

# **[Draft] Statutory Guidance on care and support**

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

This document contains draft statutory guidance on the values, principles legal duties and powers associated with social care assessment, support planning and review. The guidance covers adults, children, young carers and adult carers. It has been developed by Scottish Government with contributions from a joint working group of key partners which included the Association of Directors of Social Work, Self Directed Support Scotland, Independent Living in Scotland, the Coalition of Care and Support Providers in Scotland and the Carer's Trust.

**The guidance is published for consultation. The Scottish Government would like to hear from those who receive care and support, carers, social work and health professionals, local authorities, Health Boards and the general public.**

Following the consultation the guidance will be amended it will be issued before the planned commencement date for the Social Care (Self-directed Support) (Scotland) Act 2013.

**Alongside the draft statutory guidance, the Scottish Government is inviting views on draft Regulations to accompany the Self-directed Support Act. Consultees are encouraged to provide their views on the draft Guidance and the draft Regulations which are being considered as one single consultation.**

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## **SECTION 1: INTRODUCTION**

### Background

1. This document contains statutory guidance issued by Scottish Ministers under Section 5 of the Social Work (Scotland) Act 1968. Under statutory guidance the professional must have regard to the guidance when discharging their role. They must follow both the letter and the spirit of the guidance. They must not depart from the guidance without good reason.
2. The guidance elaborates on a variety of powers and duties contained within the social care legislation. It attempts to translate those powers and duties into practical advice to professionals. The majority of legal powers and duties described within the guidance will fall to local authorities. However, a Health Board may discharge social care duties on a delegated basis. Where this is the case, the Health Board (and professionals acting on the Board's behalf) will be obliged to have regard to this guidance. In addition the guidance contains a section on the role of healthcare professionals, clarifying their contribution to social care assessment and support. This reflects the importance of healthcare and social care professionals working in partnership to conduct joint assessments and set up jointly funded packages of support.
3. Beyond health and social care professionals, the guidance should be of interest to a range of other groups and individuals. This will include those who use care and support or may use it in future, carers, providers, regulatory and inspection agencies – in short, any person or organisation involved in care and support now and in the future.

### The topics covered in this guidance

4. The guidance deals with a variety of matters related to social care assessment and the provision of social care and support. There are four main legal reference points. The first is Section 12A of the Social Work (Scotland) Act 1968 which provides the duty on authorities to assess an adult's need for care and support. The second is Sections 22 and 23 of the Children (Scotland) Act 1995 ("the 1995 Act") – the legal basis for support to children. The third is the Social Care (Self-directed Support) (Scotland) Act 2013 ("the 2013 Act") - the legal basis for choice over care and support. The final reference point is Section 12AA of the 1968 Act, section 24 of the 1995 Act and the accompanying Section 3 of the 2013 Act – the basis for the assessment of and support to, carers.

### Statement of intent

5. The guidance focuses on the duties and powers within the 2013 Act. However the scope of the guidance goes beyond the 2013 Act to cover a wide range of duties and powers in relation to assessment, support planning and review. This recognises that care and support provision - and choice and control over that provision - plays a key role in helping to deliver independent living for disabled people.

## **Self-directed Support: Statement of Intent**

Independent living means disabled people of all ages having the same freedom, choice, dignity and control as other citizens at home, at work, and in the community. It does not mean living by yourself, or fending for yourself. It means rights to practical assistance and support to participate in society and live an ordinary life. This is the definition of independent living developed by disabled people and adopted, in the strategic approach to independent living, by the Scottish Government, COSLA, the NHS and the Disabled People's Independent Living Movement.

Without care and support, and the opportunity to direct their support, many disabled people would not be able to participate in society and live an ordinary life. They would not be able to live free from discrimination and harassment as promoted by the Equality Act 2010, to enjoy their human rights nor contribute to a wealthier and fairer, healthier, safer and stronger, smarter and greener Scotland.

Self-directed support, alongside many other policies, is intended to support, promote and protect the human rights and independent living of care and support users in Scotland. It aims to ensure that care and support is delivered in a way that supports choice and control over one's own life and which respects the person's right to participate in society.

### Further information and contacts

6. This guidance provides a starting point. It is up to professionals and individuals to deliver its aims. At the end of each section you will find links to further information, additional publications and contact details. In time, the statutory guidance will be joined by further best practice guides. You can also contact the Scottish Government at:

Self-directed Support Team  
Adult Care and Support Division  
Health and Social Care Integration  
Scottish Government  
Room 2.ER, St. Andrew's House  
Regent Road, Edinburgh EH1 3DG

Telephone: 0131 244 5455

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

### **Further guidance and hyperlinks:**

Christie Commission (2011) Commission on the future delivery of public services

<http://www.scotland.gov.uk/Publications/2011/06/27154527/18>

Institute for Research and Innovation in Social Services, *Self-directed support: preparing for delivery*

<http://www.iriss.org.uk/resources/self-directed-support-sds-preparing-delivery>

Institute for Research and Innovation in Social Services, *Legislation relevant to social services in Scotland*

<http://www.iriss.org.uk/resources/legislation-relevant-social-services-scotland>

Scottish Government (2010) *Self-directed support: A National Strategy for Scotland*

<http://www.scotland.gov.uk/Publications/2010/11/05120810/0>

Scottish Government (2012) *Charter of Patient Rights and Responsibilities*

<http://www.scotland.gov.uk/Publications/2012/04/6273>

Scottish Government, Independent Living in Scotland, COSLA and NHS Scotland (2013) *Our Shared Vision for Independent Living in Scotland*

<http://www.ilis.co.uk/uploads/VISION%20STATEMENT.pdf>

The Knowledge Network - Implementing Self-directed Support - Personalisation – Human Rights Issues

<http://www.knowledge.scot.nhs.uk/home/portals-and-topics/self-directed-support/implementing-self-directed-support/human-rights-issues.aspx>

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

## SECTION 2: THE SUPPORTED PERSON'S PATHWAY

This section describes the supported person's "pathway" through support. It describes the core aspects of the pathway for adults, children and carers of all ages. For further guidance on children, young carers and adult carers please see section 9 in this document.

7. The supported person's pathway is their route through their care and support. The key stages will be familiar to anyone involved in social services. The professional should consider the concept of a pathway, journey or a "route" through support when they work with individuals.

### Table 1: The Person's Pathway

#### **Step 1: "I need support"**

The person decides that they need some kind of support or a relative, friend or professional recommends that they contact social services.

#### **Step 2: First Contact**

The person makes contact with social care services or community health services. They can arrive at this point direct or referred on by school, housing association, family or friends, hospital, carers centre, local voluntary organisation etc. There is an initial screening to determine if the person should progress to a formal decision on their eligibility for support.

#### **Step 3: Eligibility and assessment**

This is the point where the initial decisions are made about the person's eligibility for support under the various legal obligations:

- \* Section 12A of the 1968 Act (the assessment duty relating to adults);
- \* Section 22 of the 1995 Act (the duty relating to children in need);
- \* Section 12AA of the 1968 Act (the assessment duty relating to carer's of adults), and;
- \* Section 24 of the 1995 Act (the assessment duty relating to carers of children).

Following the initial assessment of the person's eligibility for support the person's needs will be explore in much greater detail. As part of this process, the two parties - the professional and the individual - will begin to translate the initial needs into a more detailed exploration of the personal outcomes for the individual.

See section 4 of this document for further guidance on assessment and eligibility.

#### **Step 4: Support Planning**

Support planning covers a wide range of issues but will tend to include a discussion of:

- the choices available to the supported person;
- the main risks and how the supported person and others can manage

those risks, and;

- the resources that will help to deliver the person’s support plan.

If the supported person is a child then the process should be part of a single plan for the child. It should capture the contribution that any support assessed or provided under Section 22 of the 1995 Act will make as part of the overall plan for the child.

See section 5 in this document for further guidance on support planning.

See section 9 in this document for further guidance in relation to support planning for children and families.

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**Step 5: Decision Time**  
This describes the stage where the supported person and the professional agree or “sign off” the support plan.

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**Step 6: Support**  
This is the actual provision of support, including any steps to adapt and change what is done.

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**Step 7: Monitoring and Review**  
The update of the original assessment along with any changes to the person’s needs and any changes in circumstances etc.

See section 6 in this document for further guidance on monitoring and review.

The Person’s Pathway: Roles and responsibilities

8. A number of individuals and organisations may be involved in the person’s pathway or will help to influence it in one shape or form. Table 2 provides a summary of the main roles and responsibilities.

**Table 2: Roles and Responsibilities**

<b>Role</b>	<b>Responsibilities</b>
The professional	The social work or health professional should take steps to ensure that the assessment is conducted in line with social care law. They should consider any wider legal duties beyond the duties provided in social care legislation. They should ensure that the person’s support plan is comprehensive and they should ensure that it meets the assessed needs for the individual. They may arrange for some additional assistance so that the supported person can play a full part in the assessment or support planning process. They may give voice to a supported person’s wishes.

<b>Role</b>	<b>Responsibilities</b>
The supported person	The supported person should be supported to play an active part at the centre of the assessment and support planning process. They should be supported to take an active role in all of the key decisions relevant to their support. This will include any decisions about initial eligibility or access to support, together with the planning and provision of that support.
The unpaid carer	The primary role of the unpaid carer is to provide care and support to a family member or friend. However, in addition to this they may provide a wealth of information, expertise and guidance. Carers may be guardians or attorneys for the individual's they support. Carers are also entitled to request an assessment of their own needs.
The provider	The term provider describes the organisation or individuals who provide support to the individual. The provider may be the local authority, the NHS, an organisation from the third or independent sector or a personal assistant employed by the supported person or the unpaid carer. The provider can play an important role in the assessment and support planning process.
Senior managers within the relevant organisations	Senior managers help to shape the culture and approach right across their organisations. They can take important decisions about a supported person's care and support. In light of this, they should take steps to ensure that guidance, training and general culture of the organisation is predicated on the values and principles within this guidance. They should support front line professionals/providers to work with individuals in a flexible and innovative way.
The finance manager or finance official	Finance managers and officials play an important role in determining and administering the level of spend assigned to services. As such, they should ensure that the right processes and systems are in place, and that they support the collective objectives for care and support in their local area.
Legal advisers within the local authority/Health Board	Legal advisers will provide support to social services, advising on their legal responsibilities and powers.
Those who commission services and support	Strategic commissioning describes the activities involved in assessing and forecasting needs, the linking of investment to agreed outcomes and consideration of the options available. It also describes the activities to plan the nature, range and quality of future services and the



Role	Responsibilities
	<p>steps that are taken by the local authority and health board to work in partnership to put their plans in place. Joint commissioning is where these actions are undertaken by two or more agencies working together, typically health and local government, and often from a pooled or aligned budget. The organisations and individuals who commission services play a key role in ensuring a good range of support is made available in order to meet the needs and desires of a diverse population.</p> <p>See section 7 in this document for further guidance on facilitating a good range of choices for individuals.</p> <p>Further guidance on joint commissioning is available at:  <a href="http://www.jitscotland.org.uk/action-areas/commissioning/">http://www.jitscotland.org.uk/action-areas/commissioning/</a></p>

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**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

**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

**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?*

## SECTION 3: VALUES AND PRINCIPLES

This section elaborates on the core values and principles of care and support. It highlights the statutory principles which the professional must consider when they conduct an assessment.

### The values of care and support

9. Values are established ideals. They are the fundamental things that define what we do. Values will be unique to each and every professional. It would not be appropriate (nor would it be helpful) for this guidance to seek to *impose* particular values on individual professionals. At the same time, it can be helpful to return to the core values that help to underpin the legislation and to mark the link between social care legislation and day to day practice. The following words describe the values that have helped to inform this guidance:

- Respect
- Fairness
- Independence
- Freedom
- Safety

### The principles of care and support

10. Principles are the means by which we put our values into practice. The 2013 Act (Sections 1 and 2) provides four general principles which should guide the professional. The four principles are described below:

#### i) Participation and dignity (Section 2 in the SDS Act)

11. Under Section 2 of the SDS Act the professional must take reasonable steps to facilitate the principle, a) that the supported person's right to dignity is to be respected, and; b) that the supported person's right to participate in the life of the community is to be respected. The general principles set out in Section 2 of the Act apply both to the initial assessment of need *and* to the provision of choice as part of the wider support planning process. Participation and dignity are core aspects of independent living whereby all disabled people should expect to have the same freedom, choice, dignity and control as other citizens at home, at work and in the community. Section 2 therefore describes one of the ultimate objectives for social care. In some respects, it provides a modern interpretation of the social welfare duties provided in the 1968 Act.

#### ii) Involvement (Section 1 in the SDS Act)

12. This is the principle that the supported person must have as much involvement as they wish in both the assessment and in the provision of support associated with that assessment.

iii) Informed choice (Section 1 in the SDS Act)

13. This is the principle that the supported person must be provided with any assistance that is reasonably required to enable them to express views about the options available to them and to make an informed choice about their options for support.

iv) Collaboration (Section 1 in the SDS Act)

14. This is the principle that the professional must collaborate with the supported person in relation to the assessment of the supported person's needs and in the provision of support or services for the supported person.

The purpose of the general principles

15. The statutory principles are important because they carry legal weight. They articulate the underlying aims or "spirit" of the legislation and complement the detailed duties and powers provided elsewhere in the Act. Beyond the statutory principles the professional should consider further good practice principles. The following table brings together:

- the statutory principles within the 2013 Act (paragraph 10 above), and;
- further good practice principles which should help to underpin good quality assessment and support planning.

**Table 3: The principles that should underpin a good assessment and support plan**

<b>The principle</b>	<b>What it means in practice</b>
<b>Collaboration</b> - a statutory principle	The professional and the supported person should work together in the completion of the assessment, the support plan and in the provision of support. <i>Underpinned by Section 1 of the 2013 Act</i>
<b>Dignity</b> - a statutory principle and a key aspect of independent living	The professional should facilitate the supported person's right to dignity. <i>Underpinned by Section 2 of the 2013 Act</i>
<b>Informed Choice</b> - a statutory principle	The supported person should receive the assistance they need to help them to make an informed choice. <i>Underpinned by Section 1 of the 2013 Act</i>
<b>Innovation</b>	The professional and the supported person should develop creative solutions to meet the outcomes identified in the support plan.

<b>Involvement –</b> a statutory principle	The professional should involve the supported person in a genuine and active way in deciding their outcomes and in planning and delivering their support. <i>Underpinned by section 1 of the 2013 Act.</i>  Communities should be assisted to play an active role in the commissioning of services.
<b>Participation -</b> a statutory principle and a key aspect of independent living	The supported person should be provided with the help that they need to participate in the life of their community and wider society <i>Underpinned by Section 2 of the 2013 Act</i>
<b>Responsibility</b>	The supported person should be able to take as much control over their support as they wish. In return, the supported person should exercise that choice and control in a responsible way.
<b>Risk enablement</b>	The supported person should be assisted to feel safe and secure in all aspects of life, to enjoy safety but not to be over-protected and, in so far as possible, to be free from exploitation and abuse.

**Further guidance and hyperlinks:**

See section 4 in this document for further guidance on how the general principle on involvement relates to the legal powers and duties on assessment.

See section 5 in this document for further guidance on the links between the general principles and the choices that must be made available to individuals.

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**Draft Statutory Guidance on Care and Support**  
**Consultation Questions**

Section 3: Values and Principles

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

Yes	No
<input type="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

**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?*

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## **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 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.

#### **a) 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*

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*

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 that 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.

#### **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>

#### **b) 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 tick-box 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 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 that are 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.

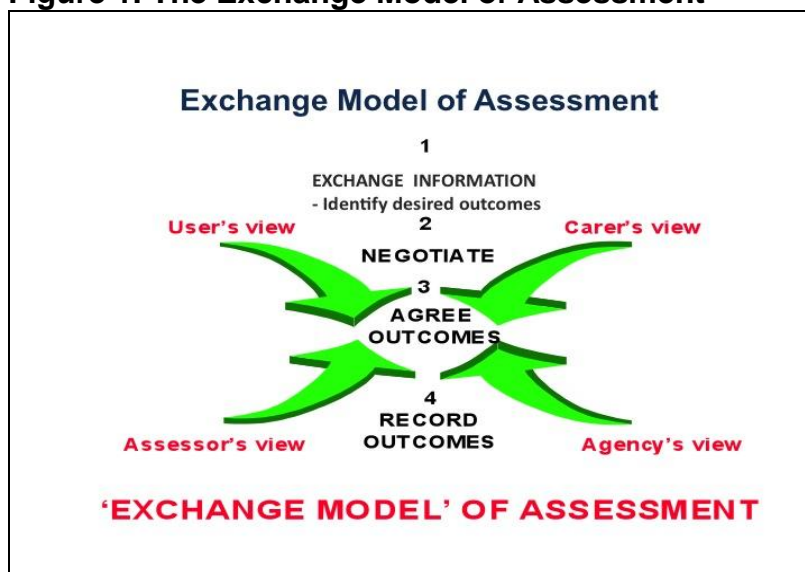
### **Further guidance and hyperlinks:**

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

### The 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 Assessment<sup>1</sup>**



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**

An assessment led by the service...	An assessment informed by personal outcomes...
- sees the ultimate destination as the delivery of the service  - is based on pre-determined question and answer formats	- sees the ultimate destination as the impact of the supported person's plan  - is based on a semi structured conversation with open questions

<sup>1</sup> Smale et al 1993

<b>An assessment led by the service...</b>	<b>An assessment informed by personal outcomes...</b>
<ul style="list-style-type: none"> <li>- obtains information in order that a form can be filled out</li> <li>- views the supported person as a client, service user or patient</li> </ul>	<ul style="list-style-type: none"> <li>- involves active listening by the professional and reflecting back</li> <li>- views the supported person as a supported person in their own right with skills, abilities and a role to play in determining and achieving their outcomes</li> </ul>
<ul style="list-style-type: none"> <li>- views the professional as an expert</li> </ul>	<ul style="list-style-type: none"> <li>- acknowledges the professional's expertise but views their role as an enabler and partner</li> </ul>
<ul style="list-style-type: none"> <li>- focuses on identifying problems and deficits and matching them to a list of services</li> </ul>	<ul style="list-style-type: none"> <li>- focuses on building on a supported person's capacities and strengths to develop creative, flexible solutions</li> </ul>
<ul style="list-style-type: none"> <li>- results in a tick box form</li> </ul>	<ul style="list-style-type: none"> <li>- builds a picture which helps to form a clear plan to achieve the supported person's outcomes</li> </ul>

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.

### 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. 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.

40. It is important that the supported person's outcomes are later reviewed, to ensure the continued relevance of support.

### **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-useful-resources/>

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

**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

**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

**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?*

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## SECTION 5: SUPPORT PLANNING

This section deals with support planning. It identifies the core requirements for a good support plan and it addresses the question of personal risk and resources. It clarifies the choices that should be made available to a person as part of the support planning process along with the additional information and support that should be provided as part of this process.

### 5.1 General guidance on support planning

41. The support plan should be developed in line with the statutory principles in Section 1 of the 2013 Act and in line with this guidance. The plan should cover certain key aspects such as the personal outcomes which help to shape the plan, the resources (both financial and non-financial) which will help to meet those outcomes, the choices available to the supported person to arrange their support and all associated information. Table 6 provides some “key ingredients”, developed from the point of view of the supported person.

**Table 6 - Support Plans: key ingredients**

<b>The people and things that are important to me</b>	<b>The main <i>risks</i> and how we will manage them</b>	<b>The <i>people</i> who can help me to achieve my outcomes</b>
<b>Where I can go for <i>information and support</i></b>	<b>My personal outcomes</b>	<b>The <i>things</i> (knowledge, funding etc.) that will help me to achieve my outcomes</b>
<b>The things that I can do</b>	<b>How I will arrange my support</b>	

42. The support planning *process* - the act of considering the outcomes and pulling together a plan - can make a significant difference to the person’s life. In light of this the support plan should be developed in a collaborative way. A good support plan will demonstrate a link between the individual’s eligible needs, their outcomes and the support required to meet those needs and outcomes. It will be written in language that the supported person understands. It will be presented in a way that is engaging and helpful to the supported person as they embark on their pathway through support. It may include pictures alongside text.

43. The support plan may be developed in any type of format but it should be framed in such a way that it can be used as a living document. It should

focus on what the person wants to achieve with the right help, rather than simply putting arrangements in place to stop things from getting any worse. It should be capable of acting as a reference point for the supported person, the professional, the provider and, subject to the person's wishes, other important individuals in the person's life. The parties involved should be able to return to the plan, review the plan, add to the plan or make changes over time.

**Further guidance and hyperlinks:**

Institute for Research and Innovation in Social Services, *Reshaping care and support planning for outcomes*

<http://content.iriss.org.uk/careandsupport/assets/html/intro.html>

## 5.2 Risk

44. Risk assessment and risk management are critical to the role of the health or social care professional. The identification and management of risk is fundamental to any assessment and support planning process.

45. It can be difficult for some individuals to appreciate or recognise the risks associated with their support. In light of this the personal risks to the individual (distinct from organisational risk to the local authority or Health Board) should be considered in collaboration with the supported person. The supported person should be fully involved in considering their risks and how they will be managed. The principles of involvement, informed choice and collaboration are helpful aids to this approach. If the supported person identifies the key risks *alongside* the professional then both parties will have a better awareness of the relevant risks and both parties will be better placed to manage those risks. Where the supported person has difficulty in understanding or identifying their personal risks, the professional should seek to involve others who can assist in the task.

46. The two parties should take a proportionate approach, spending appropriate time on those risks that carry the greater potential impact or likelihood. The professional should seek to enable positive, informed and proportionate risk taking. They should consider the risks of not acting as well as the risks of choosing a particular support option. They should also review and monitor the person's risks and they should encourage the supported person to undertake this task alongside other important individuals in the person's support plan.

**Further guidance and hyperlinks:**

Social Care Institute for Excellence (2010), *Enabling risk, ensuring safety: Self-directed support and personal budgets*

<http://lx.iriss.org.uk/sites/default/files/resources/report36.pdf>

The Knowledge Network - Implementing Self-directed Support - Personalisation - Risk Enablement



<http://www.knowledge.scot.nhs.uk/home/portals-and-topics/self-directed-support/implementing-self-directed-support/risk-enablement.aspx>

Simon Duffy & John Gillespie (2010) *Personalisation and Safeguarding Discussion Paper*

<http://www.in-control.org.uk/media/52833/personalisation%20safeguarding%20discussion%20paper%20version%201.0.pdf>

### 5.3 Resources

47. The “resource question” should not be about financial resource – money – alone. The professional should consider all of the possible resources available. The main types of resources that the professional and user will wish to explore are:

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

48. Where the person is eligible for support, the authority will wish to consider a fair and transparent means by which to determine the appropriate level of funding. Section 4 of the 2013 Act refers to a “relevant amount” and defines this as the “amount that the local authority considers is a reasonable estimate of the cost of securing the provision of support for the supported person.”

49. There is no single approach to “resource allocation” prescribed in law, nor any single method recommended by Scottish Government. Some authorities may wish to adopt an equivalence model where they determine the cost of the service to be arranged and then provide the equivalent amount as a budget for the supported person to control. Others may wish to adopt a Resource Allocation System where they gather information about the person’s outcomes, allocate points to those outcomes and, on the back of this process, allocate a level of funding. Alternatively, decisions about budgets may be made by professional judgement alone or on a case-by-case basis.

50. The important point to bear in mind is that while systems and tools can be useful aids, they are no substitute for the skilled judgement of a social work or health professional. The authority must ensure that the approach taken to

the allocation of resources is both fair and transparent. They should take steps to involve user and carer groups in the development of any methodology used to define or determine budgets for individuals. Regardless of the specific approach to allocating resources, the professional should take steps to inform the person of the amount of support available under each of the options.

51. In terms of the *application* of any methodology, the authority should ensure that professional expertise is brought to bear in order to determine the appropriate level of financial resource to meet a person's eligible needs. Authorities, and professionals on their behalf, have a responsibility to ensure that the nature and level of support meets the person's eligible needs. The approach to defining the budget should be rational and it should be transparent and the final support defined in the support plan should be sufficient to meet the needs identified as eligible in the assessment.

#### **5.4 The choices that must be made available to the supported person**

The Social Care (Self-directed Support) (Scotland) Act 2013 contains a range of choices that must be available to a supported person as part of the assessment and support plan process.

The main legal references covered in this section are:

- Sections 1 and 2 of the 2013 Act - the general principles that must guide the professional when they undertake the assessment and when they provide choice to the supported person
- Section 4 of the 2013 Act - the options that must be made available to the supported person
- Sections 5, 7 and 8 of the 2013 Act - the way that the choices must be offered to the supported person

#### The statutory principles in the 2013 Act

52. The professional should ensure that the statutory principles contained in Section 1 of the 2013 Act lie at the heart of their approach to assessment, support planning and review. Self-directed support is not about cutting people loose or leaving them to get by on their own. It is not simply about “the money” or providing that money to the person. It is about developing solutions together, recognising that a supported person's support is their support, a means by which to achieve their outcomes and to have control over their life. Overall, the professional should view self-directed support not as a particular mechanism or a the provision of money to the individual, but as a collaborative approach to assessment and support planning.

#### **“Self-directed support is real social work”: a view from a social work professional**

The social work profession is defined as “promoting social change, problem solving in human relationships and the empowerment and liberation of

people to enhance well-being... its purpose is to enable all people to develop their full potential and enrich their lives”.

It is helpful to think about self-directed support in the context of the profession it has evolved through. The early origins of this concept stem from disability rights activity through the 1960's to 1980's. However, since then the emerging legal duties and professional practice have been the responsibility of social workers.

Assessment focused on outcomes restores the therapeutic role of social work, the importance of relationships, and supporting people to find their own solutions. This therapeutic role for social workers is enabling real choice and control for people as well as common sense plans that are more effective than many of the services we have traditionally relied on.

Front line workers should embrace self-directed support – and the principle of choice to individuals - as a way to deliver good outcomes. Decision making devolved closer to workers will empower people and evolve and develop choice as the norm and not the exception.

### The options

53. The 2013 Act contains 4 options that must be made available to the supported person as part of the assessment process. The options are:

- |                 |  |
|-----------------|--|
| <b>Option 1</b> | The making of a direct payment by the local authority to the supported person for the provision of support.  |
| <b>Option 2</b> | The selection of support by the supported person, the making of arrangements for the provision of it by the local authority on behalf of the supported person and, where it is provided by someone other than the authority, the payment by the local authority of the relevant amount in respect of the cost of that provision. |
| <b>Option 3</b> | The selection of support for the supported person by the local authority, the making of arrangements for the provision of it by the authority and, where it is provided by someone other than the authority, the payment by the authority of the relevant amount in respect of the cost of that provision.                       |
| <b>Option 4</b> | The selection by the supported person of Option 1, 2 or 3 for each type of support and, where it is provided by someone other than the authority, the payment by the local authority of the relevant amount in respect of the cost of the support.   |

54. All of the choices must be described to the supported person. A key challenge for the professional will be how to relate the options to the supported person and how to make them “come alive” to the supported person.

*Option 1: the direct payment*

55. Option 1 is a direct payment. Under a direct payment the supported person - or an organisation or individual identified by them (a so-called “third party” direct payment) - receives the sum of money into a bank account. The supported person, either on their own or with support, can then purchase support. The supported person can use the resource in whichever way they wish, provided that it will secure the provision of support agreed with the professional and provided that it meets the outcomes contained in the support plan. Certain choices, such as the decision to become an employer, will only be available under the direct payment option. However a supported person can also use their direct payment to purchase a range of services that might otherwise be available under Options 2 to 4. For example, a direct payment can be used to purchase services from a registered care provider or from the local authority itself. In short, option 1 describes the maximum flexibility but also carries, potentially, the maximum responsibility.

**Further guidance and hyperlinks:**

Section 9 in this guidance provides further guidance on direct payments.

*Option 2: the supported person directs the available support*

56. Option 2 describes an arrangement where the individual selects the support that they want and the local authority – or subsequently a provider on their behalf - makes various administrative arrangements on the supported person’s behalf. Unlike the direct payment there is no requirement for the funding to be provided directly to the individual as a cash payment. The budget provided to the person is, in effect, a virtual budget. Typically, the individual will be informed of a resource that will be made available to deliver their support plan. The resource can remain with the local authority or it can be delegated to a provider to hold and distribute under the individual’s direction.

57. An example of an arrangement under Option 2 is the Individual Service Fund. Under an Individual Service Fund the authority identifies a financial resource and the supported person then directs that resource choosing the support that they would like. The local authority can transfer the resource to one or more providers on the individual’s behalf. The individual can then direct how that resource is used. They can ask for the budget, or portions of the budget, to be directed to other providers within the overall framework of support.

58. Arrangements under Option 2 should provide a further degree of choice, control and flexibility beyond what would otherwise be available under Option 3 (arranged support). The supported person should be firmly “in the driving seat” working alongside the professional to direct their support. The arrangements should be designed and operated in such a way as to give the supported person much greater control over their support and a practical means by which to exercise this control. The arrangements should make it straightforward for the supported person to exercise control over their support, to secure their preferred support and to make adjustments to their support quickly and efficiently. Though the authority is not obliged to make arrangements as set out in this guidance, there are very few limits to what can be done. The key limitation is that a person cannot use Option 2 in order to employ their own staff.

*Option 3: the local authority arranges support for the supported person*

59. Under option 3 the professional, in collaboration with the individual, selects the appropriate support and then makes arrangements on the supported person’s behalf. In contrast to option 2 the individual steps back somewhat. They choose to leave many of the detailed minutiae of decisions to the professional. This may be described as “arranged service provision” or “direct services”. In very basic terms, the local authority is providing or arranging services on the supported person’s behalf. The individual is not seeking direct, on-going or day-to-day responsibility for planning and controlling how the available resource is used.

60. Large numbers of individuals will continue to select their support under Option 3. However, the principles of choice and control, collaboration and involvement should continue to hold for individuals who make this choice. The relevant authority should seek to ensure that the services provided under Option 3 are as flexible as possible and ready to adapt to the desires of the individuals who use them. This should involve the necessary workforce education and development, ensuring that those who provide care and support do so in line with the values outlined in this guidance.

*Option 4: “mix and match”*

61. Option 4 - a combination of two or more of the options - recognises that some people will be happy to take on some control but perhaps not the full control that comes with a direct payment. This is a “mix and match approach”, ensuring maximum flexibility in the options available. This option may be attractive to people who would like to experiment with the direct payment or individual service fund approach for a small aspect of their support or for a small portion of their outcomes.

Professional discretion to limit the choices available to individuals

62. There are two circumstances where a supported person’s range of choices may be limited in some shape or form by the professional.

*i) Discretion to refuse a particular option under the 2013 Act*

63. The first area is where there is a legal restriction on the professional's power to offer the option as described in Section 4 of the 2013 Act. This is where the law simply does not allow the professional to offer any choice in the first place. Published alongside this guidance are [draft] Regulations which define specific circumstances and persons where the professional cannot offer a direct payment. Please see the draft Regulations for a draft list of circumstances and persons deemed ineligible for particular options within the 2013 Act – in this case the direct payment option only.

*ii) Discretion in relation to whether a particular type of support is appropriate to meet the assessed needs/agreed outcomes for the person*

64. A separate matter is where the professional believes that a particular form of support (as opposed to the mechanism for delivering that support) will not meet the assessed needs of the individual. This is a situation where it is the professional's considered opinion that the decisions that the person is taking under their particular option are failing to meet their assessed needs.

65. This discretion - sometimes known as a "duty of care" discretion - stems from the authority's power under Section 12 of the 1968 Act. Section 12 allows authorities to secure the provision of support (referred to in Section 12 as "facilities") which they may consider "suitable and adequate". For clarity, the professional cannot refuse a particular option under the 2013 Act (i.e. the mechanism under which the care is provided). What they *can* do is use the discretion available under Section 12 to refuse to fund a particular type of support.

66. Professionals must exercise their "duty of care" discretion to refuse to fund a particular type of support with great care and only where it is clear that the support choices in question will fail to meet the supported person's eligible needs. The professional should explain why a particular type of support will fail to meet the supported person's assessed needs, and they should seek to agree alternative forms of support under the options available via the 2013 Act. As with any key decision about a person's assessment or support plan, the professional should take steps to inform the person of their right to complain about the process used to arrive at any decision. They should inform them of their right to take their complaint to the Public Services Ombudsman once they have exhausted the local authority complaints procedure, and to judicial review if necessary.

**Further guidance and hyperlinks:**

Self-directed Support in Scotland website - Professionals  
<http://www.selfdirectedsupportscotland.org.uk/professionals/>

Scottish Government (2010) *Self-directed support: A National Strategy for Scotland*  
<http://www.scotland.gov.uk/Publications/2010/11/05120810/0>

## 5.5 Information and support

67. Section 9 of the Self-directed Support Act 2013 requires the professional to ensure that information and appropriate “signposting” advice is provided to individuals to help them to make an *informed* choice. Section 9 accompanies the earlier Section 1 within the 2013 Act, which provides the general principle relating to information and support.

68. Section 1, sub-section 3 of the 2013 Act states:

- (3) A person must be provided with any assistance that is reasonably required to enable the person—
  - (a) to express any views the person may have about the options for self-directed support, and
  - (b) to make an informed choice when choosing an option for self-directed support.

69. Section 9, sub-section 2 of the 2013 Act states that:

- (2) The authority must give the person—
  - (a) an explanation of the nature and effect of each of the options for self-directed support,
  - (b) information about how to manage support,
  - (c) information about persons (including persons who are not employed by the authority) who can provide—
    - (i) assistance or information to the person to assist the person in making decisions about the options,
    - (ii) information about how to manage support, and
  - (d) in any case where the authority considers it appropriate to do so, information about persons who provide independent advocacy services (within the meaning of section 259(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)).

70. Section 9 also requires the authority to give the explanation and information required by subsection (2) in writing and, if necessary, in such other form as is appropriate to the needs of the supported person to whom they are given.

*What should this mean in practice?*

71. Sections 1 and 9 mean that the professional must provide any assistance that is reasonably required to enable the supported person to express a view on the choices available to them, and to make an informed choice in terms of the four options. The advice to the supported person should be impartial, balanced and well informed. The emphasis throughout should be on supporting an individual to make an informed choice.

72. The professional should explain the options in a clear and accessible way. They should tailor any communication to the communication needs of

the individual. They must provide the individual with an explanation of the “nature and effect” of the options available to them under the law. This means that they should seek to explain the basic characteristics of the options available to the supported person. In particular, they should seek to describe the distinctions between the different options. They should approach this task using terms that the supported person can engage and relate to, and they should attempt to make the options tangible and real to the person.

73. In addition, the professional must provide the supported person with information about how they can manage their support *after* they have made their initial choice. This is particularly important in relation to the direct payment option, where the supported person may be considering taking an active role in directing their support. Clearly, there are practical limits to this duty. For instance, it would be disproportionate (and potentially unhelpful to the individual) for the professional to explain every detailed employment responsibilities at the point where the person is considering the direct payment option.

*What should the organisation (the authority/health board) do to ensure a good mix of information and support?*

74. In order to discharge its obligations under section 9 of the 2013 Act, the wider authority will wish to consider the appropriate mix of information and support options available in their local area. Table 7 below lists some of the key forms of information and support.

<b>Table 7: Examples of information and support</b>	
Basic information and advice	<p>Basic information direct from the professional about:</p> <ul style="list-style-type: none"> <li>* the choices available to a person and the opportunities and responsibilities that come with each option;</li> <li>* how to understand and navigate the processes that surround assessment, support planning and review, and;</li> <li>* where to go for further detailed or technical advice and support.</li> </ul> <p>Leaflets and information in accessible formats</p> <p>Case study examples showing how the various options work</p> <p>Accessible information in a variety of formats</p>
Mentoring and peer support	<p>Information and support from people with personal experience of care and support or directing their own support</p> <p>Mentoring for support planning</p>



	Contact details for mentoring networks
Support and information services	Organisations that are independent or semi-independent from the authority. This may include “in house” support and information services or it may include user-led or peer support organisations.
Brokerage	Specialist support to people to plan, procure and manage their own support arrangements under the direct payment option.
Independent advocacy	Advocacy services to make sure that people’s voices are heard (individually or collectively) during all stages of the care and support pathway
Training	Training to individuals or voluntary or independent sector organisations in: * care and support pathways and key stages such as assessment, support planning, managing your support and review * disability, diversity and equality * confidence and assertiveness

*Sources of information and support out-with the authority/health board*

75. The professional should point the supported person towards other sources of information out with the authority. This may include independent organisations or user-led organisations such as centres for independent living, specialist support organisations with an expertise in the individual’s particular support needs or disability, or organisations with expertise in supporting specific client groups. In addition, it may include organisations with a general role in support and assistance to citizens.

**The role of user-led support and information organisations**

User-led support and information organisations operate on a peer support model. They offer a unique contribution, helping disabled people to understand their options to relate to the needs of others in the same situation. Their staff and volunteers may have personal experience of care and support services. It is this experience which helps to inform the design and delivery of support services, leading to high quality, relevant and appropriate information and support.

Further information is available from the Self Directed Support Scotland (SDSS) website [www.sdsscotland.org.uk](http://www.sdsscotland.org.uk)

Advocacy and advocacy services

76. In addition the professional, where they consider it appropriate to do so, must provide the supported person with information about independent advocacy services. Advocacy services provide a unique role in terms of helping people to navigate and make their choices. The professional should

seek to use their discretion and to signpost the person to advocacy services in all instances where they consider this appropriate.

**Further guidance and hyperlinks:**

Self-directed Support Scotland

<http://www.sdsscotland.org.uk/>

Scottish Government (2005) The New Mental Health Act: A guide to independent advocacy: Information for Service Users and their Carers

<http://www.scotland.gov.uk/Publications/2005/12/02144347/43475>

Scottish Independent Advocacy Alliance

<http://www.siaa.org.uk/>

Scottish Government (2012) *A Right to Speak: Supporting Individuals who use Alternative and Augmentative Communication*

<http://www.scotland.gov.uk/Publications/2012/06/8416/0>

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

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**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)**

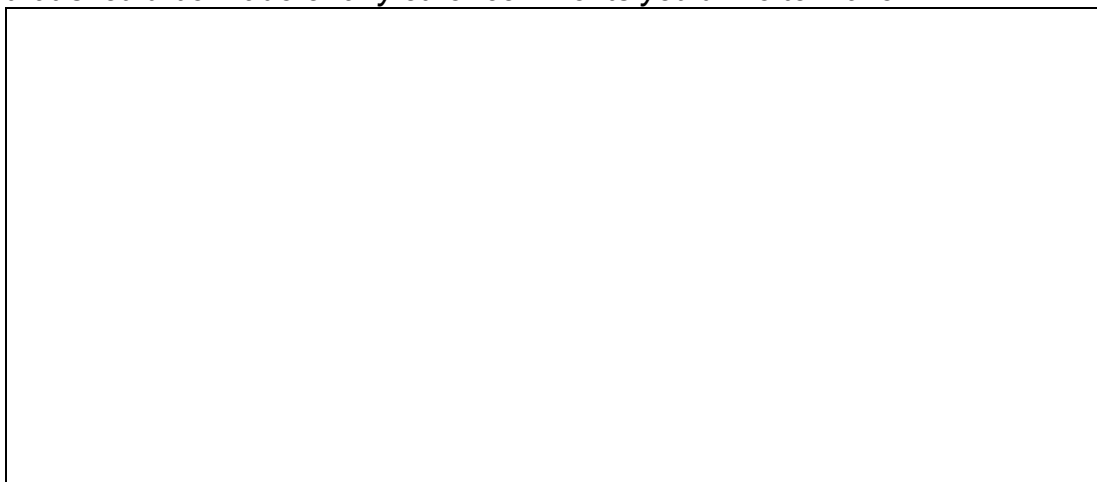
Yes	No

**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

**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?*

A large empty rectangular box with a thin black border, intended for providing comments or suggestions.

## SECTION 6: MONITORING AND REVIEW

77. A change to a supported person's needs or a request for a further assessment should prompt a review. A review is a further consideration of the supported person's needs and outcomes.

78. It is recommended that the professional actively seek reviews with those they support. The approach taken at review should be similar to the approach taken at initial assessment. In other words, the review should be conducted on the basis of personal outcomes, with a view to meeting assessed needs. It should involve a period of reflection on whether the choices made and the support provided is helping to meet the outcomes and needs of the supported person. The review should also consider whether the needs and outcomes have changed in the intervening period. This may require some adjustments to be made to the support plan.

79. Authorities should be prepared to respond to the likely demand for reviews. They should aim to conduct reviews on an annual basis and they should consider review as a means by which to prevent crisis or to respond and adapt to the supported person's life.

### *Review of the supported person's options under the 2013 Act*

80. The 2013 Act imposes some additional responsibilities on the question of *how* the supported person's support is arranged. In other words, the choices available to the supported person under the 2013 Act. In practice the two types of review - a review of your 2013 Act option and a review of your wider needs and outcomes - will tend to go hand in hand. It is difficult to foresee a review of a supported person's needs failing to incorporate some consideration of the means by which they arrange their support. However, a review of a person's choice under the 2013 Act *can* take place without a detailed review of needs. The person may decide that they do not wish to continue with the option that they have chosen. Alternatively, they may decide that arranged services are not working out the way that they had thought and would like to reconsider the other options. The professional should view this as part of the on-going nature of assessment, working with the supported person to consider what adjustments they would like to make.

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### **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

**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

**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?*

## SECTION 7: FACILITATING CHOICE

This section deals with the challenge of providing genuine choice in terms of promoting a range of providers and a suitable range of support options.

81. Access to choice “on paper” is of very little value if there is a lack of variety in the range of providers or a lack of variety in the type of support on offer. Section 19 sub-section 2 in the 2013 Act requires the authority to take active steps promote variety in the support options available to those who are eligible for care and support.

### **Promotion of options for self-directed support**

*Social Care (Self-directed Support) (Scotland) Act 2013, section 19*

- (1) A local authority must take steps to promote the availability of the options for self-directed support.
- (2) For the purpose of making available to supported persons a wide range of support when choosing options for self-directed support, a local authority must, in so far as is reasonably practicable, promote—
  - (a) a variety of providers of support, and
  - (b) the variety of support provided by it and other providers.

82. The authority should view their role as being a facilitator of choice for individuals. In discharging this role they may wish to adopt an approach to commissioning based on Table 8 below.

### **Table 8: Commissioning for self-directed support**

#### **1. Learn and understand what people need and want**

Individuals in receipt of support, operational social workers, and providers are all rich sources of data for building a picture of need and demand in an area. The authority/partnership should consult with a variety of different sources in order to gather the good quality information about what people need and want from the services available. User views and information about current services will provide an understanding of what is already on offer and whether it matches what people need or want.

#### **2. Set out what you will do to meet what people need and want**

The authority/partnership should use the information from their consultation in order to plan what the variety of services might look like in future. This will provide information about gaps in support provision and evidence for influencing the development of new support and services.

#### **3: Try out different approaches**

The authority/partnership should bring together the results of the analysis and planning stages into what they will actually do to facilitate the choices.

The actions taken at this stage will be different depending on the needs of the local area but may include: allocating additional resources for specialist support services, providing specialist training; setting aside funding for innovation; financial incentives to meet gaps in support; or simply being clear about the commissioning or de-commissioning of services.

#### **4. Review - ask if it worked and make changes**

This final stage is an opportunity to assess whether the process has worked. By reviewing the information gathered during the earlier stages this assessment should shape what the local authority intends to do to facilitate a variety of choices in future.

#### **Further guidance and hyperlinks:**

Joint Improvement Team – Joint Strategic Commissioning  
<http://www.jitscotland.org.uk/action-areas/commissioning/>

Scottish Government (2012), *Guidance on the procurement of care and support services by public bodies in Scotland*  
<http://www.scotland.gov.uk/Publications/2010/09/21100130/0>

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

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### **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

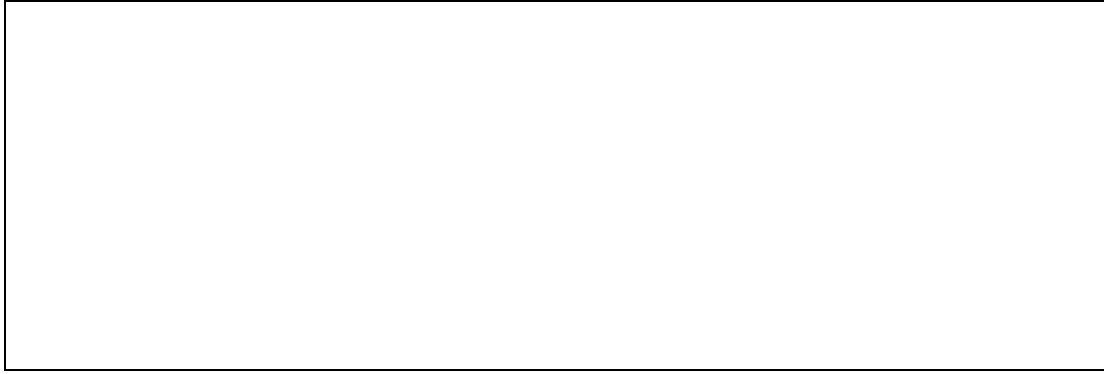
**Question 6b: How useful did you find this section of the guidance? (please tick)**

Very useful	Quite Useful	Not very useful	Not at all useful

**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?*

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## **SECTION 8: THE ROLE OF THE NHS AND THE NHS PROFESSIONAL**

This section considers the role of the NHS professional. It clarifies what is possible under the respective legal frameworks and it provides some case study examples of combined packages of support for individuals. It encourages the respective professionals and organisations to work together, to conduct assessments based on personal outcomes and to pool budgets at the level of the individual.

83. Social care and healthcare, particularly community healthcare, are closely related. It is not uncommon for a supported person to receive on-going healthcare – care that is funded by the NHS – and to receive social care and support at the same time. Moreover, a supported person's needs and outcomes – indeed their life as a whole - will not always respect traditional boundaries between healthcare services and social care services. The relevant professionals and organisations should consider their respective roles, contributions, expertise and resources.

### **What is meant by NHS or "health" support?**

84. This section of the guidance uses the shorthand term "healthcare" or "NHS support". This is referring not to acute healthcare (hospital based healthcare, treatments or operations) but to community based healthcare - the range of NHS-funded support provided by district nurses and allied health professionals such as occupational therapists. Support funded or arranged by the NHS may be provided to a person *alongside* social care provision or it may be provided in place of social care provision. It is important that the relevant health and social care professionals are alive to this reality and take steps to collaborate and work together in the interests of the supported person/patient.

### **What is meant by a joint approach?**

85. A joint approach is not simply about the pooling or transfer of budgets. At its core it is about a joint “person-centred” approach to assessment and support planning. It is about recognising all available opportunities to pool expertise, share common approaches and combine resources at every stage in supported person’s pathway. This requires ingenuity, a “solution focused” or “problem-solving” approach and a determination on the part of the health and social care professionals (and senior managers) to take full advantage of the broad powers afforded them in legislation.

#### **Case study 1:**

##### **Lisa’s story: a package of support jointly funded and supported by health and social care**

Lisa is 21, she was involved in a road traffic accident 4 years ago resulting in an acquired brain injury, significant physical disability and communication impairment.

In the 3 years following Lisa's discharge from her local rehabilitation unit, Lisa was totally reliant on her parents, including getting out of the house in her manual wheelchair the physical demands of which limited the scope for family members taking Lisa out. An electric wheelchair had been provided for Lisa but it wasn't being used.

Lisa's occupational therapist told Lisa & her family about the opportunity to take more choice and control – to direct their support - and helped them complete the required paperwork.

Lisa was awarded a joint self-directed support package funded by both health and social care, Lisa and her family, with the support of their occupational therapist, identified her need to gain confidence in using her electric wheelchair independently, and part of her direct payment was used to employ a personal assistant from a local care agency to support Lisa using her wheelchair to access her local community.

By using her wheelchair independently Lisa significantly increased her confidence in using it, particularly in crowded places, and developed her social skills; this has resulted in Lisa starting a college course and to begin to participate in activities in her local community i.e. archery.

The impact on Lisa's family has also been very positive, caring for Lisa is now less physically demanding, and they report that life is easier and that they have respite from their caring role when she is out with her personal assistant. They feel that this experience will enable Lisa to work towards more independent living, through improved communication and more active decision making on her part.

Lisa reports that she feels 'superb' in her ability to go out independently

### **Examples of shared healthcare and social care needs**

86. The respective legal duties in relation to the assessment of social care needs and the provision of healthcare support were framed in a very broad way. There is no definitive list of social care and healthcare interventions. This provides quite a high degree of discretion to the professionals and organisations involved. The following are *illustrative* examples of joint or shared health and social care interventions – interventions that may be provided using jointly funded packages of support:

- interventions to assist with a supported person's general health such as skincare, the management of pressure sores, the administration of percussive physiotherapy;
- on-going management of aspiration and suctioning;
- specialist cancer, MS, brain or spinal injury care, and;
- epilepsy or diabetes care.

## What is “allowed”?

87. What *can* be done under social care and healthcare legislation? The relevant professionals can do the following:

- They can contribute their professional healthcare expertise to a single assessment and support plan.
- They can arrange for the transfer of funding from the NHS to the local authority in order to pay for aspects of social care provision. The funding can then be directed by the supported person under the 2013 Act. The jointly funded package can be arranged by the relevant professionals on the supported person’s behalf, it can be directed by an individual in the form of an individual service fund or it can be released direct to the individual in the form of a direct payment.

### Joint assessment and delegated assessment

88. Where the social care assessment function is delegated to the NHS all of the legal powers and duties associated with that assessment will transfer to the NHS professional. The NHS professional must comply with this duty to assess and to meet the person’s assessed needs under Section 12A of the 1958 Act or Section 22 of the 1995 Act. In addition they must provide choices over the person’s support as defined by the 2013 Act. They must offer the various choices to the supported person and they must “give effect” to the supported person’s choice. In addition, the healthcare professional should discharge the relevant duties in line with this guidance.

### Joint Funding

89. Under the framework provided by the Community Care (Joint Working etc.) (Scotland) Regulations 2002 (SSI 2002 No. 533) ('the 2002 Regulations') the local authority and the health board can transfer funding between themselves and they can combine their funding at the level of the individual. This flexibility, which applies to “high level” strategic budgets *and* funding at the “micro level” of the individual, will be retained and enhanced by the forthcoming legislation on the integration of health and social care.

### Budgets are pooled: what happens next?

90. Once a decision has been taken to pool budgets the combined funding pot can be released in a variety of ways. Some example scenarios are provided below:

- “Health funding” (funding to address health needs) is added to funding from the local authority. It is then released to the individual as a direct payment. The payment is used to employ a personal assistant with the requisite health training and skills. The assistant is provided with the necessary training. Alternatively, a portion of health funding is used to increase the number of hours funded so that a second personal

assistant is provided with the necessary training and can attend to health needs at specific times of the day.

- Health funding is added to a virtual budget in the form of an individual service fund. The budget is then released to a provider by the local authority. The budget is used to purchase support from an agency with staff who are able to assist with healthcare tasks that may otherwise have been provided separately by the NHS. The relevant health professionals must be assured that the agency staff are sufficiently trained and competent to meet the health needs of the supported person.
- The relevant health and social care professionals work together to arrange a package of services on behalf of the individual. The services may be provided by the local authority, a third sector or private sector provider or the NHS.

### **Case study 2:**

#### **Steven's story: a package of support jointly funded and supported by health and social care**

Steven is a tetraplegic. Paralysed following a serious accident in 1978, Steven was cared for at home by his mother until 1996. Using the Independent Living Fund and a direct payment he moved into his own adapted accommodation when his mother was 73 years old. This package was successful for several years allowing Steven to continue to work and live independently supported by his team of personal assistants.

During this time Steven was also supported by the District Nursing Service daily who attended to various aspects of his care including bowel management and administration of certain medications.

Unfortunately Steven's physical health began to deteriorate and repeated chest infections led to hospitalisations and the subsequent need for overnight respiratory support. Steven was very keen to ensure that he could return home and continue to enjoy his independence, at the age of 60 he felt that a nursing home placement was not for him.

The Care Manager and District Nurse put together a case for joint funding. The District Nurse provided training to all members of the care team on all healthcare interventions and the respiratory team provide training on ventilation which was required overnight. There was significant debate between social work and health service managers on the share of the funding which required evidence from the care manager and the district nurse. Once agreed, Steven was able to come home from hospital to be supported by his trained care team.

Steven says 'Living independently with joint funding has made a huge difference to my life. The advantages have been: being in charge of my life and making my own decisions; organising my household and shopping



## SECTION 9: FURTHER GUIDANCE

### 9.1 Children and families

This section provides guidance on the assessment of the child's needs, the choices that should be made available to the child/family and the involvement of the child in the assessment and support planning process. It should be considered alongside the Scottish Government's Guidance and Regulations on the Children (Scotland) Act 1995, in particular Chapter 1 on Promoting the Welfare of Children and Families:

<http://www.scotland.gov.uk/Publications/2004/10/20066/44709>

92. Social care and support to children and families takes place within a wider policy and practice framework for children and young people. This framework emphasises the importance of:

- promoting the upbringing of children and young people within their families so far as this is consistent with safeguarding and promoting their welfare;
- giving children and young people the opportunity to become more independent in the future;
- working in partnership with families;
- recognising that children and young people are individuals with their own wishes and feelings;
- listening to children and young people and taking into account their views;
- actively involving children, young people and parents in assessments and decision-making, and;
- having regard to issues of race, language, religion and culture.

93. Under the Getting it Right framework (and likely to be underpinned in law by the forthcoming Children and Young People Bill) every child, from birth to age 18, should have a Named Person. The Named Person will be a professional from health or education, depending on the age of the child, and will act as the first point of contact for children and families. The concept relies on the principle that the Named Person will be there for each child and the role will be part of day-to-day work. Once a concern for the child's wellbeing has been brought to the attention of the Named Person, it is the Named Person's responsibility to take action to provide help or arrange for the right help to be provided to promote the child's development and wellbeing. When two or more agencies need to work together to provide help to a child or young person and their family, there should be a Lead Professional to co-ordinate that help.

94. The Named Person and the Lead Professional should be familiar with local protocols and procedures. The authority should take steps to promote the potential benefits offered by the various options available to individuals under social care law. Where the child has care and support needs which are being met under Section 22 or Section 23 of the 1995 Act the relevant

professionals should be aware of the duties and powers under social care legislation, in particular the duties to offer choices in relation to the child's care and support.

**Further guidance and hyperlinks:**

Further information about the roles of the Named Person and Lead Professional can be found at: [www.scotland.gov.uk/girfec](http://www.scotland.gov.uk/girfec)

Care and support: the main legal duties and powers

95. Section 22 of the Children (Scotland) Act 1995 places a duty on the responsible authority to safeguard and promote the welfare of children in need and, where consistent with that, to promote the upbringing of children within their families. In each case, the local authority must provide a range and level of services appropriate to the child's needs. The accompanying Section 23 provides additional prescription in relation to any support related to disability. For instance, it requires any support to minimise the effect of disability on the child and to give the child the opportunity to live as normal a life as possible.

96. The professional should bear in mind that the definition of a "child in need", as provided in Section 22, is a broad definition. It includes children under the age of 18 who have a disability, children affected adversely by the disability of any other person in the family and children whose health or development may be impaired or may fall below a reasonable standard without services from the local authority. While the focus of support provided under section 22 is to support the child, the support may be provided to the wider family if/when it will help to safeguard or promote the welfare of the child.

The assessment and support planning process

97. Under the Getting it Right approach each child who requires support, whether from a single universal service or from several services or agencies, will have this support co-ordinated and recorded within a single plan. This should mean that the "social care" assessment and support planning process – i.e. the process described in this guidance - should feed into a single plan for the child. The professional should seek to ensure the assessment process is fully co-ordinated between adult and children's services, including any other relevant departments such as education. An approach based on personal outcomes will help to draw out the child and their family's views on the things they want to achieve, the things they'd like to do and how they'd like to do them. An approach based on personal outcomes will also help to ensure that the social care assessment can easily contribute to the Single Plan for the child. In undertaking the assessment, the professional should consider the SHANARRI framework.<sup>2</sup>

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<sup>2</sup> SHANARRI: safe, healthy, achieving, nurtured, active, respected, responsible and included.

**Further guidance and hyperlinks:**

Further guidance on Getting it right for every child is available at:

[www.scotland.gov.uk/girfec](http://www.scotland.gov.uk/girfec)

Providing choice in the context of the wider safeguarding role

98. It is fundamental to the concept of the 2013 Act that it is the supported person and not the professional who gets to decide the option through which the service is delivered – subject of course to any restrictions laid down in the Act or its regulations. However, the Act does not override professional judgment as to the *nature* of the services to be provided under a particular option. In all cases, the professional must ensure that the particular type of support will ensure the young supported person's safety and promote their welfare. Where this is not the case, the professional should explain to the young supported person and their family why the support provided under alternative options will not meet their outcomes. It is important to emphasise that choices in these circumstances will involve the professional guiding the appropriate person to explore and understand the context around the options which would best promote the welfare of the child. Given social work interventions often manage crisis situations to settle into more supported on-going arrangements, the potential for including all of the various choices in forward planning should be viewed positively.

Note: Alongside this guidance the Scottish Government is consulting on draft Regulations on direct payments. Please consider the consultation document accompanying the draft Regulations. The document invites views on whether Ministers should use Regulations to place specific restrictions on the duty to allow a direct payment with respect to children's support. Are there specific circumstances where it would never be appropriate to offer Options 1 or 2 with respect to children's support? If so, what are these circumstances and why/how should they be prescribed in the secondary legislation?

The involvement of the child in making and managing choices

99. If the child is 16 or older then the child will have the right to make decisions about their support - in other words, they will be able to choose how they wish to arrange their support. If the child is under 16 then the person with responsibility for the child – called the “appropriate person” on the face of the 2013 Act – should make decisions about the child's support. The professional should inform the appropriate person that they must, in so far as practicable and taking account of the maturity of the child, give the child an opportunity to indicate whether they want to express a view about their support. If the child wishes to express a view then the appropriate person should give the child an opportunity to express their view. The appropriate person should also have regard to the views of the child in making the key decisions about that child's support.



100. The child's opinions need to be actively sought and their behaviour observed with the adults who will be supporting them. A few trial or observation visits may be needed to get their views. The child should be given appropriate help to express their views and wishes, and should have access to independent advocacy when appropriate. The professional will need to handle such issues sensitively in terms of the family situation where there may be parental conflict with the views of the child. It is important to recognise the views of parents who have been managing the delivery of support for their child in setting in place any new arrangements once the young supported person reaches age 16.

#### "Transition" from children's support into adult's support

101. For any young person the process of growing up involves the gradual taking on of responsibility for themselves. Parents can face challenges in supporting and preparing young people for an independent adult life. The transition to greater independence is rarely a single event, nor does it happen quickly. However families with disabled children often face additional challenges that may delay or limit the young person's "transition" towards independence. The greater flexibility offered by options 1 and 2 in the 2013 Act may offer advantages to the young person and their family. A direct payment or the opportunity to take control of their support may help them to take on greater responsibility right across their life, to be more independent and to have greater control over their future. Alternatively, the "mix and match" approach (where the young supported person takes direct control over a portion of their package or to meet a small collection of outcomes) may offer an opportunity to build the young supported person's confidence in managing their own support. The professional may want to facilitate transitional arrangements whereby initially the young person manages only a small proportion of their support but takes on greater responsibility over time.

102. Throughout the assessment and support planning process the young person should receive the practical support that they need in order to help them to make the relevant decisions and manage their support. This may include assistance from parents and carers, independent advice and support or, in some cases, advocacy services. The young person's ability to manage may change as they gain experience. Where the young person or family decides to take *greater* control – for instance, to take a direct payment and employ their own staff then additional local support services – the professional should ensure that they direct the young person and their family to agencies that assist with employment advice and payroll support.

#### Incapacity

103. Where the child or young person lacks capacity or may lack capacity in future the professional should make the child and their family aware of the Adults with Incapacity (Scotland) 2000 Act ("the AWI Act"). They should inform the child and their family about the opportunity to apply for power of attorney and guardianship.

### The promotion of the options to children and families

104. Under the 2013 Act the authority responsible for assessment has a duty to *promote* the options. This applies to children and families in the same way that it applies to any client group. Under this duty the authority should take steps to:

- promote self-directed support for children and young people;
- ensure the families of disabled children and young people have access to information targeted to their needs;
- provide specialist support targeted to children and young people's needs, for example an advocate or support worker may be needed with specialist skills, and;
- train social work and health professionals, and encourage a culture of positive risk taking to enable more children and young people to benefit from the support, whatever option they choose.

#### **Further guidance and hyperlinks:**

Care Inspectorate Practice Guide: Involving Children and Young People in Improving Services

[http://www.scswis.com/index.php?option=com\\_docman&task=cat\\_view&gid=533&Itemid=378#](http://www.scswis.com/index.php?option=com_docman&task=cat_view&gid=533&Itemid=378#)

Institute for Research and Innovation in Social Services, *Leading for Outcomes: Children and Young People*

<http://www.iriss.org.uk/resources/leading-outcomes-children-and-young-people>

Scottish Government (2010) *National Guidance for Child Protection in Scotland*

<http://www.scotland.gov.uk/Publications/2010/12/09134441/0>

Scottish Government (2011) Guidance on the Looked After Children (Scotland) Regulations 2009 and the Adoption and Children (Scotland) Act 2007

<http://www.scotland.gov.uk/Publications/2011/03/10110037/0>

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

**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

**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

**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?*

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## 9.2 Supported decision-making and circles of support

The professional can face challenges where there are issues about the supported person's capacity to make, understand or communicate decisions. This section:

- provides guidance on the provision of assistance by others (known as "circles of support") in order to help an individual to make or communicate their decisions, and;
- clarifies the powers available to attorneys and guardians in relation to the assessment and support planning process.

### Assistance

105. Under Sections 6 and 17 of the 2013 Act the professional must take reasonable steps to facilitate assistance which will help the supported person to play a full part in their assessment, to understand the various choices available to them and to decide how and what ways they would like to arrange their support. The purpose behind Sections 6 and 17 is to encourage reasonable, practicable steps to maximise the choice and control available to the supported person. It is not about imposing assistance on individuals. It is not about appointing proxy decision makers.

### ***Assistance with understanding and/or making decisions***

106. The supported person may find it difficult to make a decision on their own. However with some additional support they may be able to make the necessary decisions associated with the assessment, support planning process or the actual provision of support. Where the professional believes the supported person would benefit from further assistance, they should first consider the full range of decisions that will have to be made during the course of the supported person's pathway. Though every assessment will be unique, the main decisions are likely to cover:

- decisions about the outcomes that the supported person wants to achieve;
- decisions about the steps that the supported person wants to take to achieve those outcomes;
- decisions about the means by which the supported person will receive their support;
- the range of reactive or management decisions that come with the on-going day to day provision of support, and;
- any further decisions about needs, outcomes and plans associated with the review of a supported person's needs.

107. The professional must then take "reasonable steps" to enable the supported person to make the relevant decisions. They should exercise judgement in deciding whether the supported person requires such assistance. However, where they decide that additional assistance *is* required they must take reasonable steps to identify a person or persons who can provide some extra assistance to the supported person. After this step, but

only with the supported person's agreement, they should then involve the relevant individuals.

108. Where a supported decision-making arrangement or a "circle of support" is being considered the *agreement* of the supported person is paramount. The supported person must be invited to agree to any arrangement whereby another individual or group of individuals are being invited to provide them with assistance. The supported person's agreement must be secured before the individual(s) can provide any assistance.

109. It is important that the person(s) providing any assistance are *able* to provide that assistance. While there is no requirement for the individual(s) providing the assistance to have professional qualifications in supported decision-making, they should have an understanding of the type of assistance required and the limits and boundaries of what is meant by "assistance". In other words, they should be aware:

- of their role and the limits of their role, and;
- the fact that their role is to help *the supported person* to make decisions and not to *make* decisions on the supported person's behalf.

110. Only guardians or attorneys appointed under the "AWI Act" have the power to make decisions on another supported person's behalf. On certain occasions it would be reasonable to predict that the supported person's condition will deteriorate over time such that they will lack capacity to make decisions. The professional should therefore take steps to make the supported person and their family aware of the option to apply for power of attorney. Alternatively, a person's capacity to make or understand decisions may fluctuate. Where this is the case the professional should consider the benefits of an Advanced Statement under the Mental Health (Care and Treatment) Act 2003.<sup>3</sup>

### ***Assistance with communicating decisions***

111. As stated, assistance to make decisions and assistance to communicate decisions are two distinct forms of assistance, and they are treated as such on the face of the 2013 Act. The supported person may require some additional support from, for example, an interpreter or a speech and language therapist, or from a family member or friend. If so, the professional must take reasonable steps to identify other people who can help the supported person to communicate their decisions. The professional should take steps to get the supported person's agreement before they arrange any assistance for the supported person.

#### What to do when the supported person lacks capacity

112. Where the supported person has a guardian or attorney, and where that "proxy" has the necessary powers, the guardian or attorney should be supported to make the relevant decisions in relation to the person's

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<sup>3</sup> <http://www.scotland.gov.uk/Publications/2004/10/20017/44081>

assessment, the support plan, the provision of choice in relation to the person's support and the support itself. The professional should ensure that the proxy is:

- fully involved in the assessment;
- supported to collaborate with the professional, and;
- supported to make informed choices about the supported person's support.

113. The professional may have doubts or questions about a supported person's capacity. If so, they should seek assistance from a Mental Health Officer. Where the professional concludes that an application for guardianship would be appropriate they should discuss this with the supported person's family or others who may have an interest in the supported person's care and support. The local authority can apply to the court for a guardianship order over an individual.

**Further guidance and hyperlinks:**

Chapter 4 of the AWI Act Code of Practice for Local Authorities contains further guidance on the relevant AWI powers and duties and how these relate to the assessment and support planning process.

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

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

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

*Powers of Attorney and Guardianship*

Office of the Public Guardian (Scotland)

<http://www.publicguardian-scotland.gov.uk/>

Mental Welfare Commission for Scotland – Good Practice Guides

<http://www.mwscot.org.uk/publications/good-practice-guides/>

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

**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

**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

**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?*

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### 9.3 Carers

This section contains guidance on carers assessments, the provision of support to carers following the carer's assessment and the provision of choice to carers with respect to any support that they might receive.

The main legal references for this section of the guidance are:

- Section 12AA of the Social Work (Scotland) Act 1968 and section 24 of the Children (Scotland) Act 1995: Assessment of ability to provide care
- Section 3 of the Social Care (Self-directed Support) (Scotland) Act 2013: Support for adult carers
- Section 7 of the Social Care (Self-directed Support) (Scotland) Act 2013: Choice of options: adult carers along with all accompanying sections of the 2013 Act, in particular sections 1, 2, 4, 9 and 11-16.

#### The carer's assessment

114. A carer who provides a substantial amount of care on a regular basis has the right to request an assessment of their own needs as a carer. This is known as a carer's assessment. Under Section 12AA of the 1968 Act (relating to carers of adults) and Section 24 of the 1995 Act (relating to carers of children) the professional must comply with any such request. In addition, the professional has an obligation to inform individuals of the right to request an assessment under section 12AB of the 1968 Act and section 24A of the 1995 Act.

115. A good quality carer's assessment rests on a problem-solving conversation between the professional and the carer and a strong focus on personal outcomes. Sections 4 and 5 in this document provide general guidance on how to conduct assessments – and much of this is equally relevant to carers assessments.

#### **Further guidance and hyperlinks:**

For further guidance on the legal basis and policy aims for carer's assessments see the Scottish Executive's Community Care and Health (Scotland) Act 2002: New Statutory Rights for Carers: Guidance [http://www.sehd.scot.nhs.uk/publications/cc2003\\_02full.pdf](http://www.sehd.scot.nhs.uk/publications/cc2003_02full.pdf)

For practical guidance on how to conduct a carer's assessment, please see further good practice guidance [currently under development by Scottish Government, national carers organisations and other partners].



### Support to the carer

116. The 2013 Act contains additional requirements on the professional in relation to the outcome or end result from the initial assessment.<sup>4</sup> First, it places a duty on the professional to consider the conclusions from the assessment. In considering this aspect the professional must consider whether the carer would benefit from some form of support to enable them to continue in their caring role. If the answer is “yes” then Section 3 of the 2013 Act provides the legal basis for the professional to work with an adult carer in order to arrange some support. For young carers the basis is section 22 of the Children (Scotland) Act 1995.

117. Support to a carer can mean a wide variety of things. It can mean access to universal services available in the community, referral to a known source of information and advice (for example, to a condition-specific organisation or to a carers centre) or the provision of further information in the form of booklets, websites, advice or guidance on coping with their caring role.

118. It can also mean arranging some form of “funded” services or support. Funded support to the carer can be of significant benefit to the carer and to the supported person. It can also lead to significant benefits to the statutory agencies responsible for care and support. Carers do not tend to “down tools” but without the contribution of the carer or other friends and relatives, it would be the statutory agency which would otherwise have to step in with higher levels of support to the supported person in need. Senior managers should encourage professionals to exercise their own judgement, consider the outcomes alongside carers and put in place the right support at the right time.

### The choices that must be made available to the carer

119. If, as a result of the assessment, the professional decides to provide funded support, they must offer the carer choices as to how they wish to receive that support. They must provide the carer with the various options within the 2013 Act and they must give effect to the carer’s choice. As with support to the disabled or older person, they must inform the carer of the amount of support available under each of the options. If the carer does not wish to make their own decision about how they will receive any support (and assuming that they still wish to receive support) then the professional should continue to arrange support on their behalf.

### Information and additional advice and support to carers

120. The professional must collaborate with the carer in relation to their assessment. They must: take steps to ensure the carer can exercise informed choice; involve the carer in the assessment and in the decisions around any

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<sup>4</sup> Section 3 of the 2013 Act requires the professional to consider the carer’s assessment and allows local authorities to provide support. Section 7 imposes the duty to offer choice in relation to the support to be delivered in consequence of adult carers’ assessments. Section 8 imposes the same duty in relation to young carers.

support to them in their own right, and take steps to ensure that the carer makes an informed choice. This means that they must provide the following:

- an explanation of the nature and effect of the various options under which they may arrange their carer support;
- information about how to manage that support;
- information about people or organisations, including independent organisations, who can provide assistance or information to the carer to help them to make decisions about the options (this might include general advice and information support services or it might mean more specialist advice from a carer’s organisation);
- information about how to manage their carer’s support, and;
- in any case where the authority considers it appropriate to do so, information about supported persons who provide independent advocacy services to help the carer to take part in their assessment to navigate their choices and to arrange their carer support.

121. The professional will want to make the options “come alive” for the carer and make the choices meaningful and relevant. Table 9 provides some examples of what the various choices may mean in practice in terms of carer’s support:

**Table 9: Examples of carer’s support under the 2013 Act**

2013 Act option	Example
Direct payment	<ul style="list-style-type: none"> <li>• The professional arranges a regular direct payment covering a 3 month period while the carer recovers from a hip operation. Because of the carer’s decreased mobility, they are not able to carry out both the caring and the household tasks. The carer uses the payment to purchase domestic help - someone to do the cleaning and ironing, to tidy the home and assist with some of the domestic tasks and demands – and, as a result of the support provided via the direct payment, is able to continue caring.</li> </ul>
Directing the available support	<ul style="list-style-type: none"> <li>• The carer receives a carer’s short break voucher as a form of “virtual budget” and they use this to purchase a short break.</li> <li>• The professional arranges for an individual service fund to be set up. They arrange for this to be transferred to a third sector organisation (say, a carer’s centre). This organisation purchases training or peer support sessions under the direction of the carer.</li> </ul>
Arranged services	<ul style="list-style-type: none"> <li>• The professional arranges for the carer to attend a series of peer support sessions provided under contract to the local authority.</li> </ul>

	<ul style="list-style-type: none"><li>• The professional refers the carer to their local carer's centre which is grant funded or funded under contract with the authority.</li></ul>
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### **Case Study 3: Support to carers: Isobel and John's story**

Isobel cares for her husband who needs a lot of help with personal care. John doesn't want anyone other than his wife to help but she is exhausted trying to care for her husband and run the house. It's difficult to get time to do laundry, shopping etc. Following a carer's assessment the local authority provides Isobel with a budget of £40 per week to help with tasks that will enable her to concentrate on providing support to John, which is what she wants to do. The couple also receive support to have short breaks together of up to two weeks per year in accessible accommodation.<sup>5</sup> This has helped relieve the stress felt by Isobel and has improved their relationship.

### Charging for support to carers

Consultation issue: Separate to this consultation the Scottish Government is consulting on draft regulations and guidance in relation to charging for carers support provided under Section 3 of the Social Care (Self-directed Support) (Scotland) Act 2013. The Scottish Government proposes to lay regulations which would waive all such charges and some charges for related services or support to cared-for persons which enable the carer's support to be delivered in practice. *This* guidance document will be updated to reflect the final version of the Carer's Charging Regulations along with any accompanying guidance.

### Support to carers out-with the formal carer's assessment

122. Early preventative support helps to lessen any negative impact of a caring role. Working together, the carer and the professional can ensure better emotional and physical wellbeing for the carer by putting preventative support in place. The aim is to support the carer in circumstances such as the early stages of a caring role knowing that the caring will become more intensive in due course (for example, caring for a supported person just diagnosed with dementia) or whilst caring for someone whose condition is known to remain stable and low-level.

123. It is important to remember that the characteristics of the individual carer are relevant when deciding whether that individual is providing a substantial amount of care on a regular basis. For example, they might be very old themselves and in poor health. Preventative support is more cost-effective than support provided in a crisis or emergency. Carers who do not meet the threshold for a carer's assessment (in other words they are not providing a substantial amount of care on a regular basis) can still benefit

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<sup>5</sup> The short break funding is made partly under section 3(4) of the 2013 Act (as regards Isobel's break) and partly under section 12 of the 1968 Act (as regards John's).

from low-level preventative support, and carers who feel confident enough to access low-level support are more likely to take up further support should their caring role increase in the future. In some cases the carer may not wish to undertake a full assessment. Carers need not, therefore, undertake a formal assessment in order to receive some kind of support from the authority.

**Further guidance and hyperlinks:**

Scottish Government (2010) Caring Together: The Carers Strategy for Scotland 2010 – 2015  
<http://www.scotland.gov.uk/Publications/2010/07/23153304/0>

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**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

**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

**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?*

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## 9.4 Direct Payments

Direct payments have their own distinct characteristics - aspects which set them apart from the other options that a person may choose. This section provides further guidance on direct payments.

### The fundamental characteristics of a direct payment

124. A direct payment is not a benefit and nor is it a gift. It is a means by which to meet eligible needs. Its ultimate purpose is to meet the eligible needs for the individual. As such, it should relate to the person's support plan. The direct payment funding should be used in flexible ways, but it must relate in some way to the outcomes set out in the supported person's support plan. The professional should take care to ensure that the supported person understands what a direct payment is and how it might be used. The professional should take steps to learn about the nature and effect of a direct payment, the purpose behind a direct payment and the flexibility and responsibilities that come with direct payments. They should engage with the philosophy behind direct payments and their potential application for a wide range of individuals and circumstances.

### Third party direct payments

125. Under the Self-directed Support (Direct Payments)(Scotland) Regulations ('the Direct Payments Regulations') which are consulted on in draft alongside this guidance, the supported person can ask for their direct payment to be paid to a third party – a supported person or an organisation – and administered on the supported person's behalf. Under a third party direct payment, the person remains in control of the payment and the person remains responsible for the direct payment. They supported person should be made aware of this.

### Circumstances where the professional cannot offer a direct payment

126. There are certain circumstances where social care legislation prevents the professional from offering the direct payment option. The relevant circumstances are contained in the draft Direct Payments Regulations. Where a person is deemed to be ineligible for the direct payment, it is not sufficient for the professional to simply inform the supported person that they cannot have a direct payment and leave matters there. They must notify the supported person as to the reason why they cannot have a direct payment. They must explain the circumstances in which the authority must review the question of whether the supported person is ineligible. Finally, they must give the supported person the option of choosing the other options available. Where there is a subsequent material change in the supported person's circumstance and the supported person asks for a review of their ineligibility for the direct payment, the professional must provide the supported person with an opportunity to choose from the four options in the 2013 Act.

### The choices available to a supported person under a direct payment

127. What can a supported person do with their direct payment? The short answer is anything, provided that it meets the supported person's "assessed need", relates to the outcomes within the person's support plan and the supported person acts within the criminal and civil law. Typically, direct payments have been understood as a route to employing a personal assistant. However, a direct payment can also be used to purchase:

- a service from the local authority or from another local authority;
- a service from a provider organisation in either the voluntary or private sector;
- a physical "thing" which helps to meet the supported person's needs;
- a holiday or respite of one sort or another, or;
- anything else which helps to meet the supported person's needs, has a link to the outcomes in the supported person's support plan

128. Of the four options available under the 2013 Act, the direct payment, if constructed and developed on a sound basis, carries the greatest level of flexibility. Professionals should make this point clear to individuals. Similarly, the organisation as a whole should seek to convey this point in the promotional literature.

129. On occasion, the professional will have doubts that a particular purchase is an appropriate use of the direct payment. The professional should seek to anchor any discussion in the person's assessed needs and in the outcomes contained within the person's care and support plan. The key question is whether the support in question will meet the personal outcomes and assessed needs for the individual. The professional must be open and honest with the supported person. Where they conclude that a particular form of support will not meet the person's assessed needs and outcomes they should seek to explain why this is the case.

### The responsibilities that come with a direct payment

130. The supported person should be provided with the relevant information to allow them to come to an informed choice. There are certain responsibilities that come with a direct payment and these should be explained to the person. There is no specific legal requirement to do so, but it would represent good practice to explain the following responsibilities:

- to use the payment to meet the outcomes within the support plan;
- to report back in a proportionate and reasonable way on how the funding is being spent, and;
- where the supported person chooses to employ a Personal Assistant, the responsibility to be a good employer and to discharge the range of additional responsibilities that come with being an employer (the main responsibilities relate to disclosure, employment law, payroll, staff development and training).

131. The professional should take steps to provide this information to the supported person and they should point the supported person towards further sources of information which can help them to understand their responsibilities.

**Further guidance and hyperlinks:**

For further guidance on direct payments and the Protecting Vulnerable Groups scheme, consult the Scottish Government's "Guidance on the interaction between Self-Directed Support and Protecting Vulnerable Groups Scheme":

<http://www.scotland.gov.uk/Publications/2011/08/04111811/0>

Monitoring and administration of direct payments

132. A direct payment is a cash payment in order to meet assessed needs. As such, it requires a proportionate level of financial and welfare monitoring. It is essential that monitoring is co-ordinated in an effective and efficient way. Honest mistakes should not be penalised. When an administrative error is made, the local authority should ensure support is provided to address any gaps in knowledge or expertise.

*"Welfare" monitoring*

133. The professional should not rely on the support person asking for help, particularly when that person is embarking on a direct payment for the first time. A local independent support organisation or independent advocacy service may help the person raise any issues which are giving concern. Packages which include health services will require to be monitored by health professionals who will have the necessary expertise to judge whether the person's health needs are being met.

*Financial monitoring*

134. The authority should consider the national Chartered Institute of Public Finance and Accountancy (CIPFA) good practice guidance which recommends proportionate monitoring, focused on outcomes, and with as light a touch as possible.

Terminating and recovering direct payments

135. The professional may have to consider using the powers available to them under the Direct Payments Regulations to terminate the direct payment.

136. Any decision to terminate a direct payment should follow a thorough discussion with the supported person, carer(s) and circle(s) of support. If the person chooses to receive the support by means of a direct payment, and the person is eligible to do so in terms of the 2013 Act and Direct Payments Regulations, the local authority must provide the direct payment. The local

authority can then only terminate the direct payment in the circumstances laid down in those Regulations (including that it has been used for some purpose other than to secure the agreed support).

137. The professional should inform the person of any decision or potential decision to terminate a direct payment as soon as possible. They should keep the supported person informed throughout the process. It is recommended that they set a minimum period of notice which will normally be given before the payments are discontinued, and include it in the information to be provided to people who are considering their options at the outset. The authority should bear in mind any contracts into which the supported person has entered.

138. The supported person may have to enter hospital for a short period. If so, and where the person employs a personal assistant, the professional should take all necessary steps to ensure that the direct payment continues to pay the staff costs in line with employment legislation. This is the best way to ensure continuity of care and support, avoid legal challenges and avoid the stress and disruption of repeated recruitment processes. This can ensure that the person can continue to receive appropriate support under the 1968 Act or 1995 Act in the temporary hospital setting.

139. It may make sense to discontinue the direct payment temporarily, for example when the supported person enters hospital for a longer period or because their condition improves. In such cases, the professional should discuss with the supported person how best to manage the crisis period. The aim should be to help the supported person to resume responsibility for their own services after the interruption, if that remains their wish.

**Further guidance and hyperlinks:**

Scottish Personal Assistant Employers Network  
<http://www.spaen.co.uk>

Self-directed Support Scotland  
<http://www.sdsscotland.org.uk/>

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

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**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



**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

**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?*

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## 9.5 Wider legal duties and strategic responsibilities of local authorities

This section covers the relationship between the 2013 Act and:

- adult support and protection;
- re-ablement and intermediate care;
- residential care;
- personal and nursing care;
- housing support;
- equipment and adaptations (including housing adaptations);
- other forms of social welfare support such as assistance to people fleeing domestic abuse, assistance to address homelessness or drug and alcohol addiction, and;
- charging.

### Adult support and protection

140. The Adult Support and Protection (Scotland) Act 2007 (“the 2007 Act”) provides the legal framework for the protection of adults who are unable to safeguard their own interests. It is based on the fundamental principles that the intervention must provide benefit to the adult and is the least restrictive option to the adult's freedom.

#### Further guidance and hyperlinks:

For further guidance on local authorities' corporate responsibilities and professionals' individual responsibilities under the 2007 Act see the Scottish Government's Adult Support and Protection (Scotland) Act 2007: Code of Practice:

<http://www.scotland.gov.uk/Publications/2009/01/30112831/0>

141. The local authority will wish to ensure that there is an effective and positive link established between their adult support and protection duties and their assessment and support planning duties. There are some simple, practical steps that they should take in order to foster a positive link between the two frameworks. For example:

- they should ensure that professional(s) involved in assessment and support planning take a thorough approach to risk assessment, enablement and management (see section 5 for further guidance);
- they should fully involve the supported person at every stage in the person's assessment and support planning pathway;
- they should ensure effective arrangements for the review and monitoring of support, and;
- they should ensure that adult protection duties are incorporated and highlighted in any social care training, and vice versa.

142. There will be occasions where the professional will have to consider and/or use their safeguarding powers. See section 9.1 for guidance on child safeguarding/protection and the links to care and support duties.

### **Re-ablement**

143. Re-ablement services involve a short term package of support provided over a 6 week period. Re-ablement may be provided following a fall or following discharge from hospital though it may be provided in other circumstances. The unique characteristic of re-ablement support is that it is *short-term* intensive support designed to help the supported person regain independence. There will tend to be two possible outcomes when the re-ablement support comes to an end: a) the supported person may be eligible for long-term support, or b) the re-ablement service will address the initial need and, as such, there will be no further “stable” or long-term support. It would be sensible for the professional to view re-ablement as a part of the assessment process – an early intervention which may or may not lead to more stable forms of on-going support. However, where it is decided that the supported person will be provided with that stable on-going support, the professional must offer the person the various choices set out in the 2013 Act.

### **Intermediate Care**

144. Intermediate Care is an ‘umbrella’ term describing a collection of services working to common, shared objectives and principles. It provides a set of ‘bridges’ at key points of transition in a person’s life, in particular from hospital to home (and vice versa) and from illness or injury to recovery and independence. The purpose of Intermediate Care is to provide time-limited interventions at points of crisis in a person’s life where this will restore or avoid a loss of independence and confidence, or reduce the risk of hospital admission (or a longer stay in hospital).

#### **Further guidance and hyperlinks:**

Further guidance on Intermediate Care can be found in Maximising Recovery, Promoting Independent: An Intermediate Care Framework for Scotland

<http://www.scotland.gov.uk/Publications/2012/07/1181>

145. The “gateway” into intermediate care is a multi-disciplinary assessment of one form or another. In light of the short-term intensive nature of the intervention, intermediate care should be viewed as an initial step or staging post which can help to determine a supported person’s need and inform any subsequent long-term support plan. Where it is decided that the supported person will be provided with stable on-going support, the professional must offer the supported person the choices set out in the 2013 Act.

**Consultation issue:**

Re-ablement and intermediate care may involve elements of both health care (provided by the NHS) and social care (provided by local authorities). Insofar as the support is social care, the guidance provided in this section views re-ablement and intermediate care as forming part of the assessment process, as opposed to an on-going form of support.

The duties in the 2013 Act to offer the various options as to the mechanisms for receiving support only apply to support which a local authority decides to provide after the assessment process. They would therefore not apply to forms of support provided before an assessment has been completed.

It would be possible to put the question of whether the Options apply in these circumstances beyond doubt by making regulations to provide that Options 1 and 2 under the 2013 Act do not apply to re-ablement and intermediate care services, even where they are provided under the 1968 Act.

Consultees may wish to consider whether a firm statement on the face of the law would be helpful. Alternatively, others may take the view that professionals *should* be compelled to offer a variety of options in the provision of intermediate care or re-ablement services.

**Please record your views as part of your response to question 12a.**

**Residential Care**

146. Residential Care is a social care service. Assessments which result in a decision to receive care and support in a group setting are *social care* assessments. As such, the professional should undertake any assessment which may result in residential care in line with this guidance. For example, the general principles of assessment set out in Section 1 of the 2013 Act apply in exactly the same way as any other context. The professional must collaborate with the supported person, ensure that the supported person can make informed choices and involve the supported person in their assessment.

**Consultation issue:**

As part of the consultation on draft Regulations to accompany the 2013 Act, Ministers are inviting views on whether or not to allow direct payments to be used for the purchase of residential care. Please see the accompanying draft Regulations and consultation paper on draft Regulations if you wish to provide a view on this question.

147. As stated, as part of the consultation on this guidance Ministers are inviting views on whether or not to place a legal duty on professionals to offer the supported person the direct payment option for the purchase of residential care. However, the remaining choices provided in the 2013 Act (to direct the available support or to have their support arranged on their behalf) must be offered to the individual in a way that is meaningful and relevant to them in the

context of residential care. In particular, the two parties should consider the flexibility that may be offered by Option 2 in the 2013 Act (i.e. where a support or service fund is directed by the individual). A care home fee, paid under the National Care Home Contract, is a good example of a virtual budget arrangement. However, there may be further opportunities to develop the concept and to explore the flexibility that may be offered by an individual fund for residential care.

148. Regardless of the particular mechanism by which the supported person arranges their care the initial choice of residential establishment and any subsequent change must be made in line with the Choice of Accommodation Directions and the accompanying guidance issued by Scottish Ministers.

#### **Further guidance and hyperlinks:**

Scottish Government guidance on Choice of Accommodation; Discharge from Hospital (2004)

[http://www.sehd.scot.nhs.uk/publications/CC2003\\_08.pdf](http://www.sehd.scot.nhs.uk/publications/CC2003_08.pdf)

### **Charging**

149. Under Section 87 of the 1968 Act the authority can require the supported person to pay a charge towards the cost of any services which meet the supported person's assessed needs. Historically, charges have tended to be based on established "service" charges, with some services exempted from charging. However, where a supported person's package is predicated on flexible use of an identified budget rather than a menu of services, the authority is no longer able to charge on the basis of service types. Authorities should consider new approaches to charging – approaches which enable them to charge on the basis of a proportion of the supported person's budget as opposed to one form of service or another. Personal and nursing care support to people aged 65 and over must be provided free from any charge. Where this is the case, the authority should refer to Executive circular CCD 4/2002: Free personal and Nursing Care 19, particularly Section 5: Payment Mechanisms.

### **Personal and nursing care**

150. Personal and nursing care is a form of social care and support. As such, it falls within the scope of the assessment and support planning processes described in this guidance. If the supported person has personal care needs then they should be provided with the full range of choices under the 2013 Act.

### **Housing support services**

151. Housing support is support other than care or housing management services that will enable a person to establish or maintain occupancy of a dwelling. Housing support services are provided to help people live as

independently as possible in their own homes. 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.

### **Equipment and adaptations (including housing adaptations)**

152. The professional should have regard to the following key principles which represent good practice in housing adaptations:

- the supported person and their carer(s) should be placed at the centre of service provision and be in control;
- access to assessment and the adaptation itself should take account of need and be fair, consistent, reliable and reasonable, with a focus on prevention;
- assessment and access to financial and other non-financial supports for the adaptation should be equitable and fair, and;
- the supported person should be able to understand the systems and rules, which should be uncomplicated and maximise the ability of the supported person to make informed choices.

153. Options 1 and 2 in the 2013 Act - the direct payment or the opportunity to direct the available support – may provide an opportunity to explore new or alternative ways to meet the person's outcomes. However any additional costs or responsibilities that may be incurred by arranging the adaptation via a direct payment or individual service fund should be fully explained to the individual. Consideration should be given as to how any on-going costs will be met, and who will be responsible for these costs, for example providing additional top ups to the direct payment to cover these fees.

### **Other forms of social welfare support: assistance to people fleeing domestic abuse, assistance to address homelessness or drug and alcohol addiction**

#### **Consultation issue:**

Support provided under Section 12 of the 1968 Act can include a range of interventions *beyond* support to disabled and older people. For example, it may include support to address homelessness, drug or alcohol addiction, or assistance to promote the welfare of individuals who are fleeing domestic abuse. Direct payments and individual service funds may deliver positive outcomes to individuals eligible for support due to homelessness, drug or alcohol addiction or because they are fleeing domestic abuse. On the other hand, it may be inappropriate for alternatives such as direct payments or individual service funds to be made available for this particular set of social care needs. Scottish Ministers would like to hear your views. Should professionals be required by the law to offer all 4 options (i.e. including direct payments and individual service funds) or should they be prevented from doing so? **Please record your views as part of your response to question 12a.**

**Draft Statutory Guidance on Care and Support**  
**Consultation Questions**

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

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

Very useful	Quite Useful	Not very useful	Not at all useful

**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?*

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**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 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.*



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.*

**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>

## **Annex A: Legal duties in relation to social care assessment and support planning**

### Assessment duties in relation to adults

#### **Section 12 (1) Social Work (Scotland) Act 1968**

##### **General social welfare services of local authorities**

(1) It shall be the duty of every local authority to promote social welfare by making available advice, guidance and assistance on such a scale as may be appropriate for their area, and in that behalf to make arrangements and to provide or secure the provision of such facilities (including the provision or arranging for the provision of residential and other establishments) as they may consider suitable and adequate, and such assistance may, subject to subsections (3) to (5) of this section, be given in kind or in cash to, or in respect of, any relevant person.

(2) A person is a relevant person for the purposes of this section if, not being less than eighteen years of age, he is in need requiring assistance in kind or, in exceptional circumstances constituting an emergency, in cash, where the giving of assistance in either form would avoid the local authority being caused greater expense in the giving of assistance in another form, or where probable aggravation of the person's need would cause greater expense to the local authority on a later occasion.

#### **Section 12A, Social Work (Scotland) Act 1968**

##### **Duty of local authority to assess needs**

(1) Subject to the provisions of this section, where it appears to a local authority that any person for whom they are under a duty or have a power to provide, or to secure the provision of, community care services may be in need of any such services, the authority—

(a) shall make an assessment of the needs of that person for those services; and

(b) shall then decide, having regard to the results of that assessment, and taking account—

(i) where it appears to them that a person (“the carer”) provides a substantial amount of care on a regular basis for that person, of such care as is being so provided; and .

(ii) in so far as it is reasonable and practicable to do so, both of the views of the person whose needs are being assessed and of the views of the carer (provided that, in either case, there is a wish, or as the case may be a capacity, to express a view)

whether the needs of the person being assessed call for the provision of any such services.

## Assessment duties in relation to children

### **Section 22, Children (Scotland) Act 1995**

#### **Promotion of welfare of children in need**

- (1) A local authority shall—
- (a) safeguard and promote the welfare of children in their area who are in need; and
  - (b) so far as is consistent with that duty, promote the upbringing of such children by their families
- by providing a range and level of services appropriate to the children's needs.

### **Section 23, Children (Scotland) Act 1995:**

#### **Children affected by disability**

- (1) Without prejudice to the generality of subsection (1) of section 22 of this Act, services provided by a local authority under that subsection shall be designed—
- (a) to minimise the effect on any—
    - (i) disabled child who is within the authority's area, of his disability; and
    - (ii) child who is within that area and is affected adversely by the disability of any other person in his family, of that other person's disability; and
  - (b) to give those children the opportunity to lead lives which are as normal as possible.
- (2) For the purposes of this Chapter of this Part a person is disabled if he is chronically sick or disabled or suffers from mental disorder (as defined in section 328(1) of the Mental Health (Care and Treatment)(Scotland) Act 2003).
- (3) Where requested to do so by-
- (a) a child's parent or guardian; or
  - (b) a mental health officer (as defined in section 329 of the Mental Health (Care and Treatment)(Scotland) Act 2003 who –
    - (i) has responsibility under that Act or the Criminal Procedure (Scotland) Act 1995 for a child's case; and
    - (ii) makes a request for the purposes of either of those Acts,
- a local authority shall, for the purpose of facilitating the discharge of such duties as the authority may have under section 22(1) of this Act (whether or not by virtue of subsection (1) above) as respects the child, carry out an assessment of the child, or of any other person in the child's family, to determine the needs of the child in so far as attributable to his disability or to that of the other person.

(4) In determining the needs of a child under subsection (3) above, the local authority shall take account—

(a) where it appears to them that a person (“the carer”) provides a substantial amount of care on a regular basis for the child, or for another person in the child’s family who is being assessed under that subsection, of such care as is being so provided; and

(b) in so far as it is reasonable and practicable to do so, of—

(i) the views of the parent or guardian of the child, and the child; and

(ii) the views of the carer, provided that the parent, guardian, child or carer in question has a wish, or as the case may be, a capacity, to express a view.

### Assessment duties in relation to carers

#### *Carers of adults*

#### **Section 12AA, Social Work (Scotland) Act 1968**

##### **Assessment of ability to provide care**

(1) A person (“the carer”) who provides, or intends to provide, a substantial amount of care on a regular basis for another person aged eighteen or over (“the person cared for”) may, whether or not the carer is a child, request a local authority to make an assessment (“the carer’s assessment”) of the carer’s ability to provide or to continue to provide such care for that person.

(2) The local authority to whom the request is made shall—

(a) comply with the request where it appears to them that the person cared for is a person for whom they must or may provide, or secure the provision of, community care services; and

(b) if they then or subsequently make an assessment under subsection (1)(a) of section 12A of this Act of the needs of the person cared for, have regard to the results of the carer’s assessment—

(i) in the assessment of the person cared for; and .

(ii) in making their decision under subsection (1)(b) of that section as respects that person.

(3) Subsection (1) above does not apply as respects a carer who provides, or will provide, the care in question—

(a) by virtue of a contract of employment or other contract; or

(b) as a volunteer for a voluntary organisation.

### *Carers of children*

#### **Section 24, Children (Scotland) Act 1995:**

##### **Assessment of ability of carers to provide care for disabled children**

(1) Subject to subsection (2) below, a person (“the carer”) who provides, or intends to provide, a substantial amount of care on a regular basis for a disabled child may, whether or not the carer is a child, request a local authority to make an assessment (“the carer’s assessment”) of the carer’s ability to provide or to continue to provide such care for the child.

(1A) The local authority to whom the request is made shall—

(a) comply with the request where it appears to them that the child, or another person in the child’s family, is a person for whom they must or may provide services under section 22(1) of this Act; and

(b) if they then or subsequently make an assessment under section 23(3) of this Act to determine the needs of the child, have regard to the results of the carer’s assessment—

(i) in the assessment of the child; and

(ii) in making a decision as to the discharge by them of any duty they may have as respects the child under section 2(1) of the Chronically Sick and Disabled Persons Act 1970 or under section 22(1) of this Act.

(2) No request may be made under subsection (1) above by a person who provides or will provide the care in question—

(a) under or by virtue of a contract of employment or other contract; or

(b) as a volunteer for a voluntary organisation.

## CASE STUDY STORIES

The draft guidance contains a range of case study stories – narratives describing people’s experience of assessment, support planning and support. The case study stories seek to illustrate the substantive text and to provide simple, practical examples to professionals.

**We would like to encourage you to provide your case studies for inclusion in the final version of the guidance.** The Scottish Government are keen to receive as many good quality case study stories as possible from local authorities, provider, user-led organisations and any other person or organisation involved in social care and support. This is a key aspect of the development of the guidance, which is seen as a collaborative project involving all partners in care and support. While we cannot guarantee that all case studies will be used in the final statutory guidance, we may be able to include your case study in one of the best practice guides which will accompany the final statutory guidance.

### **Guidance for submitting your case studies:**

- A good case study will explain the background, describe the problem/challenge that was faced, the steps that were taken to address the problem/challenge and the final outcome that was achieved. It will provide practical information and advice and relate that information to the surrounding guidance.
- The majority of the case studies provided in the draft guidance relate to the direct payment option. We would like to encourage case studies that cover the entire journey for the individual and all of the options under the 2013 Act – i.e. the “direct the available support” (individual service funds etc.) and the “arranged service” option as well as the direct payment option.
- A good case study will illustrate difficult or challenging issues and how these were resolved/overcome, are encouraged – i.e. not simply the “positive” stories but the difficult stories where challenges were identified and resolved.
- The case study should be no more than 350 words in length
- It should be written in plain English
- It may be based on a real life example but it should be anonymous – i.e. the names of the individuals involved should be changed along with any other key identifying characteristics. You should provide confirmation that the individuals to whom the case study relates have provided their consent for their case study to be submitted to the Scottish Government.



# 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

Title Mr  Ms  Mrs  Miss  Dr  Please tick as appropriate

Surname

Forename

### 2. Postal Address

<input type="text"/>		
<input type="text"/>		
<input type="text"/>		
<input type="text"/>		
Postcode	Phone	Email

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

Individual	/	Group/Organisation
<input type="checkbox"/>		<input type="checkbox"/>
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

**Please tick ONE of the following boxes**

(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 as appropriate**

Yes  No



Yes, make my response, name and address all available

or

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

or

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

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

Please tick as appropriate

Yes

No

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

Please tick as appropriate

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



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