; therefore to waive contributions would in effect reduce Councils' income and by default result in a further budget cut.

It is difficult to see how waiving personal contributions to short breaks/respite can be achieved without additional funding being made available. It is not unrealistic to suggest that if this action is endorsed it may have a detrimental impact on the amount of short breaks Councils are able to provide. This could impact on the progress being made in providing an additional 10,000 weeks of respite for carers across Scotland.

Transformational funding, which may well prove to be insufficient to achieve the cultural change required to effectively implement self directed support has only been provided until 2014/15. Waiving charges for carers in relation to short breaks/respite will clearly have a real cost factor. The real costs of

implementing self directed support are still uncertain and the issue of funding the additional costs of self directed support, will, we respectfully suggest, require that further consideration and debate is taken within the Scottish Government.

The equality and human rights impacts of the guidance

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

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

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

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

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

We believe the Guidance fulfils obligations in relation to equality

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

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

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

We would refer you to the concerns regarding safeguarding and would suggest these could have wider implications in relation to the human rights of individuals who could potentially be placed at risk.

# Consultation Questionnaire

## Draft Regulations

### Consultation Questions

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

We would advocate that recipients of direct payments receive their funding net of any personal contribution they are required to contribute, following means testing. The option of providing recipients with the choice of either net or gross payments would lead to additional administration for the Council and an unnecessary additional cost. Dundee City Council has since the introduction of direct payments, effectively paid recipients on a net basis.

We would also recommend that Regulation 7 (3) a should be qualified by the words “which the local authority is aware of”.

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

We strongly recommend that the current legislative restriction governing the employment of family members remains in place. The discretion that the current legislation provides Councils to determine what “exceptional circumstances” is, we believe is sufficient in considering all representations from individuals and their respective family members.

The nine factors set out in the draft regulations are, in our opinion, too wide ranging and do appear to have been thoroughly thought through as you could, for example, quite easily conclude that a significant number of proposed supported persons could experience difficulty interacting with strangers. It is our opinion that this criterion does not, in isolation, mean that the supported person’s needs would be considered as falling within exceptional circumstances.

We also suggest that the risks involved in employing a family member have not received appropriate consideration. For example, our experience in supporting carers confirms that the needs of unpaid carers and the supported person are very different. Ensuring that it is the supported person’s needs which are central to any care and support arrangement is difficult to attest to when a family member is the employer.

It is also difficult to establish eligible support, including short breaks/respite, within carers assessment for family members who are providing both paid and unpaid.

We would also wish to highlight that the dynamics within families can change

and sadly not always for the better good and that significant difficulties would be encountered when establishing, with clarity, that both the supported person and the proposed employed carer had agreed to such an employment arrangement, without any undue pressure.

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

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

We submit that if this particular regulation were to be amended, as set out in the draft regulations, then it would potentially place the supported person, the wider community and the local authority at risk. We strongly recommend that Adult Support and Protection and Child Protection duties should take priority over the duty to offer a direct payment and that the offer of the option of a direct payment should be discretionary, where there are concerns around safeguarding for either or both the individual and the person providing support.

We also believe that professional assessments could be seriously compromised in relation to duties associated with all of these Acts, if discretion was not allowed.

**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?**

Whilst we would not wish there to be an automatic restriction of access placed on individuals who were homeless, fleeing domestic abuse or requiring support in relation to their drug or alcohol addiction. Instead, we would recommend that further consideration be given on how to better safeguard the interest of individuals within these groupings, in order to maximise their rights of choice and control. For example, if local authorities were given a power, rather than a duty to offer all four self directed support options to individuals in these groupings, then this would allow certain options of self directed support, in situations where it was evidenced that there would be an unacceptable level of risk to the individual or wider public, to be declined, whilst still supporting the individual meet their defined outcomes through one of the other available options.

**Question 5: What are your views on restricting access to direct payments in relation to the provision of long-term residential care?**

This question was raised during the initial consultations on a draft SDS Bill. The Scottish Government would like to invite detailed views before making a final decision prior to the laying of the Regulations before the Scottish Parliament. Should the restriction be removed from the final regulations, thereby allowing direct payments for residential care? Or should it be retained? Please provide reasons as to your support or opposition to requiring authorities to provide direct payments for residential care.

We note that the draft regulations confirm that option 1 (direct payment) is not available for long term residential care. However, we would wish clarification as to whether long term residential care would be available within option 2 and if so, we would seek guidance from Scottish Government as to how nominal costs for residential care would be calculated for individual service funds/budget.

**Question 6: The draft Regulations do not specify circumstances where the direct payment option should be unavailable for care and support to children/families. *Should* there be specific restrictions on choice of support in relation to children/families support (i.e. support provided under Section 22 of the Children (Scotland) Act 1995) and should these restrictions apply to the direct payment only, or to other options as well?**

We strongly suggest that the key element in this is that the safety and wellbeing of the child has to be paramount. We would be of the view that the professional assessment is crucial in determining whether or not a direct payment would be the appropriate service delivery model. For example we would be concerned if an individual parent or carer was to propose using a direct payment in a way that put a vulnerable child at risk. An example of this would be a parent/carer using a direct payment to employ a personal assistant to support their child and that the employed person represented a risk to the child. The obvious example of this would be a Schedule 1 offender or someone whose name was on the Sexual Offenders Register. In circumstances such as this we would be of the view that the direct payment option should not be made available.

We are however not opposed to any of the options being available if assessment demonstrates that they will be used appropriately for the best interests of the child. For that reason we would be of the view that Local Authorities be given a power rather than a duty to offer all four self directed support options in relation to children, young people and families. We would also be of the view that we should decide on whether or not to exercise that power by undertaking an assessment of the child/young person



circumstances using the GIRFEC National Practice Model.

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

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

***PVG***

Whilst we fully acknowledge that self direct support provides individuals with the right to direct their own support and that this can include employing their own personal assistants, we do not believe that sufficient consideration has been given as to whether PVG checks should be mandatory and as such made a requirement for those selecting options 1 or 4. We would have an expectation that any Agencies providing care and support through options 1, 2 or 4 would have the requirement for their staff to have undergone appropriate PVG checks to be written in as part of their approved provider status.

If PVG checks were to be written in to the regulations as being mandatory we would welcome further discussion as to whether it would be the responsibility of the individual to assess the information within the PVG record or that of the local authority. In relation to protecting vulnerable groups, local authorities have established specific duties and in order to fully discharge this responsibility they would not be able to devolve all of the responsibility to the individual.

***Implementation timescale for existing service users.***

The proposed implementation date of 1<sup>st</sup> April 2014 for self direct support to be put into operation for all new service users, at point of initial assessment is fully acknowledged and accepted. However, in relation to all existing service users, we would welcome clarification as to the expected timescale for implementing self directed support through the normal review rotation for the supported person.

**Draft Regulations**

## Consultation Questions – General Questions

### The costs and benefits arising from these regulations

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

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

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

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

At this point in time we do not believe that we are able to estimate what the full implementation costs will be for self directed support for a variety of reasons including the outcome of this consultation. Neither do we believe is it possible to determine with certainty whether further transformation funding will be required after 2015. However, we are projecting that specific support costs associated with the provision of independent advocacy services will be required.

### The equality and human rights impacts of the regulations

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

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

By “equality impacts” we mean whether or not, and in what ways, the Regulations will affect certain groups, and whether they will impact on those groups in a positive or a negative way. In considering the impacts you may wish to consult the Equality Impact Assessment published for the Social Care (Self-directed Support) (Scotland) Act 2013, available at the following hyperlink: <http://www.scotland.gov.uk/Publications/2012/03/9876>

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

The regulations in general enhance the likelihood of positive impacts for individuals, (and their families) who are included in the categories described above. It is anticipated that the regulations result in positive outcomes being attained by individuals and carers who are assessed as requiring services

and supports , as they will have greater choice and control in how their support will be provided.

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

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

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

It is anticipated that, in general, the regulations will have a positive impact on Human Right, the services and supports that people will have access to as a result of the regulations will support them to participate in society on an equal basis to others; to live their life in the way they choose.

**EQUALITY IMPACT ASSESSMENT TOOL**

**Part 1: Description/Consultation**

<b>Is this a Rapid Equality Impact Assessment (RIAT)?</b>	
<b>Is this a Full Equality Impact Assessment (EQIA)?</b>	
<b>Date of Assessment:</b> 26 <sup>th</sup> July 2013	<b>Committee Report Number:</b> 334 - 2013
<b>Title of document being assessed:</b>	Social Care (Self Directed Support (Scotland) Act 2013 – Draft Regulations and Guidance
<b>1. This is a new policy, procedure, strategy or practice being assessed</b> (If yes please check box) <input checked="" type="checkbox"/>	<b>This is an existing policy, procedure, strategy or practice being assessed?</b> (If yes please check box) <input type="checkbox"/>
<b>2. Please give a brief description of the policy, procedure, strategy or practice being assessed.</b>	This report provides elected members with information about the Social Work Department Officers' response to the draft Regulations and Guidance issued by the Scottish Government, to support the Social Care (Self Directed Support) (Scotland) Act 2013.
<b>3. What is the intended outcome of this policy, procedure, strategy or practice?</b>	To encourage individuals, assessed as having eligible social care needs, with a range of choice options for how their care and support arrangements can be delivered to meet their agreed outcomes. Self Directed Support encourages individuals to consider and decide how much ongoing control and responsibility they want over their own support arrangements. It is an approach which is designed to bring about independence and choice for people with care or support needs.
<b>4. Please list any existing documents which have been used to inform this Equality and Diversity Impact Assessment.</b>	Social Care (Self Directed Support ((Scotland) Act 2013 – draft Regulations and Guidance to support the 2013 Act.
<b>5. Has any consultation, involvement or research with protected characteristic communities informed this assessment? If yes please give details.</b>	The Social Work Department, on behalf of the Council, facilitated discussions on both the draft Regulations and Guidance with a range of focus groups. These focus groups included Carers and Service Users as well as representatives from Care Management groups, Legal Services section, Contracts, Finance and Welfare Rights section, Children's Services and Housing

	Department. Views from these groups have helped to form the Social Work Department's response to the consultation and will also be of use when developing Policy, Procedure and Guidance.
<p><b>6. Please give details of council officer involvement in this assessment.</b></p> <p>(e.g. names of officers consulted, dates of meetings etc.)</p>	<p>16<sup>th</sup> May 2013 – staff focus group meetings held as detailed above.</p> <p>29<sup>th</sup> May 2013 – 3rd Sector Provider Event held.</p> <p>17<sup>th</sup> June 2013 – Service User and Carer Reference Group meeting held.</p> <p>17<sup>th</sup> June 2013 – CAN group meeting held</p>
<p><b>7. Is there a need to collect further evidence or to involve or consult protected characteristics communities on the impact of the proposed policy?</b></p> <p>(Example: if the impact on a community is not known what will you do to gather the information needed and when will you do this?)</p>	<p>This will be reviewed once we have been notified of the outcome of the consultation on the draft Regulations.</p>

## Part 2: Protected Characteristics

Which protected characteristics communities will be positively or negatively affected by this policy, procedure or strategy?

**NB Please place an X in the box which best describes the "overall" impact. It is possible for an assessment to identify that a positive policy can have some negative impacts and visa versa. When this is the case please identify both positive and negative impacts in Part 3 of this form.**

If the impact on a protected characteristic communities are not known please state how you will gather evidence of any potential negative impacts in box Part 1 section 7 above.

	Positively	Negatively	No Impact	Not Known
<b>Ethnic Minority Communities including Gypsies and Travellers</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>Gender</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>Gender Reassignment</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>Religion or Belief</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>People with a disability</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Age</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Lesbian, Gay and Bisexual</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>Socio-economic</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Pregnancy &amp; Maternity</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>Other (please state)</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

### Part 3: Impacts/Monitoring

<p><b>1. Have any positive impacts been identified?</b></p> <p>(We must ensure at this stage that we are not achieving equality for one strand of equality at the expense of another)</p>	<p>Once implemented, the Social Care (Self Directed Support) (Scotland) Act 2013 will ensure that all service users and carers, assessed as requiring eligible care and support services will have greater choice and control in how their support will be provided.</p>
<p><b>2. Have any negative impacts been identified?</b></p> <p>(Based on direct knowledge, published research, community involvement, customer feedback etc. If unsure seek advice from your departmental Equality Champion.)</p>	<p>Any negative impact will be considered and actioned once the final regulations are agreed and made known. It is anticipated that the outcome about the draft regulations will be known in January 2014.</p>
<p><b>3. What action is proposed to overcome any negative impacts?</b></p> <p>(e.g. involving community groups in the development or delivery of the policy or practice, providing information in community languages etc. See Good Practice on DCC equalities web page)</p>	<p>As above</p>
<p><b>4. Is there a justification for continuing with this policy even if it cannot be amended or changed to end or reduce inequality without compromising its intended outcome?</b></p> <p>(If the policy that shows actual or potential unlawful discrimination you must stop and seek legal advice)</p>	<p>As above</p>
<p><b>5. Has a 'Full' Equality Impact Assessment been recommended?</b></p> <p>(If the policy is a major one or is likely to have a major impact on protected characteristics communities a Full Equality Impact Assessment may be required. Seek advice from your departmental Equality lead.)</p>	<p>A further report will be submitted to Committee once the outcome of the consultation on the draft regulations and guidance are known.</p>
<p><b>6. How will the policy be monitored?</b></p> <p>(How will you know it is doing what it is intended to do? e.g. data collection, customer survey etc.)</p>	<p>The Personalisation and SDS Project Board will monitor and report to Committee any action required as a result of the outcome of the current consultation on the draft Regulations and Guidance to support the Social Care (Self Directed Support) (Scotland) Act 2013.</p>

#### Part 4: Contact Information

<b>Name of Department or Partnership</b>	Social Work
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<b>Type of Document</b>	
Human Resource Policy	<input type="checkbox"/>
General Policy	<input type="checkbox"/>
Strategy/Service	<input checked="" type="checkbox"/>
Change Papers/Local Procedure	<input type="checkbox"/>
Guidelines and Protocols	<input type="checkbox"/>
Other	<input type="checkbox"/>

<b>Manager Responsible</b>	<b>Author Responsible</b>
<b>Name:</b> Diane McCulloch	<b>Name:</b> Avril Smith Hope
<b>Designation:</b> Manager, Community Care	<b>Designation:</b> Service Manager
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<b>Signature of author of the policy:</b> Avril Smith Hope	<b>Date:</b> 13.08.2013
<b>Signature of Director/Head of Service:</b> Diane McCulloch	<b>Date:</b> 13.08.2013
<b>Name of Director/Head of Service:</b> Diane McCulloch	
<b>Date of Next Policy Review:</b> N/A	