

Corporate Policy and Strategy Committee

10am, Tuesday, 6 August 2013

Response to Scottish Government Consultation on Draft Statutory Guidance and Regulations Linked to Self-directed Support

Item number	7.6
Report number	
Wards	All

Links

Coalition pledges	P1 , P33 , P38
Council outcomes	CO3 , CO4 , CO5 , CO10 , CO11 , CO12 , CO13 , CO14 , CO15 , CO25 , CO26 , CO27
Single Outcome Agreement	SO2 , SO3

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Director of Health and Social Care

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Executive summary

Response to the Scottish Government Consultation on Draft Statutory Guidance and Regulations Linked to Self-Directed Support

Summary

This report presents the draft responses, which have been submitted on behalf of the Council in response to the Scottish Government consultation on the documents listed below, which are linked to the implementation of the Social Care (Self-directed Support) (Scotland) Act 2013 on 1 April 2014:

- Draft Statutory Guidance on Care and Support
- Draft Self-directed Support (Direct Payments) (Scotland) Regulations 2013
- Draft Carers (Waiving of Charges for Support) (Scotland) Regulations 2014
- Draft Directions (The Carer's Assessment (Scotland) Directions 2014)

The extremely tight timescales given by the Scottish Government for responses, together with the volume of work required to respond in detail to these critical documents, mean it has not been possible to present these reports to members before the deadline. However, civil servants are clear that the responses are in draft form only, and subject to confirmation or amendment by members today.

Recommendations

It is recommended that the Committee consider the draft responses contained in Appendices 1 to 3, and subject to any member amendments, request that the Director of Health and Social Care confirm the Council's decision to Scottish Government.

Measures of success

The Scottish Government will review all submissions and is expected to issue final statutory guidance and regulations ahead of the implementation of the Social Care (Self-directed Support) (Scotland) Act 2013, which comes into effect on 1 April 2014.

Long-term measures of success will be developed as part of the performance framework put in place in respect of personalisation and self-directed support.

Financial impact

There is no immediate financial impact arising from the response to the consultation. The proposals contained within the draft regulations relating to direct payments and to waiving charges for carers could present a significant budget pressure if these remain unchanged in their final form. For example the proposals to:

- relax the position on the use of direct payments to employ relatives
- provide for people in receipt of direct payments to request that they be paid gross and then be invoiced for their contribution
- waive the right of local authorities to charge for respite care where the service is provided to the person in need of support.

Equalities impact

The Scottish Government has undertaken an equalities impact assessment in respect of these proposals.

Sustainability impact

There are no sustainability implications arising from this report.

Consultation and engagement

In developing the responses to the various consultation documents, views have been sought from colleagues in Children and Families, Corporate Services (Finance and Legal), Health and Social Care and Services for Communities. Colleagues from these areas have also been asked for comments on the first draft of the responses and any comments received have been taken into account in developing the final drafts.

Background reading / external references

[Draft Statutory Guidance on care and support](#)

[Draft Self-directed Support \(Direct Payment\) Regulations 2013](#)

[Draft Carers \(Waiving of Charges for Support\) \(Scotland\) Regulations 2014](#)

[Draft Directions \(The Carer's Assessment \(Scotland\) Directions 2014\)](#)

Response to the Scottish Government Consultation on Draft Statutory Guidance and Regulations Linked to Self-Directed Support

1. Background

- 1.1 The Social Care (Self-directed Support) Scotland Act 2013 was passed by the Scottish Parliament in January 2013 and will be implemented on 1 April 2014. On 17 April 2013, the Scottish Government launched a consultation on a set of draft statutory guidance, directions and regulations linked to the Self-directed Support Act.
- 1.2 The Council's proposed responses to these documents are attached as follows:
- Proposed combined response to the consultation on the 'Draft Statutory Guidance on care and support' and the 'Draft Self-directed Support (Direct Payments) (Scotland) Regulations 2013' – Appendix 1
 - Proposed response to the 'Draft Carers (Waiving of Charges for Support) (Scotland) Regulations 2014' – Appendix 2
 - Proposed response to the 'Draft Directions (The Carer's Assessment (Scotland) Directions 2014)' – Appendix 3.
- 1.3 The proposed responses include contributions from Children and Families, Corporate Services (Finance and Legal), Health and Social Care and Services for Communities.
- 1.4 The deadline for responding to the Scottish Government was 10 July 2013. In order to meet this deadline the responses provided at Appendices 1 to 3 have been submitted as drafts, with a clear indication that the Council's formal response will not be agreed until considered by the Corporate Policy and Strategy Committee.

2. Main report

- 2.1 The Draft Statutory Guidance on care and support is well written and easy to understand, providing what is generally clear and useful guidance on the key

stages of a person's journey through the care and support system. The underlying principles and values, desired outcomes and deliverables are considered, as are the roles and responsibilities of a range of stakeholders, including the supported person, informal carers, service providers, the social work professional, senior managers, finance managers, legal advisors and commissioners.

2.2 The key elements of the proposed response in respect of the Draft Statutory Guidance are:

- that overall, the document is both helpful and provides clarity
- that the document is very adult focused and does not address the issues relating to children and families adequately, particularly in respect of the relationship between self-directed support and children or young people who are subject to statutory measures of intervention and support, or multi-agency child protection measures and plans
- an urgent request for further clarity on the application of the self-directed support legislation to children and families in general
- a proposed reordering of the section on assessment and eligibility and re-drafting of the section on eligibility to provide greater clarity and address some inaccuracies
- concern about the interface between the self-directed support legislation and the adult protection and support legislation
- the need to strengthen the section of the guidance relating to monitoring and review
- the need to make greater reference to the integration of health and social care in the section covering 'The role of the NHS and the NHS Professional'
- a concern that the way in which the guidance is written may lead to a significant increase in the number of applications the Council is required to make for welfare guardianship
- the clarity in the guidance that reablement and intermediate care should be considered as part of the assessment and so not subject to the four options of self-directed support is welcomed; as is the recognition that the four options should not be offered to people in a crisis
- concern at the short time between the publication of the final version of the guidance and the implementation of the Self-directed Support Act.

2.3 The key provisions within the Draft Self-directed Support (Direct Payments) (Scotland) Regulations 2013 are:

- that local authorities should pay direct payments net of any amount the supported person is required to contribute to the cost of their care, unless the supported person requests that they are paid the gross amount
- the circumstances in which local authorities can terminate a direct payment
- a relaxation of the rules on when direct payments can be used to employ family members
- the circumstances in which a direct payment cannot be offered to an individual

There are also two additional issues on which the Scottish Government is seeking views:

- should direct payments be made available for the purchase of long-term residential care
- should there be any restrictions on the type of support available to children and families that can be accessed through the four options of self-directed support

2.4 The key elements of the proposed response in respect of the regulations relating to direct payments are:

- a strong recommendation that direct payments should be paid net of the supported person's contribution in all but exceptional circumstances, in order to avoid local authorities incurring additional costs in respect of invoice processing and bad debt
- a concern that the use of direct payments to employ family members will lead to a blurring of the distinction between paid and unpaid care, and that between family member and employee, making it difficult for professionals to support family carers appropriately, and putting a strain on the relationship between the family member and the supported person; the proposed recommendation, therefore, is that the employment of family members through the use of a direct payment should remain at the discretion of the local authority, based upon an assessment of the individual's circumstances and the risks involved
- concern regarding the proposed blanket exclusion of some individuals and types of support from direct payments and the proposed loss of the professional's discretion to refuse access to direct payments, where they

believe that this would represent a serious risk to the supported person or others

- support for the proposal that the four options of self-directed support should not be offered to people in a crisis
- the proposal that local authorities should have the *power* to offer direct payments in respect of long-term residential care, rather than this being a *duty*.

2.5 The Draft Carers (Waiving of Charges for Support) (Scotland) Regulations 2014 set out the extent to which charges for care and support services should be waived where the service is being provided directly to a carer. The draft regulations are accompanied by a draft set of guidance. The circumstances covered are:

- direct services to carers – the whole charge to be waived
- services provided to enable a person to take a holiday – charge to be partially waived
- replacement care provided to the cared for person in circumstances where the carer is unavailable – the whole charge to be waived.

2.6 The key elements of the proposed response in respect of the regulations relating to waiving charges for support to carers are that:

- the Council agrees in principle with the waiving of charges, subject to adequate Scottish Government funding for the new demand, which will inevitably be generated and the loss of income from charges for respite care
- the Regulations and Draft Guidance are complex and difficult to understand and appear to provide quite complicated rules for when support to a carer is free from charging in whole or in part
- further detailed guidance is required on how to determine whether the support to a carer is direct or indirect
- an unintended consequence of this proposal may be that funding for carers' services is shifted towards the provision of support to specific carers and away from preventative or universal carers' support
- the guidance focuses on a limited range of services, rather than on the premise that support directly provided to a carer should be flexible and determined through collaboration between the carer and professional in order to meet the needs and outcomes of the carer.

- 2.7 The Draft Directions (The Carer’s Assessment (Scotland) Directions 2014) aim to reinforce the interpretation of “providing a substantial amount of care on a regular basis” in order to ensure that a broadly consistent approach to carrying out carer’s assessments is adopted across all local authorities.
- 2.8 The proposed response to the regulations relating to carer’s assessments states that the Council “is supportive of the objective “to enhance the quantity and quality of carer’s assessments”, but is unsure how effective the draft directive will be in this respect. The proposed response also suggests that it would be useful to have directions to clarify the position on parents of children and when the definition of substantial and regular care differs to that of the responsibilities of a parent in general. It is also suggested that it would be helpful to have more directions on the approach which should be adopted in interpreting ‘substantial and regular care’ for young carers.

3. Recommendations

- 3.1 It is recommended that the Committee consider the draft responses contained in Appendices 1 to 3, and subject to any member amendments, request that the Director of Health and Social Care confirm the Council’s decision to Scottish Government.

Peter Gabbitas

Director of Health and Social Care

Links

Coalition pledges	<p>P1 – Increase support for vulnerable children, including help for families so that fewer go into care</p> <p>P33 – Strengthen Neighbourhood Partnerships and further involve local people in decisions on how Council resources are used</p> <p>P38 – Promote direct payments in Health and Social Care</p>
Council outcomes	<p>CO3 – Our children and young people at risk, or with a disability, have improved life chances</p> <p>CO4 – Our children and young people are physically and emotionally healthy</p> <p>CO5 – Our children and young people are safe from harm or fear of harm, and do not harm others within their communities</p>

CO10 – Improved health and reduced inequalities
CO11 – Preventative and personalised support in place
CO12 - Edinburgh’s carers are supported
CO13 – People are supported to live at home
CO14 – Communities have the capacity to help support people
CO15 – The public is protected
CO25 – The Council has efficient and effective services that deliver on objectives
CO26 – The Council engages with stakeholders and works in partnership to improve services and deliver on agreed objectives
CO27 – The Council supports, invests in and develops our people

Single Outcome Agreement

SO2 – Edinburgh’s citizens experience improved health and wellbeing, with reduced inequalities in health
SO3 – Edinburgh’s children and young people enjoy their childhood and fulfil their potential

Appendices

- 1 Proposed combined response to the consultation on the ‘Draft Statutory Guidance on care and support’ and the ‘Draft Self-directed Support (Direct Payments) (Scotland) Regulations 2013’
- 2 Proposed response to the ‘Draft Carers (Waiving of Charges for Support) (Scotland) Regulations 2014’
- 3 Proposed response to the ‘Draft Directions (The Carer’s Assessment (Scotland) Directions 2014)’

APPENDIX 1

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

The City of Edinburgh Council

Title Mr Ms Mrs Miss Dr Please tick as appropriate

Surname

Dale

Forename

Wendy

2. Postal Address

Health and Social Care

City of Edinburgh Council

Waverley Court

4, East Market Street, Edinburgh

Postcode EH8 8BG

Phone 0131 553 8322

Email wendy.dale@edinburgh.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 checked="" 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 : Values and Principles

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

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

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

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

The clarity provided in relation to the supported person's pathway and the roles and responsibilities of the various individuals and organisations that may be involved in the pathway is very helpful.

Step 7 of the pathway (Monitoring and Review) should be extended to include explicit reference to the importance of monitoring the extent to which the support plan is meeting outcomes and consideration of whether the outcomes themselves have changed. It would also be useful to refer to the opportunity to reconsider the SDS option in place as part of any review.

It would be helpful to mention the potential role of the provider in Individual Service Funds. This could be achieved by extending the final sentence detailing the responsibilities of 'The provider', by adding "and in assisting people to direct their own support through the use of Individual Service Funds."

It would also be helpful to indicate in this section of the Guidance the stage of the pathway at which it is envisaged that discussion of the resources available to support the person should take place.

From a Children and Families perspective, the pathway is really helpful when focusing on children and their families who are seeking social work support. It is, however, unclear throughout the guidance where such an approach would fit with children and their families who are subject to statutory measures of intervention

and support, or multi-agency child protection measures and plans. It would be useful to have further guidance on how compulsory measures of care would sit alongside the principles of choice.

Draft Statutory Guidance on Care and Support

Consultation Questions

Section 3: Values and Principles

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

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

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

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

This is a useful restating of the underpinning values and principles, although it would be helpful to restate the link to Human Rights principles as in the National Strategy.

Whilst recognising the absolute importance of 'collaboration' between the professional and the supported person, it is also important to recognise that they will both have their own views, which may not always be in agreement. It would therefore be helpful if paragraph 14 could be amended to reflect the need for the views of each party to be transparent and recorded, along with any disagreements and resolutions.

The section on 'involvement' in table 3 makes reference to the need to assist communities to take an active role in commissioning; whilst this is important, the role of communities should not be limited to commissioning, but should include active engagement in the planning and delivery of services. It would be helpful if the table could be amended to reflect this.

From a Children and Families perspective, the reiteration of the values and principles underpinning our practice are a clear and useful reminder of the statutory principles of undertaking an assessment. It is not clear, however, how some of the

principles of collaboration, informed choice, involvement and participation would be implemented for those children who are subject to statutory or child protection measures. It would be useful to have clearer guidance on the following:

- Does the duty to consider and offer SDS arrangements extend to services that are required as part of a condition of a supervision requirement?
- Does the duty extend to services that are being put in place, or have been put in place, as agreed within a multi-agency child protection plan?
- What is the threshold for considering/offering SDS arrangements where children are not on supervision with specific conditions, or are 'children in need', not subject to a current Child Protection Registration or Initial Referral Discussion? For example, where there is an agreed multi-agency child's plan, put in place in relation to concerns about the care and well-being of a child, are the parents entitled to direct elements of that plan via SDS?

The importance of the underpinning values and principles may be communicated more effectively if this section came before the section on the supported person's pathway. This would make it clear that they relate to all aspects of how we discharge our duties, including the person's pathway.

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="checkbox"/> could be clearer	<input type="checkbox"/>

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

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

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

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

Whilst much of this section of the guidance is very useful, the ordering of the information is somewhat confusing. The following changes are suggested to improve the overall clarity of the section:

- The section headed 'The general principles that must inform the

assessment' (paragraphs 31 and 32 and Table 4) should be moved to follow paragraph 17.

- The first sentence of paragraph 18 should be retained and the remainder deleted and replaced with the content of paragraph 39 (main products from the assessment).
- The sub-heading 'Determining a person's eligibility for support' under paragraph 18 should become a bold heading.
- Paragraphs 24 and 25 should be moved to follow paragraph 20 under the heading 'Eligibility criteria'.
- The sub-headings 'Eligibility criteria' at the top of page 15, 'Further exploration of the person's needs and outcomes' above paragraph 26 and 'The conversation: good assessment practice and personal outcomes' above paragraph 33 should all become bold headings.

A version of this section of the Guidance reordered as suggested above is attached as Appendix A

The section on *Eligibility Criteria* requires significant amendment. Paragraph 21 currently states:

Eligibility criteria

21. Local authorities apply local eligibility criteria in order to determine whether the person's needs call for the provision of services (i.e. to determine if [sic] *[should read "whether"]* the person's needs are eligible needs). Where the person is over 65 and eligible for personal care, or where the person is eligible for nursing care, the local authority must follow the relevant joint Scottish Government and COSLA guidance on eligibility criteria.

The first problem is factual inaccuracy. The 2009 Eligibility Guidance did not confine eligibility criteria to (a) people over the ages of 65 and eligible for personal care and (b) people of any age eligible for nursing care. It made the eligibility criteria mandatory for all social care for older people and optional for social care for adults aged 18-64. ("Mandatory" in the sense of guidance that Ministers expected it to be applied).

Even if this were corrected, Paragraph 21 would confine the joint Scottish Government/COSLA guidance on eligibility criteria to older people whilst Paragraph 22 refers to "the eligibility framework for access to social care for adults" and quotes the definitions for the four risk bands from the same guidance.

This inconsistency is rooted in the 2009 Eligibility Guidance, which prescribed social care eligibility criteria for older people, but left it up to councils whether they apply this to adults aged 18-64. [Today this would be subject to successful challenge as discriminatory under the UK Equalities Act 2010]. The anomaly is historical, but continues to cause problems, as evidenced in the draft SDS Guidance.

The solution can be found in the 2009 Eligibility Guidance, which while prescriptive for older people also contains the following advice:

1.5 It is also recognised that some councils might choose to apply the eligibility framework set out within this guidance to all community care groups – the framework is generic and need not be confined solely to the management of older people's care. It has been written in such a way that it can be applied consistently across all adult care groups if individual councils choose to do so. However, this is a matter solely for individual councils and is not tied to the agreement between Scottish Government and council leaders on Free Personal and Nursing Care.

This leaves the way open to rewriting paragraph 21 as follows:

21. Local authorities apply local eligibility criteria in order to determine whether the person's needs call for the provision of services (i.e. to determine whether the person's needs are eligible needs). National eligibility criteria for social care were agreed by the Scottish Government and COSLA in 2009, and while originally developed for older people, as part of the response to Lord Sutherland's report on free personal and nursing care, the criteria were explicitly designed to apply consistently across all adult care groups (see paragraph 1.5 of the eligibility guidance available at: <http://www.scotland.gov.uk/Topics/Health/Support-Social-Care/Support/Older-People/Free-Personal-Nursing-Care/Guidance>).

The existing Paragraph 22 can then stand, followed by a new paragraph 23:

23. In these definitions, the risks do not refer only to a reduction in an individual's current independent living, or health and wellbeing, but also to the risk that she or he may not be able to gain these outcomes without support.

Table 5 is helpful in terms of staff training and awareness-raising, as it gives a clear illustration of the shift in practice, which needs to take place.

The vast majority of the content of this section seems to relate to adults, with the guidance in relation to children and families sitting in section 9. It would be better to either rename this whole section 'Eligibility and Assessment – Adults' or to move section 9 to be part of this section and have two distinct subsections, one for adults and the other for children and families.

Given that a decision about eligibility is generally reached as a result of an assessment, it may be more appropriate to rename this section 'Assessment and Eligibility'.

It would also be helpful to distinguish between assessment and support planning more clearly, as the support planning may not always be completed at the assessment stage of involvement.

The legal basis for assessment covered by the guidance only refers to Section 23 and Section 24 of the Children (Scotland) Act 1995. There is reference to any other

legal basis for children and their families to be assessed. It would therefore be useful to have further clarity on whether the guidance is only referring to children with disabilities and their carers? There is no mention of any other child in need under Section 22 in this section of the Guidance and therefore it still remains unclear as to the circumstances in which children and their families could be eligible under the new legislation.

Draft Statutory Guidance on Care and Support

Consultation Questions

Section 5 : Support Planning

This section of the guidance covered:

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

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

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

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

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

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

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

The description in Table 6 of the key ingredients of a support plan is clear and helpful, as is the clarification that the support plan is not limited to resources funded by the local authority.

Section 5.3 on **Resources** does not mention the legal requirement for councils to inform people of “the relevant amount for each of the options for self-directed support from which the local authority is giving the person the opportunity to choose” [2013 Act section 5(4)(a)]. The definition of “the relevant amount” is “the amount that the local authority considers is a reasonable estimate of the cost of securing the provision of support”.

The draft Guidance does not explain how this duty should be best delivered within the process of support planning.

One common interpretation of this duty is that councils have to provide a reasonable estimate of the available resources to assist the supported person choose between the four SDS options, and reach decisions regarding how best they can meet their needs and wishes. However, as the support planning is finalised, the actual funding required to deliver the plan to meet their eligible needs may vary from the initial estimate. Support planning is informed by one or more indicative budgets (depending on whether they are the same for the four options), which is then finalised, as choices are made and care and support plans agreed. It would be helpful if the Guidance said something either to support or amend this interpretation.

The discussion regarding resources in paragraph 49 suggests three approaches to “resource allocation”: the equivalence model, RAS, and “professional judgement alone or on a case-by-case basis”. It is not clear how this third approach would deliver the required consistency, equity, and transparency.

Paragraph 50 stresses that systems and tools “are no substitute for the skilled judgement of a social work or health professional”, and whatever resource allocation methodology is used, professional judgement is still required “to determine the appropriate level of financial resource to meet a person’s eligible needs” (paragraph 51). If “professional judgement alone or on a case-by-case basis” is a third method of resource allocation, this would appear to be confirmed or revised by a further exercise of professional judgement.

The quotation in the “view from a social work professional” box after paragraph 52 needs a footnote to a source. The source is:

International Federation of Social Workers (IFSW) definition of social work, available at:

<http://ifsw.org/policies/definition-of-social-work/>

The City of Edinburgh Council has particular concerns regarding the impact of the limited ability of professionals to restrict the use of Option 1 in respect of the authority’s wider responsibility for safeguarding and public safety. There will be a number of situations in which individuals who will not be excluded by legislation, from accessing direct payments through Option 1, may represent a risk to themselves or others; for example:

- people who have the capacity to choose Option 1, but may not be able to understand fully or exercise the responsibilities of an employer. In this situation people may unwittingly fall foul of employment legislation because they did not understand their responsibilities.
- 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.

We believe that adult support and protection and child protection duties should take precedence in such circumstances and consider it essential that guidance and regulations provide clarity on this issue.

It is presumptuous to state at the beginning of paragraph 60 that “Large numbers of individuals will continue to select their support under Option 3” and suggest that this would be better if the first two sentences were reworded to read: “The principles of choice and control, collaboration and involvement should hold true for individuals who select option 3”.

It would be helpful if the Guidance included a more detailed section on Brokerage, including a definition of the activities involved and guidance on who might carry out this function, together with a consideration of any issue around conflict of interest.

Draft Statutory Guidance on Care and Support

Consultation Questions

Section 6: Monitoring and Review

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

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

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

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

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

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

We believe it is important that the desire to change the option through which a person's support is arranged should be recognised as a trigger for review, and therefore suggest that the first sentence of paragraph 77 should be extended by adding the following “...as should a request to change the option through which a person's support is arranged and managed.”.

It is important to stress that the collaborative and conversational approach taken to assessment should also be used in review. It is therefore suggested that paragraph 78 is amended to reflect this.

This section of the Guidance is relatively brief, which seems surprising given the importance of review and monitoring in ensuring that a person's needs and outcomes are being met and that the Option through which the support they receive is arranged and managed is working effectively. The tone of the section almost implies that review and monitoring is optional. It would be helpful if the guidance acknowledged the importance of review in stronger terms, particularly when regulatory bodies such as the Care Inspectorate place such an emphasis on review in their inspection procedures.

Other areas it may be helpful to address are:

- the need for a proportionate approach
- the way in which resources are being managed where a person is using Option 1 or 2
- the way in which any changes in the level of support are implemented, particularly where a person is in receipt of a direct payment and the review leads to a reduction in the amount of that payment, which may have implications for them as an employer.

Draft Statutory Guidance on Care and Support

Consultation Questions

Section 7 : Facilitating genuine choice for individuals

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

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

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

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

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

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

This section of the Guidance is fairly limited and seems to focus on commissioning best practice, rather than on the new role of market facilitation, which local authorities will need to take on.

We suggest that this section should include reference to:

- the change required in the nature of commissioning from a hierarchical activity to one based upon collaboration and partnership between the local authority, provider and service user
- the importance of community planning and community capacity building
- the development of alternative approaches, such as cooperatives of providers and/or people in need of support
- personal assistants
- the need to support providers, including through the provision of information to assist them in understanding and responding to the changing requirements for care and support
- the provision of accessible information about the range of support available at a local level.

From a Children and Families perspective, it would be useful if this section included reference to the following:

- the need for information to be accessible for parents with a learning disability and for the children and young people it affects
- the need for providers to be ready and supported to prepare for changes in providing care and support services, and have structures in place for support
- the impact of the co-operative approach and how this will be integrated into self-directed support and service delivery
- the need for a shift in organisational culture from the traditional approach to commissioning of services to working in partnership with service users and providers to develop services that meet the needs of children and families
- the need to ensure synergy and communication between adult services and children's services to avoid both duplication and gaps, especially at points of transition
- the need to embed the principles of Getting it Right for Every Child and the key elements of the Children and Young People's Bill, including Children's Rights
- the need for information regarding services (and how to access them) to be made available to families within their local area.

Draft Statutory Guidance on Care and Support

Consultation Questions

Section 8 : The role of the NHS professional

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

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

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

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

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

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

It would be helpful if this section of the Guidance could make greater reference to the integration of health and social care, and the links between personalisation and self-directed support and the Person-centred Health and Care Programme within the NHS. The level of culture change required cannot be underestimated.

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.

Case study 1 is not a particularly useful example of a jointly funded package.

In paragraph 85, the last but one line should be amended to read “and social care senior managers and professionals to take full advantage of” on the basis that senior managers need to create the strategic environment within which professionals feel able to adopt joint approaches.

There appears to be an error in the second line of the second bullet point of paragraph 87 – “aspects of social care provision” should read “aspects of health and social care provision”.

The examples and references in this section are related to adults with health and social care needs. It would be useful to have examples and more specific guidance in this section, relating to children where there is a role for both health and social work, and how it is envisaged that jointly funded packages of care would be implemented.

Draft Statutory Guidance on Care and Support

Consultation Questions

Section 9.1 : Children and Families

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

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

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

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

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

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

It is disappointing that the section on Children and Families is very brief, taking up only 5 of the 79 pages of the guidance. The overall guidance is currently very adult-focused. This is unfortunate and a missed opportunity.

It would be useful to have a definition of social care in relation to children and families.

It is imperative to have further clarity as to whom the legislation covers when making reference to children who have 'care and support needs, which are being met under Section 22 or Section 23 of the 1995 Act'. Does this include children who are subject to a supervision requirement, children who are looked after at home or away from home, children in a residential school setting, children who are eligible for throughcare and aftercare support, children who are subject to child protection inquiries or child protection registration?

Paragraph 96 makes reference to the 'broad definition' of children in need as provided in Section 22 , but does not answer the above questions.

It is useful to mention the GIRFEC approach and well-being indicators in this Section. It would also be useful to include further guidance as to how this new legislation will fit with other relevant legislation, such as the Children and Young People (Scotland) Bill and the Children's Hearing (Scotland) Act 2011.

In paragraph 100 reference is made to potential conflict between the child's and the parent's views. It would be useful to have further guidance on this matter, as very often it is not easy to determine for whom we are providing the service. Assessments are often made to identify support to parents to assist them in

continuing in their parenting role, rather than identifying services that the child has requested. For example, a child often receives residential respite in order to give the parent/carer a break, rather than because that child has expressed an explicit need to have some time away from his/her family.

We suggest that reference should be made not only to parents but to parents/carers, as an acknowledgement that not all children are cared for by their birth parents.

Paragraph 104 makes reference to 'positive risk taking'. Again it would be useful to have further guidance on this, including a definition. Self-directed support will inevitably mean that families will be taking on more responsibility and will require there to be a shared responsibility for risk taking.

Draft Statutory Guidance on Care and Support

Consultation Questions

Section 9.2 : Supported decision-making and circles of support

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

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

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

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

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

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

This is clearly a complex area and links to a range of other legislation. This section would benefit from a summary of the relevant legislation as has been included at the start of some other sections of the Guidance (e.g. 9.3 Carers). Specific reference should also be made to:

- the definition of capacity contained within the Incapacity (Scotland) Act 2000; and
- Section 13Z of the Social Work (Scotland) Act 1968, which deals with the provision of services to adults with incapacity

- The Code of Practice for local authorities exercising functions under the Adults with Incapacity (Scotland) Act 2000, which covers the limits of Section 13Z in the context of human rights.

The Guidance does not deal directly with the issue of people who lack capacity but have no welfare guardian or attorney. This is a significant omission. Clarity is required as to whether a local authority may provide services under Option 4 in these circumstances, using their powers under Section 13Z of the Social Work (Scotland) Act 1968. If this is not the case, it would appear that the only alternative will be for the local authority or a private individual to apply for welfare guardianship in order for services to be provided under this Option; which may lead to a significant increase in applications for welfare guardianship.

Paragraph 111 would benefit from the inclusion of a reference to wider communication tools, such as Talking Mats, in order to assist those who experience difficulty in communicating decisions.

The implication in the Guidance seems to be that people either do or do not have capacity. There is no recognition that for some people, the capacity to make decisions may fluctuate.

The concern we raised in our response to question 4c regarding people who have the capacity to choose Option 1 but may not be able to understand fully or exercise the responsibilities of an employer, is also relevant here.

Draft Statutory Guidance on Care and Support

Consultation Questions

Section 9.3: Carers

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

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

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

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

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

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

The City of Edinburgh Council is supportive of the power to provide assistance to carers to enable them to continue in their caring role. There are a number of areas, however, where we believe the Guidance could provide greater clarity:

- It would be useful to provide definitions of both carers and young carers, which could be taken from 'Caring Together: The Carers' Strategy for Scotland 2010-15' and 'Getting it Right for Young Carers: The Young Carers' Strategy for Scotland 2010-15.
- It is not always easy to determine whether a particular service is providing support to the carer, the cared for person, or both. This is pertinent to both adults and children's services. Indeed, some carers take the view that any support provided to the person they care for provides a break for them as a carer. This can be a significant issue where the carer and the supported person have differing views about the support to be provided to the supported person in order to give the carer a break. It also will become an increasingly important issue if the Draft Carers (Waiving of Charges for Support) Regulations are passed. Guidance on this issue is therefore required urgently.
- The Guidance makes little specific reference to young carers. Greater clarity is required as to how self-directed support applies to young carers, and in particular the availability of Option 1 to those aged under 18.

There seems to be no recognition of the fact that informal carers and the person they care for may have differing views as to how the carer's break from caring should be facilitated, particularly where the break involves a service being provided to the cared for person. For example, the carer may prefer that the cared for person goes into residential accommodation for a short period to enable the carer to go on holiday, whilst the cared for person may prefer to be supported to remain at home. This potential conflict between providing support for the carer and enabling the supported person to exercise choice and control is a complex issue where professionals would benefit from clear guidance.

From a children and families perspective it would be useful to have clarity on when a parent/guardian's role and responsibilities become such that they would be eligible for a carer's assessment. The definition, as it stands, of a carer as someone who 'provides a substantial amount of care on a regular basis' could currently be applied to all parents and carers of children and young people.

Draft Statutory Guidance on Care and Support

Consultation Questions

Section 9.4: Direct payments

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

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

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

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

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

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

Whilst paragraph 125 spells out the responsibility of the supported person in situations where a third party direct payment is in place, nothing is said about the responsibilities of the third party. It is important that there is clarity regarding the responsibilities of both.

The right of the professional to refuse to agree to a direct payment being spent on a particular purchase, which they do not believe will meet the supported person's needs and outcomes is implied in paragraph 129; it would be more helpful if this were explicit.

There is no mention of the Government's intention to relax the restrictions on using direct payments to employ family members. Guidance on the issues to be addressed when considering this option would be welcomed.

Paragraph 127 outlines how a supported person might use their direct payment. One suggestion is a 'physical "thing", which helps to meet the supported person's needs. This implies that this could be some form of equipment, such as a bike or a computer. It would be useful if the guidance addressed the issue of responsibility for the maintenance and upkeep of any equipment purchased.

Draft Statutory Guidance on Care and Support

Section 9.5: Wider legal duties and strategic responsibilities

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

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

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

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

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

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

Adult support and protection

We have already detailed some of our concerns regarding this issue in relation to direct payments in our response to question 4c. In general, we believe that much clearer guidance is required regarding the interaction between self-directed support and the safeguarding and public safety responsibilities of local authorities and the relative priorities of each.

Reablement /Intermediate Care

The clarification that reablement and intermediate care are not subject to the four options of self-directed is welcomed. It would be helpful if this position were confirmed by regulations.

Charging

Some reference to the Self-directed Support section in the COSLA non-residential charging guidance would be useful here, with the web link to the document.

Equipment and adaptations

The title of this section appears to be misleading, as no reference is made to equipment for daily living. Guidance in this area, particularly around the four options of self-directed support would be welcome.

In terms of adaptations, further guidance is required as to how funding through self-directed support impacts on other sources of funding.

Housing support services

Paragraph 151 states that "Where housing services fall within the definition of community care services, then the 2013 Act applies, and the supported person should be provided with the full range of choices under the 2013 Act". This guidance is not helpful unless it is already well understood which housing services, especially those formerly funded under Supporting People, are also community care services. Such boundaries are not at all clear and require further explanation in the SDS Guidance to clarify the application of the Self-directed Support Act.

Other forms of social welfare

We believe that housing support to those assessed as homeless should be excluded from direct payments and individual service funds, as this is a short-term reablement type service designed to take people out of crisis. Furthermore, this exclusion should be extended to those receiving advice and support to prevent homelessness, as these services are short-term in nature and intended to assist people to maintain a tenancy.

Draft Statutory Guidance on Care and Support

Consultation Questions – General Questions

The Guidance document as a whole

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

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

The City of Edinburgh Council welcomes the opportunity to comment on the Draft Statutory Guidance and Regulations and is committed to the implementation of self-directed support. Overall, we consider the Guidance to be clear, comprehensive and very readable. It provides much useful material for staff training and development, and also emphasises the scale of the culture change required for all stakeholders, local authorities, people who use care and support services, carers, service providers and colleagues within the NHS.

We are, however, concerned that the timescales for the publication of the final versions of the Guidance and Regulations will allow little time for action before the implementation of the Social Care (Self-directed Support) (Scotland) Act 2013.

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.

Our comments are set out below in response to the draft Regulations

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 that the Guidance meets 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>

No comments.

Consultation Questionnaire

Draft Regulations

Consultation Questions

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

We strongly recommend that direct payments should be paid net of the supported person’s contribution in all but exceptional circumstances, such as where the supported person is contesting the local authority’s financial assessment or charges, through complaints or appeal processes, or through the courts. Regulation 4 therefore should be amended.

The option for the supported person to request that the local authority pays them the gross amount and then recovers part of that amount as their contribution, would, when exercised, add significant unnecessary bureaucracy. It will also result in additional costs for local authorities through invoice processing and bad debt at a time when we are seeking to streamline administrative processes in order to generate efficiencies and protect frontline services.

We are concerned that the proposed Regulation 6 regarding third party direct payments takes no account of whether the proposed third party represents a risk, either to the individual or the local authority. We can envisage circumstances in which a third party may put pressure on a supported person to enter into a third

party arrangement, which may result in the direct payment being used inappropriately and not for the benefit of the supported person. We therefore advocate the inclusion of a provision, which allows for professional judgement as to whether the third party is an appropriate person to take on this role. If your legal advice is that such discretion is covered by the use of the word “may” in describing a local authority power rather than a duty, the Statutory Guidance on care and support should include a section on the reasons why a request to make Third party direct payments should be refused.

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

The employment of close relations risks blurring the distinction between paid and unpaid care and that between family member and employee. We believe that the draft regulations will make it difficult for professionals to support family carers appropriately and put a strain on the relationship between the family member and the supported person. For example:

- it will be difficult to establish whether undue pressure has been exerted by either the family member or the supported person on the other party to agree to the family member being employed using a direct payment
- it will be difficult for the professional to assess the needs of the family member in their unpaid caring role if they are also employed as a paid carer, for example – is the need for a break, respite care or paid annual leave?
- there will inevitably be an impact on dynamics within the family when one family member is employed by another
- there is a real danger that the family member who is employed does not feel able to take a break from their caring role, whether paid or unpaid, and that the duties of an employer and rights of an employee are not adhered to
- it may not be in the family's interest to meet the outcomes identified for the child, such as independence if this would mean there would then be no need for the family member to be employed
- the family receiving the direct payment may not speak up if the support is not meeting their needs because they feel torn/guilty that this could mean making another family member unemployed.

We therefore believe that the employment of family members through the use of a direct payment should remain at the discretion of the local authority, based upon an assessment of the individual's circumstances and the risks involved.

Section 9(3)(b) gives an example of when a family member could be employed as: if the 'service user has difficulty interacting with strangers'. We would hope and expect that all children would initially have difficulty interacting with strangers on first meeting them and therefore suggest that further consideration is given to this statement.

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?

There are individuals who are not subject to any of the criminal justice orders listed in regulation 11, whose circumstances are such that it would not be appropriate for them to receive a direct payment, for example:

- 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 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.

There will also be situations where individuals who are subject to one of the criminal justice orders in Regulation 11 are on the road to recovery and where taking on the responsibility for a direct payment may form part a positive part of that journey.

We are therefore not comfortable with the idea of a blanket ban on receiving direct payments for specific groups of people, but believe that this is an area where the decision should be made based on professional judgement of the risks involved on a case by case basis.

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

We fully support the position that it is inappropriate to ask people to choose between the four options for self-directed support in a crisis and agree that people who are homeless, at risk of homelessness or fleeing domestic abuse should not be offered a direct payment as a first response. However, once the individual's situation has stabilised, we believe they should be offered access to the four options with any decision regarding the appropriateness of offering a direct payment made on a case by case basis and based on the professional's judgement of the risks involved.

We understand that this is consistent with the wording of regulation 12, which removes the legal *duty* to offer Option1, but not the *power* to do so. Again, it would be helpful for this to be clarified in the SDS Statutory Guidance.

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 remain unconvinced as to the benefits of allowing direct payments to be used to fund long-term residential care. Therefore the removal in Regulation 12(d) and (e) of a *duty* to provide Option 1 should be retained for the following reasons:

- People who are assessed as requiring residential care and who are eligible to receive local authority funding already have a statutory right to a choice of accommodation, subject to certain provisos, as a result of Choice of Accommodation Direction, issued in 1993 by Ministers under section 5(1A) of the Social Work Scotland Act. It is difficult to see what further *choice* would be achieved by converting the local authority funding into a direct payment.
- Residential care is a supplier's market in some parts of Scotland. In Edinburgh, there is a limited number of care homes willing to admit people at the National Care Home rates for older people without a third-party top-up. Direct payments will therefore not provide more choice than already exists, unless the Council funding increased above the national rates.
- Less choice and/or greater cost might result if care home providers were to treat recipients of direct payments as *self-funders*. If so, this might also involve the local authority in more cost, when residents run out of funds or relatives' top-ups.
- People seeking admission to a care home, following assessment, might feel they had more *control* if the receipt of a direct payment empowered them to negotiate with care home providers. However, the gains from such control seem fairly limited compared to what the earlier consultation paper acknowledged would be "the responsibilities and paperwork that come with entering into a contract with a care home."

We do, however, recognise that there may be some people who want a direct payment for this purpose, perhaps because they were receiving a direct payment

to purchase community based services prior to needing residential care. In these circumstances, we suggest that the local authority should have a power, rather than a duty, to provide direct payments in respect of residential care.

This would be achieved by leaving clauses (d) and (e) of Regulation 12 as drafted, since they merely remove the *duty* to offer Option 1, not the *power*. Again, it would be helpful for this to be clarified in the SDS Statutory Guidance.

Regardless of whether the Regulations are changed in respect of access to direct payments for long-term residential care, the principles of choice, control, collaboration and involvement should hold true for people using this type of support, and it would be helpful if this were emphasised in the Statutory Guidance on care and support.

There is a level of misunderstanding regarding this proposal as it seems to be being interpreted as making direct payments available to people assessed as needing residential care in order for them to purchase non-residential alternatives.

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?

The City of Edinburgh Council believes that more guidance is required specifically for children and families, particularly in relation to how the choice of support would marry with statutory measures of intervention and child protection measures. To reiterate, further consideration should be given to the following:

- Should the duty to consider and offer SDS arrangements extend to services required as part of a condition of a supervision requirement?
- Should the duty extend to services put in place, as agreed within a multi-agency child protection plan?
- What is the threshold for considering/offering SDS arrangements where children are not on supervision with specific conditions, or are 'children in need', rather than subject to a current Child Protection Registration or Initial Referral Discussion? For example, where there is an agreed multi-agency child's plan, put in place in relation to concerns about the care and well-being of a child, are the parents entitled to direct elements of that plan via SDS?

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

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

No comments.

Draft Regulations

Consultation Questions – General Questions

The costs and benefits arising from these regulations

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

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

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

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

Regulation 4 – if not amended – and Regulation 12(d,e) – if not retained – contain the potential for additional costs to local authorities, which are not recognised in the Financial Memorandum.

We comment separately on the issue of waiving charges for carers.

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.

No comment

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>

No comment

APPENDIX A – CITY OF EDINBURGH COUNCIL PROPOSED REORDERING OF SECTION 4 OF THE DRAFT STATUTORY GUIDANCE ON CARE AND SUPPORT PRIOR TO ADDRESSING OUR OTHER COMMENTS

SECTION 4: ELIGIBILITY AND ASSESSMENT

This section deals with assessment. It covers the concept of 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

16. Section 12A of the Social Work (Scotland) Act 1968 provides the legal basis for community care assessment for adults. The equivalent assessment duties for children, carers of adults and carers of children are:
 - Section 23 of the 1995 Act (children);
 - Section 12AA of the 1968 Act (carers of adults)
 - Section 24 of the 1995 Act (carers of children).
17. Please see Annex A in this document for a copy of the relevant legal provisions.

The general principles that must inform the assessment

31. Section 12 of the 1968 Act requires the relevant authorities to “promote social welfare by making available advice, guidance and assistance on such a scale as may be appropriate for their area”. Assessment is an important means by which to deliver this duty. Promoting social welfare means taking any steps necessary to improve the quality of life for individuals and the wider population. The equivalent duty in relation to children is the duty in Section 22 of the 1995 Act to “safeguard and promote the welfare of children who are in need”. Sections 12 and 22 provide the relevant professional with a fairly wide discretion to use their judgement and to provide any type of support or service, provided that the intervention or level of support will help to meet the relevant needs. The professional should utilise this discretion in order to work with the supported person and to design flexible solutions based not just on the assessed needs but on the positive outcomes for the person.
32. The general principles in Section 1 and 2 of the 2013 Act provide a further guide in interpreting and discharging the various assessment duties found in the 1968 Act and 1995 Act.

Table 4: The general principles of assessment (provided by Section 1 of the 2013 Act)

Collaboration

The professional must collaborate with a supported person in relation to the assessment. They should work with the person and towards a shared goal, in this case the identification, development and subsequent delivery of the supported

person's outcomes. They should facilitate the active contribution of the person as a partner in working towards a shared goal.

Involvement

The supported person (adult, child or carer) must have as much involvement as they wish to have in the assessment.

Informed Choice

The supported person must be provided with any assistance that is reasonably required to enable them to express their views about the assessment.

Further guidance and hyperlinks:

For further guidance on the general principles on assessment and support planning see section 3 in this document.

The purpose of assessment

18. A good quality assessment helps to ensure better outcomes for individuals and it helps to ensure greater consistency and transparency in how decisions are reached. ~~This section provides guidance on two distinct aspects of assessment:~~

- ~~• the initial steps in order to determine the person's eligibility for support, and;~~
- ~~• the detailed exploration or "further assessment" of the person's needs, moving on to their desired outcomes.~~

There should be three main products from the assessment process:

- the assessment itself – this should include a decision about whether the person is eligible for support.
- the support plan (where the person is eligible for support) – this should articulate the eligible needs, outcomes and plans for the individual.
- the actual support provided to the individual.
(previously paragraph 39)

Determining a person's eligibility for support

19. 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. In other words, it is to determine the person's "eligibility" for support.

20. The duties contained in Sections 12 and 12A relate to the provision of services to a "person in need". In order to qualify as a person in need the person must be in need of support arising out of infirmity, youth or age or require support arising from illness, mental disorder or disability (also included are persons subject to immigration control and those in need of care and attention arising out of drug or alcohol dependence or release from prison or

other forms of detention). The professional must therefore undertake an assessment of the person's needs and then, having regard to the results of that assessment, a further consideration of whether the needs call for the provision of services.

Eligibility criteria

24. A local authority can take into account its overall resources when determining eligibility criteria. However, once it has decided that the individual's needs are such that they call for the provision of services (i.e. are 'eligible needs'), they cannot then refuse to meet those needs because of budgetary constraints. The local authority should take a strategic approach to the application of eligibility criteria and it should do this in partnership with wider partners, including the health board, providers, user groups and carer groups. The authority should develop its criteria within the context of its wider commissioning strategy. The authority's strategy or policy on eligibility criteria should consider the application of those criteria within a broader framework of prevention, early intervention, support to carers and universal services. If a person does not meet a particular eligibility threshold, the authority should take steps to ensure that the appropriate arrangements are in place, providing an environment where the professional can direct that person to suitable alternative sources of support. The authority should consider their strategy for investing in preventative and universal services – interventions which prevent or delay the need for formal social care and support.
25. The authority should develop its policy in relation to eligibility criteria in line with the general principles within this guidance. In particular, it should consider the principles of involvement (of service users/carers), informed choice and collaboration. It should take steps to involve people who use support, carers and partner organisations in the development of its policies and it should do so from the outset. It should publish the eligibility criteria/framework and it should do so in a clear and transparent way. Finally, the authority's *response* to need – in other words, their *application* of eligibility criteria – should be informed by the continuing review of each individual's needs, including consideration of how urgently service provision is called for and what interim measures may be appropriate pending any long-term support. High quality and thorough professional judgement is needed in order to discharge this task.
21. Local authorities apply local eligibility criteria in order to determine whether the person's needs call for the provision of services (i.e. to determine if the person's needs are eligible needs). Where the person is over 65 and eligible for personal care, or where the person is eligible for nursing care, the local authority must follow the relevant joint Scottish Government and COSLA guidance on eligibility criteria.
22. The eligibility framework for access to social care for adults prioritises risks into 4 bands: critical, substantial, medium and low:

- **Critical Risk:** Indicates that there are major risks to an individual's independent living or health and wellbeing likely to call for the immediate or imminent provision of social care services (high priority).
- **Substantial Risk:** Indicates that there are significant risks to an individual's independence or health and wellbeing likely to call for the immediate or imminent provision of social care services (high priority).
- **Moderate Risk:** Indicates that there are some risks to an individual's independence or health and wellbeing. These may call for the provision of some social care services managed and prioritised on an on-going basis or they may simply be manageable over the foreseeable future without service provision, with appropriate arrangements for review.
- **Low Risk:** Indicates that there may be some quality of life issues, but a low risk to an individual's independence or health and wellbeing with very limited, if any, requirement for the provision of social care services. There may be some need for alternative support or advice and appropriate arrangements for review over the foreseeable future or longer term.

Application of eligibility criteria via the assessment

The professional's role

23. In determining a person's eligibility, the professional should take full account of how the person's needs and risks might change over time. The professional should consider the impact of failure to intervene and whether this would lead to escalation of need in future. They should take a well rounded approach, recognising that risks to participation in society (living an ordinary life, engaging with others) are valid alongside risks to dignity (personal care, "life and limb" support). They should be alive to potential "hidden" needs which may not be obvious or highlighted in generic guidance documents. Both parties – the professional and the individual – should be able to access information and advice about alternative sources of support out-with formal or "funded" social services.

The local authority's role

Further guidance and hyperlinks:

For further guidance on the application of eligibility criteria see the Scottish Government and COSLA's National Standard Eligibility Criteria and Waiting Times for the Personal and Nursing Care of Older People:
<http://www.scotland.gov.uk/Topics/Health/Support-Social-Care/Support/Older-People/Free-Personal-Nursing-Care/Guidance>

Further exploration of the person's needs and outcomes

26. A further purpose of assessment is to provide the basis for future support interventions. This is where the professional and the individual fully explore the nature of the person's needs and seek to translate needs into personal outcomes. Throughout this process, the supported person and the professional should work together in order to consider creative means by which to meet the person's eligible needs. Crucially, the process should rest on a *conversation* between the professional and the supported person.

The importance of assessment

27. Assessment is important because it helps to set the tone for what is to come. If the assessment is conducted in the wrong way, for example as a tickbox and form-filling exercise, then the supported person can be left with the impression that social care is something that they receive rather than something they help to shape. If it is conducted in the right way – based around the person's assets and personal outcomes – then it can be an important and valuable intervention in its own right.

A "good" assessment

28. Assessment may act as the starting point for development and improvement in an individual's life. Alternatively, it may support a person to maintain the "status quo", to slow the rate of deterioration or to ensure that any decline in a person's situation is well managed. Individuals' needs can change over time, even over relatively short timescales. The assessment should respond to changing circumstances, changes to a supported person's needs and changes during the course of the person's life.
29. A good assessment rests on critical thinking and constructive challenge. It rests on the professional's ability to be open and honest with the person. It requires good judgement, awareness and significant "people" skills. The professional should be skilled in conversation and able to strike the right balance between advising the individual and supporting them to play an active part in the assessment process.
30. Some assessments will be conducted in quite challenging environments. For instance, they may take place after a fall or in a hospital environment. Crisis situations are rarely conducive to an effective assessment. However, the professional should ensure that the initial support to address any crisis situation does not become the de facto long-term arrangement for the individual. After the initial crisis has stabilised, and as soon as the supported person is ready to do so, the professional should seek to develop a comprehensive assessment.

The conversation: good assessment practice and personal outcomes

33. The detailed consideration of the nature of a person's eligible needs should be conducted on the basis of personal outcomes for the individual. This approach is in tune with the general principles within the 2013 Act. It also fits with the so-called "exchange model" of assessment. The exchange model emphasises the collaborative nature of assessment, showing how the views of the supported person, carer, assessor and agency are brought together to negotiate, agree and record outcomes. See Figure 1 for an illustration of the exchange model of assessment.

Figure 1. The Exchange Model of Assessment¹

34. An outcome is a result or effect of an action. *Personal* outcomes are the things that matter to the supported person such as:
- being as well as possible
 - improving confidence
 - having friendships and relationships
 - social contact
 - being safe
 - living independently
 - being included

35. Personal outcomes are identified through good conversations with people during assessment and support planning. Often the conversations will involve unpaid carers. The outcomes should reflect what is important to the person, and why they are important. Table 5 provides an example of the main differences between an assessment led by the need for a particular service and an assessment based on personal outcomes:

Table 5: Service led assessment vs. assessment based on personal outcomes

36. Implementing an outcomes approach is not straightforward. The demands placed on the professional may lead to a tick box approach to assessment. In contrast, skilled and flexible communication is required to fully engage individuals in defining what is important to them in life. Rather than matching problems to service solutions, the professional should work with the individual to identify their outcomes and then 'work backwards' to plan how everyone can contribute towards achieving those outcomes.
37. An approach based on outcomes also requires the wider *organisations* to take proactive steps to move away from service-led and standardised approaches. The relevant organisations should support its front line professionals and managers to think and act flexibly. It is essential that personal and collective outcomes are ingrained in the culture and approach of social care services, the health board and the local providers of support. Senior managers must believe in the merits of this approach and they must support their staff to do the same. The organisation must invest the necessary time and effort to support a culture based on outcomes. Outcomes must be the starting point

not just for assessment, but for the commissioning, planning, monitoring and evaluation of services. The organisation should also seek to use the collated information on personal outcomes to make improvements to the way that services are commissioned, planned and delivered.

40. It is important that the supported person's outcomes are reviewed, to ensure the continued relevance of support. For further information see section 6: Monitoring and Review.

Self-assessment

38. Self-assessment describes a process whereby the supported person, often with support from a provider, undertakes an assessment of their own needs prior to a full assessment. Self-assessment can be used as a starting point, but it should not replace the further assessment involving the judgement and input from the social care or health professional.

The main products from the assessment

39. *Moved to form part of paragraph 18*

Further guidance and hyperlinks:

Institute for Research and Innovation in Social Services, *Leading for Outcomes: A guide*

<http://www.iriss.org.uk/resources/leading-outcomes-guide>

Institute for Research and Innovation in Social Services, *Understanding and measuring outcomes*

<http://www.iriss.org.uk/resources/understanding-and-measuring-outcomes>

Joint Improvement Team – Talking Points: Personal Outcomes Approach (includes Talking Points: A Practical Guide)

<http://www.jitscotland.org.uk/action-areas/talking-points-user-and-carer-involvement/>

Scottish Community Development Centre – Co-production: useful resources

<http://www.scdc.org.uk/co-production-scotland/co-production-usefulresources/>

Further links (including a guide to professionals, user's guide and carer's guide) to follow.

APPENDIX 2

Draft Carers (Waiving of charges for support) (Scotland) Regulations 2014



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

City of Edinburgh Council

Title Mr Ms Mrs Miss Dr Please tick as appropriate

Surname

Dale

Forename

Wendy

2. Postal Address

Health and Social Care

City of Edinburgh Council

Waverley Court

4, East Market Street, Edinburgh

Postcode EH8 8BG

Phone 0131 553 8322

Email wendy.dale@edinburgh.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

Consultation Questions

Question 1(a): Is paragraph 9 clear and easy to understand? (please tick)

Yes	No
	X

Question 1(b): Do you agree with the waiving of charging circumstances as set out in paragraph 9? (please tick)

Yes	No
	X

Question 1(c): If you do not agree with the waiving of charging circumstances as set out in paragraph 9, please state your reasons below:

The City of Edinburgh Council agrees in principle with the waiving of charges, subject to adequate Scottish Government funding for new demand that this will inevitably generate. This will need to include recompense for lost income from councils no longer being able to charge for respite care. Without that funding, we believe the proposals are impractical and are likely to reduce funding available for other social care services, and/or to constrain the ability of councils to exercise their powers to meet carers' needs for support.

The Regulations and Draft Guidance are complex and difficult to understand. They appear to provide quite complicated rules for when support to a carer is free from charging in whole or in part. They do not sit well with the public and carer perceptions that the Act and Regulations, when implemented, will make all local authority support services to carers free from charging.

In particular, the Draft Regulations and Guidance read as if they are concerned with support "provided directly" to carers as opposed (by implication) with indirect support. However, it is not always easy to determine whether a particular service is put in place to support the carer, the supported person, or both. To the extent that the Regulations and Guidance rely on this distinction, further detailed guidance is required on how to determine whether the support to a carer is direct or indirect.

The increased flexibility, which is central to the successful implementation of self-directed support will inevitably lead to a further blurring of the distinction between direct and indirect support.

In Edinburgh, we have found this to be the case in an innovative scheme we have developed, which provides an alternative to traditional residential respite care for people with learning disabilities. The individuals supported by this service have utilised the resources previously used to fund residential respite care, to undertake

a whole range of activities, such as going on trips within the UK and abroad, being supported to remain in their own home, whilst their carer goes on holiday and developing independent living skills by spending weekends in a self catering apartment. This development has had positive outcomes for both carers and those they care for, and in some instances has led to supported individuals being able to move into independent accommodation.

It is also clear that some carers view 'day services' accessed by the person they care for as providing them, the carer, with a break, whilst these services may have been put in place to meet the needs of the supported person in terms of social interaction and developing independence skills. The Guidance should deal directly with this issue.

Some of our responses to later questions are relevant to the detail in Paragraph 9. Here we note that the description of Line 5 in paragraph 9 is misleading. Line 5 does not require the carers to be "away", but simply to be temporarily unavailable to provide care because they are undertaking an activity as part of their support. In the case of carers who are co-resident with the person they care for, such support activities could well take place in the family home.

Our experience of requests for short breaks suggests that carers are usually looking for the provision of support from the local authority for the cared for person to enable the carer to take a break. The guidance relating to Line 5 would seem to suggest that there is an expectation that carers would find alternative support for the cared for person themselves and the local authority would fund the carer's break.

We have serious concerns about the sustainability of these proposals without the injection of additional funding to meet what we believe will be a significant shortfall in income if charges for short breaks, where support is provided to the supported person, are waived. An unintended consequence of this proposal may be that funding for carers services is shifted towards the provision of support to specific carers and away from preventative or universal carers' support.

Question 2(a): Are you content with the examples of support to carers and young carers, as set out in paragraph 10, where charges will be waived? (please tick)

Yes	No
	X

Question 2(b): If you are not content, please state your reasons below:

The majority of services in this list are services, which the City of Edinburgh Council would not charge for, the main exception being short breaks. However, we are concerned that the Guidance seems to be focusing on a fixed list of services, rather than encouraging the development of more innovative and flexible means of supporting carers.

Moreover, the inclusion of “short breaks” in a list that paragraph 10 states applies to Lines 1 and 2 means that these lines would then overlap with the specific forms of short breaks covered in Lines 3 and 4 (holidays taken together) and Lines 5 and 6 (replacement care). This is confusing: a section of the guidance considering short breaks and respite care as whole would be useful.

An annual holiday is not yet a universal human right, but is certainly desirable and often is needed to sustain carers, whether with or separate from the person they care for. It is reasonable for the local authority to make a financial contribution to a carer’s holiday, where this is an assessed need and they are unable to meet the full costs themselves. However, Lines 1 and 2 in the draft Regulations, combined with paragraph 10, would mean that a council would have to pay for the full cost of a holiday that was assessed as being required by a carer, where the council chose to exercise its power to meet such needs. That does not seem a reasonable use of scarce public resources, where the carer could fund such needs themselves (in whole or in part).

Question 2(c): Are there further examples that you would like to add? (please tick)

Yes	No
	X

Question 2(d): If there are further examples that you would like to include in the list, please state these below and also set out your reasons for suggesting their inclusion.

No comments

Question 3(a): Do you agree with the exceptional circumstances set out in paragraphs 12 (with examples) and 13 about support to carers to help pay for driving lessons and taxi fares? (please tick)

Yes	No
Partially	

Question 3(b): If you do not agree, please state your reasons below:

The examples given do not pose a problem. However, we would advocate a more person-centred, outcome focused approach, where the emphasis is on the professional working with the carer to explore a range of options and develop truly personalised solutions on a case by case basis.

Question 4(a): Do you agree with the waiving of charges as set out in paragraphs 14 and 15 with regard to short breaks? (please tick)

Yes	No
	X

Question 4(b): If you do not agree, please set out your reasons below:

Paragraph 14 of the guidance refers to a form of respite short break, which the carer takes away from the person they care for – the examples given are holidays, invitations to weddings and swimming lessons. But some carers will require a break from caring while remaining with the person they care for (who very often is co-resident in the family home), perhaps because they are ill, or stressed, or need time to do some activity that does not take them out of the home. The guidance therefore is too narrow.

More generally, we are concerned that the guidance focuses on a limited range of services, rather than simply on the premise that support that is directly provided to a carer should be free of charge. The type of support provided should be flexible and determined through collaboration between the carer and professional in order to meet the needs and outcomes of the carer.

Respite care provided in the person's own home, in another person's home, or in some other setting, all to give the carer a break, is currently chargeable. We agree with the waiving of charges, only if councils are funded to cover the loss of income from charging and the likely increase in demand for a free service.

A distinction should also be made between waiving charges and funding the full costs of any activity or service that has been assessed as supporting carers. Paragraph 15 presents the example of an assessed benefit that a carer would derive from a weekly meeting with friends, and proposes that the local authority meets any transportation costs involved. Many carers will have sufficient means to meet such costs themselves. If local authorities have to fund all aspects of carer support, without sufficient additional funding by the Scottish Government, the more likely it is that local authorities will be unable to exercise their powers under section 3 (4) of the 2013 Act to meet support needs identified in care assessments, as fully as they and the carers would wish.

In addition, where the local authority decides to provide funded support, it must offer the carers the four options and provide information about the amount of support available under each of the options, including a reasonable estimate of the cost of securing the support. Local authorities that are developing resource allocation systems for carers' support inevitably will have to tailor such reasonable amounts to what is actually affordable. The draft Guidance contains no reference to individual budgets.

Question 5(a): Do you agree with the position set out in paragraph 16 that when the carer and cared-for person take a break together, then as well as waiving the cost of the break for the carer, the additional costs of the break to enable the break to take place will also be met by the local authority? (please tick)

Yes	No
	X

Question 5(b): If you do not agree, please state your reasons below:

As stated in paragraph 16, Lines 1 and 2 mean that the local authority pays for the whole cost of the carer’s holiday, and Lines 3 and 4 mean that the local authority also pays for that part of the cared for person’s holiday costs that is attributable to their assessed needs (e.g. those arising from a disability). Line 3 of the Draft Regulations imply a counterfactual calculation, which subtracts the cared for person’s costs from those which “would have been incurred if a person without those needs had taken an equivalent holiday”. Such a calculation is not a practical proposition, and seems to imply that local authorities would hold and update information about a range of types of holiday.

Moreover, the cost of holidays varies enormously in terms of destinations, accommodation types, seasons, transports, etc. Local authorities cannot be expected to pay for any holidays chosen by carers: is the carer assessment intended to assess for the need for holiday X rather than Y? The Guidance should set out a more holistic view of assessment, where needs are associated with a reasonable estimate of the costs of support.

Question 6(a): Do you agree with the position set out in paragraphs 17 and 18 that local authorities will waive the cost of replacement care when they provide or commission replacement care in circumstances when others cannot provide replacement care free of charge? (please tick)

Yes	No
	X

Question 6(b): If you do not agree with the position, please set out your reasons below:

Paragraphs 17 and 18 appear to relate to the wording of Lines 5 and 6 in the draft Regulations, which waive the whole of the charge in the case that the cared for person has been assessed as requiring replacement care because the carers will be undertaking a support activity, which the local authority is providing to meet their assessed care needs, there being no friend, relative, neighbours, volunteers, etc who would provide such replacement care free of charge – largely to issues of “social isolation”. However, a lack of unpaid support to provide replacement care may equally be due to the type and intensity of caring required, rather than to social isolation as such.

We anticipate that this proposal will result in a significant loss of income to local authorities from charges for respite care provided to the supported person to enable the carer to take a break or in an emergency. We would therefore only be able to support this proposal if adequate additional funding were made available to local authorities to offset this loss of income. If this is not the case, the

implementation of such a proposal could only be financed through reduction in support elsewhere within the overall social care system, or by councils being constrained to exercise their powers to support carers less frequently than they, carers, and the Scottish Government would wish.

Question 7: Do you have any additional comments? If so, please use the space below to provide these further comments. Local authorities may wish to comment on any financial consequences arising from the Regulations. If so, please set out estimates of anticipated support to be provided to carers and cost estimates.

Paragraph 21 mentions the treatment of income from partners. Here and elsewhere, there should be reference to the COSLA guidance on non-residential social care charging.

The Guidance also makes no reference to any interface with the Welfare Benefits system, either for carers or for people with disabilities.

Question 8: Do you have any comments on the draft Regulations as set out in this Annex A? If so, please use the space below to set out these comments:

Thank you for completing this consultation. Please return your completed 'Respondent Information Form' and this 'Consultation Response Form' to alun.ellis@scotland.gsi.gov.uk by **Wednesday 10th July 2013**.

APPENDIX 3

Draft Directions (The Carer's Assessment (Scotland) Directions 2014) made by Scottish Ministers under section 5(1A) of the Social Work (Scotland) Act 1968



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

The City of Edinburgh Council

Title Mr Ms Mrs Miss Dr **Please tick as appropriate**

Surname

Dale

Forename

Wendy

2. Postal Address

Health and Social Care

City of Edinburgh Council

Waverley Court

4, East Market Street, Edinburgh

Postcode EH8 8BG

Phone 0131 553 8322

Email wendy.dale@edinburgh.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

(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).

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

Please tick ONE of the following boxes

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

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

Consultation Questions

Question 1a: Are the draft Directions clear and easy to understand?

Yes	No
X	

Question 1b: Did you find the draft Directions:

Very useful	Useful	Not useful
	X	

Question 1c: Do you have any further comments on the draft Directions?

The City of Edinburgh Council is supportive of the objective “to enhance the quantity and quality of carer’s assessments”. However, we are unsure how effective the directions will be in this respect.

We suggest that it would be helpful to use the directions to clarify the position on young carers aged over 16, as there is currently a discrepancy in the way in which this group of people is treated. Those not in education or known to children’s social work services are treated as adults in respect of carer’s assessments, whilst those in education would be assessed under GIRFEC.

It would be useful to have directions to clarify the position on parents of children and when the definition of substantial and regular care differs to that of the responsibilities of a parent in general.

It would also be useful to have more directions in the approach which should be adopted in interpreting ‘substantial and regular care’ for young carers.

Thank you for completing this consultation. Please return your completed ‘Respondent Information Form’ and this ‘Consultation Response Form’ to alun.ellis@scotland.gsi.gov.uk by **Wednesday 10th July 2013**.