



Prioritising need in the context of *Putting People First: A whole system approach to eligibility for social care*

*Consultation on the revision of the Fair Access to Care
Services guidance to support councils to determine eligibility
for social care services*

DH INFORMATION READER BOX

Policy HR / Workforce Management Planning / Clinical	Estates Commissioning IM & T Finance Social Care / Partnership Working
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Document Purpose	Policy
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Gateway Reference	12234
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Title	Consultation on the revision of the Fair Access to Care Services guidance
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Author	Department of Health
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Publication Date	14 Jul 2009
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Target Audience	Local Authority CEs, Directors of Adult SSs, Directors of Finance, Communications Leads, Directors of Children's SSs
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Circulation List	Voluntary Organisations/NDPBs
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Description	Following CSCI's independent review of the application of eligibility criteria for social care, we are now putting draft revised guidance on social care eligibility out to consultation. The aim of the revised guidance is to support fairness, transparency and consistency of application and to reflect the increased focus on personalisation and prevention as set out in Putting People First.
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Cross Ref	CSCI, Cutting the Cake Fairly: CSCI review of eligibility criteria for social care
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Superseded Docs	N/A
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Action Required	Responses to the consultation on the draft revised guidance should be sent to social.care.eligibility@dh.gsi.gov.uk
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Timing	Consultation period of 12 weeks
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Contact Details	Social Care Eligibility Consultation Social Care Policy & Innovation Room 118, Wellington House 133 -155 Waterloo Road London SE1 8UG 0207 972 4097
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Prioritising need in the context of *Putting People First*: A whole system approach to eligibility for social care

Consultation on the revision of the Fair Access to Care Services guidance to support councils to determine eligibility for social care services

Prepared by Department of Health – Social Care Policy & Innovation

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Introduction

1. This document is a consultation undertaken by the Department of Health on the revision of the “Fair Access to Care Services” guidance (FACS), which provides local authorities with a framework for determining individual eligibility for social care. It should be read alongside the draft revised guidance, *Prioritising need in the context of Putting People First: A whole system approach to eligibility for social care*, which is intended to replace the 2003 FACS guidance.
2. The Fair Access to Care Services framework was introduced in 2003 to provide councils with a mechanism for allocating the limited resources available for social care as fairly and consistently as possible. The aim was to enable councils to stratify need for social care support in a way that is fair and proportionate to the impact it will have on individuals and the wider community, taking into account local budgetary considerations.
3. Public funding for social care will always be limited in the face of demand and as such, there is widespread acceptance for the need to prioritise available resources according to individual need. However, since the introduction of eligibility criteria for social care, concerns have been raised that financial pressures have led some local authorities to shift their focus towards those groups with the highest needs. Many councils have raised the level of their eligibility thresholds, leading to concerns that some people who ought to be receiving support are now being ruled as ineligible.
4. In 2007 the Government launched the cross-sector agreement *Putting People First* which sets out a shared vision for the transformation of adult social care, putting service users and their carers at the heart of reform.¹ The document signals that personal budgets, enabling service users to understand what resources are available for their support and to make decisions accordingly, will become the default delivery mechanism for social care. Integral to successful transformation therefore, will be a transparent, open and fair system for the allocation of available public resources with a strong focus on outcomes for people seeking support. *Putting People First* also placed significant emphasis on prevention and early intervention to help people to live independently at home and avoid or delay recourse to social care services.
5. In response to concerns about the way in which FACS has been implemented in some local authorities, and in recognition of the vital new policy context articulated in *Putting People First*, the Commission for Social Care Inspection (CSCI) was asked by the then Minister for Care Services to undertake an independent review of the application of eligibility criteria for social care and its impact on people. The revised guidance which is the subject of this consultation has been produced in response to the recommendations made by CSCI in their report *Cutting the Cake Fairly: CSCI review of eligibility criteria for social care*.² These recommendations were intended to support the ambitions of *Putting People First* and as

¹ HM Government, *Putting People First: a shared vision and commitment to the transformation of Adult Social Care* (2007) http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_081118

² Commission for Social Care Inspection, *Cutting the Cake Fairly: CSCI review of eligibility criteria for social care* (2008) - http://www.cqc.org.uk/db/documents/FACS_2008_03.pdf

such, CSCI's report emphasises that personalisation and prevention are key policy objectives that any revised guidance on eligibility should uphold.

6. The Department is now seeking views and comments on the draft revised guidance, specifically around two key objectives:
 - to situate the application of eligibility criteria firmly within the new policy context of personalised provision of care and support;
 - to ensure that the process for determining eligibility is as fair, transparent and consistent as possible, leading to high-quality outcomes for people seeking support.

7. The revision of the FACS guidance is aimed at bringing about improvements to the system as it currently stands, making implementation fairer and more consistent for people seeking support and reinforcing the current direction of policy established by *Putting People First*. However, this consultation on the revised guidance is being undertaken in parallel with another wider consultation instigated by the recently published Care and Support Green Paper. This lays out a series of options for reform of the social care system, to ensure that care is high-quality and cost-effective; that people have choice and control over the care they receive and that the funding system is fair, sustainable and affordable for individuals and the State. Respondents to this consultation on social care eligibility criteria may therefore also wish to comment on proposals for longer-term reform set out in the Green Paper.

Development of the new guidance

8. CSCI's consultation with stakeholders during the course of their review was particularly wide-ranging, involving the general public, people using services and their carers, councils, care providers, professional bodies, voluntary and independent organisations, government departments, academics and other stakeholders. Their recommendations were therefore developed from a wide base of views and in working to address these recommendations, the Department has sought to maintain this collaborative approach.
9. The draft revised guidance was produced with the help and advice of a stakeholder working group comprising social care, local government and service user representation. This consultation is now aimed at anyone with an interest in the process by which local authorities determine eligibility for social care, as well as the arrangements they make to support individuals within their communities, whether or not such individuals are eligible for statutory support.
10. In revising the FACS guidance we have sought to re-emphasise the principles of consistency and transparency incorporated into the original framework. CSCI identify that much of what was proposed in their review constitutes "a restatement of councils' existing responsibilities" and a recognition of the need for "changes in the culture and working practices of councils and health and other partners." Successful outcomes for individuals seeking support will depend upon the effective application of these first principles at local level. To support the publication of revised guidance therefore, the Department is also exploring how we can give further practical help to staff in local authorities to support them to use the framework appropriately to ensure the best possible outcomes for all citizens in their locality.

Aim of the revised guidance

11. CSCI's report demonstrates a wide consensus that some method for the fair allocation of finite resources for social care will always be necessary. In this context, many people consulted during the course of their review acknowledged that FACS represents a significant improvement to the previous system in that it aims to provide greater consistency and transparency and a "whole person" approach to needs.
12. Nevertheless, much of the evidence collated was critical of FACS, particularly in respect of the way it has been interpreted and implemented by some councils. The review also highlighted perceived tensions between the FACS framework and new models of self-directed support currently being developed within local authorities. CSCI therefore made a number of recommendations to improve fairness and clarity of access and to set eligibility criteria for that access within a broader context that is more consistent with *Putting People First*, offering some level of assistance and advice to everyone seeking care and support.³
13. In light of these recommendations the aim of the revised guidance is to:
 - Assist councils to determine eligibility in a way that is fair, transparent and consistent, ensuring that all their citizens can expect some level of support, whether or not they receive statutory funding;
 - Emphasise the benefits of early intervention and prevention and greater access to universal services, including high quality information and advice enabling people to make choices;
 - Ensure that eligibility criteria for social care are applied in a way that is consistent with the personalisation agenda set out in *Putting People First*, based on choice and control, enabling people to live independently within strong and supportive local communities.
14. At the same time as the revised FACS guidance is published for consultation, the Government has also published the Care and Support Green Paper in recognition of the fact that England's social care system needs fundamental reform in order to meet the costs of increased demand and higher expectations. Such reform may have significant future implications for the way in which eligibility for social care is determined and funded. However, while longer-term options are being considered and debated, it is clear that there are important issues to address in the current system. This consultation on the revised FACS guidance focuses upon these more immediate issues of implementation. Respondents wishing to comment on longer-term arrangements, including funding arrangements for social care, should respond to the Green Paper consultation.

³ For further details of CSCI's recommendations see *Cutting the Cake Fairly*

Detail of the new guidance

15. The development of the draft revised guidance focused on a number of key themes, which are explored in more detail below.

Integrating eligibility criteria into the personalisation agenda

16. We believe that eligibility criteria can and should be applied within a personalised system of social care. However, *Cutting the Cake Fairly* highlighted areas where confusion may have arisen as a consequence of the shift towards personalisation since FACS was first introduced in 2003. To support the aims and objectives articulated within *Putting People First*, the draft revised guidance seeks to integrate eligibility criteria within the new model of self-directed support.

17. The revised guidance will therefore benefit both local authority staff and individuals seeking support by improving compatibility between personalisation and prioritisation of need – therefore increasing consistency and clarity. This is particularly important around the assessment of need, moving away from a professionally led approach to one that is more transparent, person-centred and conducted in full partnership with the service user. The new guidance emphasises the value of self-assessment as a tool to support choice and control in the overall assessment process. More personalised approaches should also be reflected in support planning and care management processes.

18. The draft revised guidance also places greater emphasis on outcomes, using the seven outcomes identified in the White Paper *Our health, our care, our say* to ensure that consideration of need is holistic and well-rounded, focusing on what is important to the individual. The guidance makes it explicit that the level of support required will not always equate with the complexity of individual need and that support options will vary depending on the specific circumstances and aspirations of the individual. If councils base their approach to needs on achieving outcomes rather than providing specific services, then people with similar needs should expect to receive similar outcomes.

19. To reflect the increasing availability of personal budgets, we have also sought to incorporate the use of resource allocation systems (RAS) into the process of assessment and support planning. The guidance emphasises that rather than detracting from a council's duty to determine eligibility, a RAS should serve as a useful tool to give an approximate indication of what it may reasonably cost to meet a person's particular needs according to their individual circumstances. While implementation of a national resource allocation system is at this stage very unlikely, the Department of Health will continue to support councils to develop greater transparency in the way they allocate resources, to ensure a more equitable system for service users.

20. The draft revised guidance also sets out the key principles that should inform commissioning strategies to ensure that service users are able to draw upon high-quality, flexible services which maximise their ability to exercise independence, choice and control. It reminds councils of the benefits of investing in building the capacity of user-led

organisations, to enable service users and carers to play an active role in supporting the key aims of personalisation and choice.

Q.1: Do you think the guidance sufficiently integrates the application of eligibility criteria within the new policy context of personalisation, choice and control? If not, what changes would you propose?

Support for all citizens

21. *Cutting the Cake Fairly* described an expectation that social care and public services more generally should be organised in such a way that all citizens can expect some level of support and those with the greatest needs can access additional help. *Putting People First* emphasised that “every locality should seek to have a single community based support system focussed on the health and wellbeing of the local population”.

22. The draft revised guidance therefore recommends that councils should have in place strategies for “place-shaping” and promotion of well-being through universal services. This involves ensuring that people feel supported, included and able to participate in the community in which they live.

23. It is particularly important that councils are able to ensure provision of universal information and advice to support everyone living in their local community make informed choices, whatever the level of support they might require. The draft revised guidance therefore identifies the need to provide effective signposting and high-quality, accessible information and advice to help people make confident choices, whether or not they are eligible for support. It is recommended that councils should take steps to gain a better insight into the information needs of their local population and the most appropriate channels by which to reach all groups, including those most socially isolated.

Q.2: Do you think the guidance sufficiently outlines councils’ responsibilities towards their wider community as well as those individuals with eligible needs? If not, what changes would you propose?

Prevention and early intervention

24. The report by CSCI drew attention to the importance of prevention and early intervention, not just to avoid the intensification of needs and potentially higher costs at a later stage, but also to address wider social inclusion objectives and support community well-being. CSCI suggested that while the FACS framework published in 2003 mentioned the need for preventative strategies, prevention has tended to be seen as an add-on to the framework rather than a fully integrated component. This needs to change, in light of the aspiration described in *Putting People First* for:

“a locally agreed approach, which informs the Sustainable Community Strategy, utilising all relevant community resources especially the voluntary sector so that prevention, early intervention and enablement become the norm.”

25. The draft revised guidance therefore focuses much more on prevention and early intervention than its predecessor. It emphasises the importance of targeted interventions to support individuals at increased risk, joint health and social care planning and effective service and market development. The aim is to encourage local authorities to consider the needs of their wider population, which early evidence suggests may help avoid rising levels of need and associated costs at a later stage.

Q.3: Do you think the guidance sufficiently explains the need for councils to implement preventative strategies as well as the benefits that such strategies can bring? If not, what changes would you propose?

Eligibility criteria

26. To help overcome the difficulties of interpreting and implementing the current FACS criteria, CSCI proposed adopting three new eligibility criteria bands, based on “priorities for intervention” to replace the current four bands based on risks to independence. The Department of Health has been working closely with a stakeholder working group to consider the relative costs and benefits that such a change might entail.

27. Given the scale of change currently facing local authorities and in view of parallel discussions about future resource allocation arrangements instigated by the Care and Support Green Paper, we have taken the view that it would be more cost-effective and cause less upheaval to retain the current eligibility criteria and focus instead on fairer and more transparent implementation.

28. However, if councils are successful in devising strategies to support a broader base of citizens through investment in universal services and prevention, then there may be an argument for discontinuing the use of the fourth eligibility criteria band (low). This band is now hardly ever used. In view of the fact that almost all councils now fix their eligibility threshold somewhere above this band, it may be more practical for them to make available more universal and open-access services aimed at supporting the independence and well-being of those individuals who might once have fallen into this criteria band.

Q.4: Given the emphasis upon access to universal and preventative services as set out in *Putting People First*, do you think there is still a need for a fourth criteria band (low)? Please give reasons for your answer.

Fairness, clarity and transparency of implementation

29. At the heart of CSCI’s recommendations was the need to ensure that any revised guidance on social care eligibility should strengthen and maintain the principles of fairness, clarity and transparency. The draft revised guidance seeks to do so in a variety of ways, particularly by reinforcing the importance of effective first response and subsequent timely and proportionate assessment.

30. The guidance specifies that a council’s initial response to people approaching or referred to them for support is vital. It reminds councils of the risks associated with screening people

out of the assessment process before sufficient information is known about them. It recommends that timescales for assessments should be flexible to allow time for relationship-building and to ensure that the needs of individuals are considered in the longer-term. It also recommends that councils consider a period of intermediate care or enablement to maximise what the individual is able to achieve before a longer-term assessment of need is undertaken.

31. CSCI identified several groups at risk of marginalisation in the process to determine eligibility. The draft revised guidance highlights such groups and the importance of making sure that councils have in place sufficient expertise to understand and support people with a range of needs. The guidance also states that during assessment of need, assumptions should not be made about the capacity of families and carers to provide support. It reminds councils that carers have a right to request an assessment of their needs *as carers*, independent of the needs of the person they provide care for.
32. In particular, the draft revised guidance re-emphasises that decisions as to who gets local authority support should be made after an assessment, which should be centred on the person's aspirations and support needs, involving both the person seeking support and their carers (with self-assessment as a key tool for doing so). Information should be provided throughout the process to ensure that it is transparent and understandable for the person seeking support and their carers.
33. Assessment of need should follow a human-rights based approach. This means that the evaluation of "risks to independence and well-being" should relate to all areas of life, so that with the exception of life-threatening circumstances or serious concerns about safeguarding, there will be no hierarchy of needs or outcomes.
34. Following CSCI's concerns that people are being asked about their financial resources prior to any assessment of need and consequently being diverted from the system too early, the draft revised guidance restates the point made in the 2003 guidance that any assessment of a person's financial situation must not be made until after there has been a proper assessment of needs.

Q.5: Do you think the guidance sufficiently underlines the principles of fairness, consistency and transparency in the process for determining eligibility for social care? If not, what changes would you propose?

Q.6: Do you think the guidance itself is sufficiently transparent and understandable for both health and social care professionals and people seeking support? If not, what changes would you propose?

Equalities

35. Revising the FACS guidance presents an important opportunity to evaluate what implications equality and human rights might have for eligibility. The concept of equality of access to services goes beyond merely requiring services not to overtly discriminate against people on the basis on faith, beliefs, sexuality, colour, ethnicity, disability or any other criterion. It must also be the case that in practice the eligibility criteria for social care do not operate in a way that discriminates implicitly. The draft guidance also reminds

councils of their statutory duties to have due regard to the need to promote equality in the areas of gender, disability and race.

36. A partial Equality Impact Assessment has been published alongside this consultation. To inform a full Equality Impact Assessment, we would welcome views on how the revised guidance can promote equality and ensure that all citizens, regardless of age, race or ethnicity, disability, religion or belief, gender, sexual orientation or socio-economic status can feel reassured that their specific needs will be considered and that they are given appropriate information to make the right choices for them.

Q.7: To what extent do you think the revised guidance will have a positive impact on equality? Is there anything else that you would like to see in the guidance to manage any adverse impact and to promote positive impact?

Costs and benefits

37. A consultation stage impact assessment has been made available alongside this document, which outlines the projected impact of the revised guidance – both for local authorities implementing the guidance and for people seeking support. An updated final stage impact assessment will be published following the consultation alongside the final version of the revised guidance. We would therefore welcome views about the projected costs and benefits of the revised guidance, monetary or otherwise.

38. It is suggested that revising the FACS guidance will have the following benefits:

- Better outcomes from assessment for individuals seeking support;
- Better signposting and increased access to information and advice;
- Strategies for prevention and early intervention to help people maintain independence and well-being for longer;
- More consistent alignment with the personalisation agenda.

39. Realising such benefits may incur financial costs, particularly in the early stages of implementation where councils may need to make adjustments to their systems and the way in which their social care staff guide people seeking support through the assessment and support planning process. It is possible that the publication of revised guidance may lead to increased numbers of people approaching the council for support, meaning that councils will need to undertake more assessments. In addition, improving outcomes for the wider community may require a shift in investment strategies, to support the development of universal services, information and advice, and prevention and early intervention. However, while evidence about the cost benefits of investment in these areas is still at an early stage in development, initial indications suggest that broadening the focus of commissioning in this way could potentially lead to a reduction in demand for services at a later stage.

40. The revision of the FACS guidance has been undertaken specifically to support the objectives of the Transforming Adult Social Care programme set out in *Putting People First*.

As such, we envisage that costs incurred to local authorities through changes to the guidance should be met through the Social Care Reform Grant.⁴

Q.8: Do you have any comments about the costs and benefits (monetary or otherwise) that the revised guidance will involve? Do you foresee any impact on local authorities or people seeking support that we have not identified?

⁴ The Social Care Reform Grant provides £520 million over three years (2008-2011) to enable councils to invest in the necessary system and process development to support transformation. The Grant is intended to provide specifically for the range of process reengineering, capability and capacity building activities required to redesign social care systems.

How to respond

41. Consultation responses are sought in particular on the questions set out in the text and repeated below but responses on any other points will also be welcomed. A template has been provided (please see the website) for your responses.

42. Please send your response template to:

Social.care.eligibility@dh.gsi.gov.uk

Or write to: Social Care Eligibility consultation
 Department of Health
 Room 118
 Wellington House
 133 – 155 Waterloo Road
 London SE1 8UG

43. Responses should be sent by **6 October 2009**. Please let us know if you would like us to acknowledge receipt of your response (acknowledgements will be by email).

Annex A – Consultation Questions

Q.1: Do you think the guidance sufficiently integrates the application of eligibility criteria within the new policy context of personalisation, choice and control? If not, what changes would you propose?

Q.2: Do you think the guidance sufficiently outlines councils' responsibilities towards their wider community as well as those individuals with eligible needs? If not, what changes would you propose?

Q.3: Do you think the guidance sufficiently explains the need for councils to implement preventative strategies as well as the benefits that such strategies can bring? If not, what changes would you propose?

Q.4: Given the emphasis upon access to universal and preventative services as set out in *Putting People First*, do you think there is still a need for a fourth criteria band (low)? Please give reasons for your answer.

Q.5: Do you think the guidance sufficiently underlines the principles of fairness, consistency and transparency in the process for determining eligibility for social care? If not, what changes would you propose?

Q.6: Do you think the guidance itself is sufficiently transparent and understandable for both health and social care professionals and people seeking support? If not, what changes would you propose?

Q.7: To what extent do you think the revised guidance will have a positive impact on equality? Is there anything else that you would like to see in the guidance to manage any adverse impact and to promote positive impact?

Q.8: Do you have any comments about the costs and benefits (monetary or otherwise) that the revised guidance will involve? Do you foresee any impact on local authorities or people seeking support that we have not identified?

Annex B – Consultation Process

1. How we will respond

The Department will report back on the responses to the consultation and seek to take account of them as the final revised guidance is developed for distribution to local authorities.

The consultation document is also supported by a consultation stage Impact Assessment including an initial Equality Impact Assessment.

You have been invited to comment on equality issues relating to the proposed revised guidance. Both the impact and the equality impact assessment will be revised following the consultation in light of comments received.

2. Criteria for consultation

This consultation follows the Government's Code of Practice on Consultation. This Code sets out what people can expect from the Government when it runs formal, written consultation exercises on matters of policy or policy implementation.⁵

In particular we aim to:

- consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at a stage where there is scope to influence the policy outcome;
- be clear about what our proposals are, who may be affected, what questions we want to ask, the expected costs and benefits of the proposals and the timescale for responses;
- ensure that our consultation is clear, concise and widely accessible;
- keep the burden of consultation to a minimum;
- ensure that we provide feedback regarding the responses received and how the consultation process influenced the development of the policy;
- monitor our effectiveness at consultation including through the use of a designated consultation co-ordinator; and
- ensure our consultation follows better regulation best practice, including carrying out a consultation stage Impact Assessment.

3. Comments on the consultation process itself

If you have concerns or comments which you would like to make relating specifically to the consultation process itself please contact:

⁵ The code can be found on the Department for Business, Innovation and Skills website - <http://www.berr.gov.uk/whatwedo/bre/consultation-guidance/page44420.html>

Consultation on the revision of the Fair Access to Care Services guidance

Consultations Coordinator
Room 3E48, Quarry House
Quarry Hill
Leeds
LS2 7UE

Email: consultations.co-ordinator@dh.gsi.gov.uk

Please do not send consultation responses to this address.

4. Confidentiality of information

We manage the information you provide in response to this consultation in accordance with the Department of Health's **Information Charter**.

Information we receive, including personal information, may be published or disclosed in accordance with the access to information regimes (primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and in most circumstances this will mean that your personal data will not be disclosed to third parties.

5. Summary of the consultation

A summary of the response to this consultation will be made available within three months of the end of the live consultation period and will be placed on the Department of Health consultations website page at:

<http://www.dh.gov.uk/en/Consultations/Responsestoconsultations/index.htm>