Passage of the
Social Care (Self-directed Support) (Scotland) Bill 2012

SPPB 181
Passage of the

Social Care (Self-directed Support) (Scotland) Bill 2012

SP Bill 10 (Session 4), subsequently 2013 asp 1

SPPB 181

EDINBURGH: APS GROUP SCOTLAND
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Foreword

Purpose of the series

The aim of this series is to bring together in a single place all the official Parliamentary documents relating to the passage of the Bill that becomes an Act of the Scottish Parliament (ASP). The list of documents included in any particular volume will depend on the nature of the Bill and the circumstances of its passage, but a typical volume will include:

- every print of the Bill (usually three – “As Introduced”, “As Amended at Stage 2” and “As Passed”);
- the accompanying documents published with the “As Introduced” print of the Bill (and any revised versions published at later Stages);
- every Marshalled List of amendments from Stages 2 and 3;
- every Groupings list from Stages 2 and 3;
- the lead Committee’s “Stage 1 report” (which itself includes reports of other committees involved in the Stage 1 process, relevant committee Minutes and extracts from the Official Report of Stage 1 proceedings);
- the Official Report of the Stage 1 and Stage 3 debates in the Parliament;
- the Official Report of Stage 2 committee consideration;
- the Minutes (or relevant extracts) of relevant Committee meetings and of the Parliament for Stages 1 and 3.

All documents included are re-printed in the original layout and format, but with minor typographical and layout errors corrected. An exception is the groupings of amendments for Stage 2 and Stage 3 (a list of amendments in debating order was included in the original documents to assist members during actual proceedings but is omitted here as the text of amendments is already contained in the relevant marshalled list).

Where documents in the volume include web-links to external sources or to documents not incorporated in this volume, these links have been checked and are correct at the time of publishing this volume. The Scottish Parliament is not responsible for the content of external Internet sites. The links in this volume will not be monitored after publication, and no guarantee can be given that all links will continue to be effective.

Documents in each volume are arranged in the order in which they relate to the passage of the Bill through its various stages, from introduction to passing. The Act itself is not included on the grounds that it is already generally available and is, in any case, not a Parliamentary publication.

Outline of the legislative process

Bills in the Scottish Parliament follow a three-stage process. The fundamentals of the process are laid down by section 36(1) of the Scotland Act 1998, and amplified by Chapter 9 of the Parliament’s Standing Orders. In outline, the process is as follows:
• Introduction, followed by publication of the Bill and its accompanying documents;
• Stage 1: the Bill is first referred to a relevant committee, which produces a report informed by evidence from interested parties, then the Parliament debates the Bill and decides whether to agree to its general principles;
• Stage 2: the Bill returns to a committee for detailed consideration of amendments;
• Stage 3: the Bill is considered by the Parliament, with consideration of further amendments followed by a debate and a decision on whether to pass the Bill.

After a Bill is passed, three law officers and the Secretary of State have a period of four weeks within which they may challenge the Bill under sections 33 and 35 of the Scotland Act respectively. The Bill may then be submitted for Royal Assent, at which point it becomes an Act.

Standing Orders allow for some variations from the above pattern in some cases. For example, Bills may be referred back to a committee during Stage 3 for further Stage 2 consideration. In addition, the procedures vary for certain categories of Bills, such as Committee Bills or Emergency Bills. For some volumes in the series, relevant proceedings prior to introduction (such as pre-legislative scrutiny of a draft Bill) may be included.

The reader who is unfamiliar with Bill procedures, or with the terminology of legislation more generally, is advised to consult in the first instance the Guidance on Public Bills published by the Parliament. That Guidance, and the Standing Orders, are available for sale from Stationery Office bookshops or free of charge on the Parliament’s website (www.scottish.parliament.uk).

The series is produced by the Legislation Team within the Parliament’s Chamber Office. Comments on this volume or on the series as a whole may be sent to the Legislation Team at the Scottish Parliament, Edinburgh EH9 1SP.

Notes on this volume

The Bill to which this volume relates followed the standard 3 stage process described above.

The Health and Sport Committee’s Stage 1 Report did not include the oral and written evidence received by the Committee. This material was originally published on the web only, and is now included in full in this volume.

The Finance Committee considered the Financial Memorandum to the Bill and stated its conclusions in correspondence to the Health and Sport Committee. That correspondence is included in the Stage 1 Report at Annex E. The relevant extracts from the Finance Committee minutes, the Official Report of the meeting at which it took oral evidence on the Memorandum and the written evidence it received are all included in this volume after the Stage 1 Report.

In addition to its response to the Stage 1 Report of the Health and Sport Committee, the Scottish Government issued a separate response to the report of the Subordinate Legislation Committee at Stage 1. That Committee considered and
noted the response at its meeting on 18 September 2012. As the Committee noted the response without debate, the relevant extracts from the minutes and Official Report of the meeting are not included. The Scottish Government’s response is, however, included in this volume.
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Social Care (Self-directed Support) (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to enable local authorities to provide support to certain carers; to make provision about the way in which certain social care services are provided by local authorities; and for connected purposes.

General principles

1 General principles

(1) A local authority must have regard to the principles in subsections (2) to (4) in carrying out its functions under—
   (a) Part 2 of the 1968 Act (other than the provisions mentioned in subsection (5)),
   (b) sections 22 to 24 of the 1995 Act,
   (c) this Act.

(2) A person must have as much involvement as the person wishes in relation to—
   (a) the assessment of the person’s needs for support or services, and
   (b) the provision of support or services for the person.

(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.

(4) A local authority must collaborate with a person in relation to—
   (a) the assessment of the person’s needs for support or services, and
   (b) the provision of support or services for the person.

(5) The provisions are—
   (a) sections 27 to 27B (which make provision in relation to the supervision and care of persons put on probation or released from prison etc.),
(b) section 28 (local authority’s power to arrange burial or cremation in certain circumstances),

(c) section 29 (local authority’s power to make payments to parents etc. in respect of expenses for visiting certain persons and attending funerals).

(6) In this section—

(a) references to the assessment of a person’s needs are references to assessment under section 12A of the 1968 Act or, as the case may be, section 12AA of that Act or section 23(3) or 24 of the 1995 Act,

(b) references to the provision of support for a person are references to the provision of support under section 2(4),

(c) references to the provision of services for a person are references to the provision of community care services under Part 2 of the 1968 Act or, as the case may be, the provision of services under section 22 of the 1995 Act.

**Adult carers**

(1) This section applies where—

(a) a local authority carries out an assessment under section 12AA of the 1968 Act of an adult’s ability to provide, or continue to provide, care for another person, or

(b) a local authority carries out an assessment under section 24 of the 1995 Act of an adult’s ability to provide, or continue to provide, care for a child.

(2) The authority must—

(a) consider the assessment, and

(b) decide whether the adult has needs in relation to the care which the adult provides, or intends to provide, to the person cared for.

(3) If the authority decides that the adult has those needs, the authority must consider whether the needs could be satisfied (wholly or partly) by the provision to the adult of any support.

(4) If the authority decides in pursuance of subsection (3) that an adult has needs which could be satisfied by the provision of any support, it may provide, or secure the provision of, support to the adult.

(5) In this section—

“person cared for” means the person in relation to whom the adult’s ability to provide or continue to provide care is assessed as mentioned in subsection (1),

“support” includes any form of services or assistance which will help the adult to provide, or continue to provide, care for the person cared for.

**Options for self-directed support**

(1) The options for self-directed support are—

**Option 1** The making of a direct payment by the local authority to the supported person for the provision of support.
Option 2  The selection of support by the supported person and the making of arrangements for the provision of it by the local authority on behalf of the supported person.

Option 3  The selection of support and the making of arrangements for the provision of it by the local authority.

Option 4  The selection by the supported person of Option 1, 2 or 3 for each type of support.

(2) In this section—

“direct payment” means a payment of the relevant amount by a local authority to a supported person for the purpose of enabling the person to arrange for the provision of support by any person (including the authority),

“relevant amount” means the amount that the local authority considers is a reasonable estimate of the cost of securing the provision of the support to which a direct payment relates during the period to which the payment relates,

“supported person” and “support” are to be construed in accordance with section 4 or, as the case may be, section 6 or 7.

4 Choice of options: adults

(1) This section applies where a local authority decides under section 12A(1)(b) of the 1968 Act that the needs of an adult (the “supported person”) call for the provision of community care services (“support”).

(2) The authority must give the supported person the opportunity to choose one of the options for self-directed support unless the authority considers that the supported person is ineligible to receive direct payments.

(3) If the authority considers that the supported person is ineligible to receive direct payments the authority must—

(a) notify the supported person of—

(i) the reason why the authority considers that to be the case, and

(ii) the circumstances in which the authority must under section 10 review the question of whether the supported person is ineligible to receive direct payments, and

(b) give the supported person the opportunity to choose one of the options for self-directed support other than—

(i) Option 1, and

(ii) so far as relating to that option, Option 4.

(4) If the supported person does not make a choice in pursuance of subsection (2) or (3)(b) the supported person is deemed to have chosen Option 3.

(5) The authority must give the notification required by subsection (3)(a) in writing and, if necessary, in such other form as is appropriate to the needs of the person to whom it is given.

(6) For the purposes of this section, a person is ineligible to receive direct payments if the person is of a description specified in regulations under section 13(2)(a).
5 Choice of options under section 4: assistance

(1) This section applies where—

(a) a local authority decides under section 12A(1)(b) of the 1968 Act that the needs of an adult (the “supported person”) call for the provision of community care services,

(b) it appears to the authority that, because of mental disorder or difficulties in communicating due to physical disability, the supported person would benefit from receiving assistance from another person in relation to making decisions about relevant matters, and

(c) the conditions in subsection (2) are satisfied.

(2) The conditions are—

(a) there is no guardian or welfare attorney with powers in relation to the relevant matters, and

(b) an intervention order has not been granted in relation to the relevant matters.

(3) The authority must take reasonable steps to enable the supported person to make a choice in pursuance of section 4(2) or (3)(b).

(4) The authority must take reasonable steps—

(a) to identify persons having an interest in the care of the supported person, and

(b) to involve them in assisting the supported person in making decisions about relevant matters.

(5) In this section—

“the 2000 Act” means the Adults with Incapacity (Scotland) Act 2000 (asp 4),

“guardian”—

(a) means a guardian appointed under the 2000 Act, and

(b) includes a guardian (however called) appointed under the law of any country to, or entitled under the law of any country to act for, an adult during the adult’s incapacity, if the guardianship is recognised under the law of Scotland,

“intervention order” is to be construed in accordance with section 53 of the 2000 Act,

“mental disorder” has the meaning given by section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13),

“relevant matters” means—

(a) the choice in pursuance of section 4(2) or (3)(b) of one of the options for self-directed support,

(b) anything relating to the planning of the care or support of the supported person,

(c) anything relating to support provided (or to be provided) to the supported person in pursuance of an option for self-directed support,

“welfare attorney”—
(a) means a welfare attorney within the meaning of section 16 of the 2000 Act, and

(b) includes a person granted, under a contract, grant or appointment governed by the law of any country, powers (however expressed) relating to the granter’s personal welfare and having effect during the granter’s incapacity.

6 Choice of options: adult carers

(1) This section applies where a local authority is to provide, or secure the provision of, support for an adult (the “supported person”) under section 2(4).

(2) The authority must give the supported person the opportunity to choose one of the options for self-directed support unless the authority considers that the supported person is ineligible to receive direct payments.

(3) If the authority considers that the supported person is ineligible to receive direct payments the authority must—

(a) notify the supported person of—

(i) the reason why the authority considers that to be the case, and

(ii) the circumstances in which the authority must under section 10 review the question of whether the supported person is ineligible to receive direct payments, and

(b) give the supported person the opportunity to choose one of the options for self-directed support other than—

(i) Option 1, and

(ii) so far as relating to that option, Option 4.

(4) If the supported person does not make a choice in pursuance of subsection (2) or (3)(b) the supported person is deemed to have chosen Option 3.

(5) The authority must give the notification required by subsection (3)(a) in writing and, if necessary, in such other form as is appropriate to the needs of the person to whom it is given.

7 Choice of options: children and family members

(1) This section applies where a local authority is to provide services under section 22 of the 1995 Act (“support”) to a child or a member of a child’s family.

(2) The authority must give the supported person the opportunity to choose one of the options for self-directed support unless the authority considers that the supported person is ineligible to receive direct payments.

(3) If the authority considers that the supported person is ineligible to receive direct payments the authority must—

(a) notify the supported person of—

(i) the reason why the authority considers that to be the case, and

(ii) the circumstances in which the authority must under section 10 review the question of whether the supported person is ineligible to receive direct payments, and
(b) give the supported person the opportunity to choose one of the options for self-directed support other than—
   (i) Option 1, and
   (ii) so far as relating to that option, Option 4.

(4) Subsection (5) applies where the supported person is an appropriate person in relation to the child.

(5) Before making a choice in pursuance of subsection (2) or (3)(b), the supported person must, so far as practicable and taking account of the age and maturity of the child—
   (a) give the child an opportunity to indicate whether the child wishes to express the child’s views,
   (b) if the child wishes to do so, give the child an opportunity to express them, and
   (c) have regard to any views expressed by the child.

(6) Without prejudice to the generality of subsection (5), a child who is 12 years of age or over is presumed to be of sufficient age and maturity to form a view for the purposes of that subsection.

(7) If the supported person does not make a choice in pursuance of subsection (2) or (3)(b) the supported person is deemed to have chosen Option 3.

(8) The authority must give the notification required by subsection (3)(a) in writing and, if necessary, in such other form as is appropriate to the needs of the person to whom it is given.

(9) In this section—
   “the 1989 Act” means the Children Act 1989 (c.41),
   “appropriate person”, in relation to a child, means—
   (a) a parent or guardian having parental responsibilities or parental rights in relation to the child under Part 1 of the 1995 Act,
   (b) a person in whom parental responsibilities or parental rights are vested by virtue of section 11(2)(b) of the 1995 Act,
   (c) a person having parental responsibilities or parental rights by virtue of section 11(12) of the 1995 Act,
   (d) a parent having parental responsibility for the child under Part 1 of the 1989 Act,
   (e) a person having parental responsibility for the child by virtue of—
      (i) section 12(2) of the 1989 Act,
      (ii) section 14C of the 1989 Act, or
      (iii) section 25(3) of the Adoption and Children Act 2002 (c.38),
   (f) a parent having parental responsibility for the child under Part 2 of the 1995 Order,
   (g) a person having parental responsibility for the child under Article 12(2) of the 1995 Order,
(h) a person in whom parental responsibilities or parental rights are vested by virtue of a permanence order (as defined in section 80(2) of the Adoption and Children (Scotland) Act 2007 (asp 4)),

“supported person” means—

(a) where support is to be provided (wholly or partly) to the child or a member of the child’s family who is also a child—

(i) if the child to whom support is to be provided is under 16 years of age, an appropriate person,

(ii) if the child to whom support is to be provided is 16 years of age or over, the child,

(b) where support is to be provided (wholly or partly) to a member of the child’s family who is not a child, that person.

8 Provision of information about self-directed support

(1) This section applies where under section 4, 6 or 7 a local authority gives a person an opportunity to choose one of the options for self-directed support.

(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, and

(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, and

(ii) information about how to manage support.

(3) The authority must 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 person to whom they are given.

9 Local authority functions

(1) This section applies where under section 4, 6 or 7 a local authority gives a person an opportunity to choose one of the options for self-directed support.

(2) The local authority must give effect to the option for self-directed support chosen by the person.

(3) Compliance with the requirement imposed by subsection (2) fulfils any duty imposed on the authority by Part 2 of the 1968 Act or, as the case may be, section 22 of the 1995 Act to provide to the person the support to which the option relates.

(4) Compliance with the requirement imposed by subsection (2) does not affect—

(a) any other function of the local authority in relation to the provision to the person of the support to which the option relates,

(b) the exercise by the local authority of the power in section 12(1) of the 1968 Act to make available assistance in cash to or in respect of the person in relation to the support to which the option relates.
10 Eligibility for direct payment: review

(1) Subsection (2) applies where—
   (a) a person receives notice under section 4(3)(a), 6(3)(a) or 7(3)(a), and
   (b) because of a material change in the person’s circumstances, the reason stated in
       the notice no longer applies.

(2) On the request of the person, the local authority must review the question of whether the
    person is ineligible to receive direct payments.

(3) If the local authority considers that the person is no longer ineligible to receive direct
    payments, the authority must give the person the opportunity to choose one of the
    options for self-directed support under section 4(2) or, as the case may be, section 6(2)
    or 7(2).

11 Further choice of options on material change of circumstances

(1) Subsection (2) applies where—
   (a) under section 4, 6 or 7 a local authority gives a person an opportunity to choose
       one of the options for self-directed support,
   (b) the person chooses an option, and
   (c) after the choice is made the authority becomes aware of a material change in the
       person’s circumstances.

(2) The authority must offer the person another opportunity to choose one of the options for
    self-directed support under the section concerned.

(3) The authority and the person may agree that subsection (2) also applies in other
    circumstances.

12 Power to modify section 3

The Scottish Ministers may by regulations—

(a) modify section 3,
(b) so far as necessary in consequence of any modification made under paragraph (a),
    modify sections 4, 6 and 7.

13 Power to make further provision about direct payments

(1) The Scottish Ministers may by regulations make further provision about direct
    payments.

(2) Regulations under subsection (1) may in particular make provision for or in connection
    with—
    (a) specifying descriptions of person who are ineligible to receive direct payments,
    (b) specifying circumstances in which a local authority is not to be required under
        section 4, 6 or 7 to give a person the opportunity to choose—
        (i) Option 1 of the options for self-directed support, and
(ii) so far as relating to that option, Option 4,
(c) specifying the circumstances in which a local authority may require a person to contribute to a direct payment,
(d) enabling a local authority to assess or reassess a person’s ability to contribute to the cost of securing the support to which a direct payment relates,
(e) specifying the ways in which direct payments may be paid or repaid,
(f) specifying circumstances in which a local authority may, must or may not terminate the making of a direct payment,
(g) specifying circumstances in which a local authority may pay all or part of a direct payment to a person other than the person to whom the direct payment relates,
(h) specifying descriptions of person to whom direct payments may not be made under paragraph (g),
(i) specifying descriptions of person who are prohibited from providing support to which a direct payment relates other than in such circumstances as are specified,
(j) specifying conditions which must be satisfied by persons before they may provide support to which a direct payment relates.

14 Misuse of direct payment: recovery
(1) Subsection (2) applies where—
(a) a local authority makes a direct payment to a person, and
(b) the authority considers—
(i) that the direct payment has been used (wholly or partly) for some purpose other than to secure the provision of the support to which it relates, or
(ii) that there has been a contravention of provision made by regulations under section 13 in relation to the direct payment.
(2) The authority may require the person to repay a sum equal to—
(a) the direct payment, or
(b) such part of the direct payment as the authority considers appropriate.

Local authority functions

15 Assessments under section 12A of 1968 Act: assistance
After section 12A of the 1968 Act, insert—

“12AZA Assessments under section 12A: assistance
(1) Subsection (3) applies where—
(a) a local authority is required by section 12A(1)(a) to carry out an assessment of the needs of a person (the “supported person”) for community care services,
(b) it appears to the authority that, because of mental disorder or difficulties in communicating due to physical disability, the supported person would benefit from receiving assistance from another person in relation to the carrying out of the assessment, and
(c) the conditions in subsection (2) are satisfied.

(2) The conditions are—

(a) there is no guardian or welfare attorney with powers as respects the provision of assistance in relation to the carrying out of the assessment, and

(b) an intervention order has not been granted as respects the provision of assistance in relation to the carrying out of the assessment.

(3) The authority must take reasonable steps—

(a) to identify persons having an interest in the care of the supported person, and

(b) to involve them in assisting the supported person in relation to the carrying out of the assessment.

(4) In this section—

“the 2000 Act” means the Adults with Incapacity (Scotland) Act 2000 (asp 4),

“guardian”—

(a) means a guardian appointed under the 2000 Act, and

(b) includes a guardian (however called) appointed under the law of any country to, or entitled under the law of any country to act for, an adult during the adult’s incapacity, if the guardianship is recognised under the law of Scotland,

“intervention order” is to be construed in accordance with section 53 of the 2000 Act,

“mental disorder” has the meaning given by section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13),

“welfare attorney”—

(a) means a welfare attorney within the meaning of section 16 of the 2000 Act, and

(b) includes a person granted, under a contract, grant or appointment governed by the law of any country, powers (however expressed) relating to the granter’s personal welfare and having effect during the granter’s incapacity.”.

16 Power to charge for services provided under section 2

In section 87 of the 1968 Act (power of local authority to charge for services and accommodation provided under certain enactments), in each of subsections (1) and (1A)(a)—

(a) the word “or”, where it first occurs, is repealed, and

(b) after “(asp 13)” insert “or section 2(4) of the Social Care (Self-directed Support) (Scotland) Act 2012 (asp 00)”. 
17 **Promotion of options for self-directed support**

A local authority must take steps to promote the availability of the options for self-directed support.

18 **Delegation**

In section 15(4) of the Community Care and Health (Scotland) Act 2002 (asp 5) (power to delegate certain local authority and NHS functions etc.)—

(a) the word “or” immediately after paragraph (f) is repealed, and

(b) after paragraph (g) add—

“(h) prohibiting the entering into of arrangements by virtue of subsection (1) for the delegation of such functions prescribed under subsection (2)(a) as may be specified unless the arrangements are also for the delegation of such functions under the Social Care (Self-directed Support) (Scotland) Act 2012 prescribed under subsection (2)(a) as may be specified.”.

19 **Guidance and directions**

In section 5 of the 1968 Act (guidance and directions under 1968 Act and certain other enactments)—

(a) in subsection (1), for the words from “and” to “1995” substitute “, Part 2 of the Children (Scotland) Act 1995 and the Social Care (Self-directed Support) (Scotland) Act 2012 (asp 00)”, and

(b) in subsection (1B), after paragraph (q) add—

“(r) the Social Care (Self-directed Support) (Scotland) Act 2012 (asp 00).”.

20 **Regulations: general**

(1) Regulations under this Act may—

(a) make different provision for different cases,

(b) include such supplementary, incidental, consequential, transitory and transitional provision and savings as the Scottish Ministers consider appropriate.

(2) Regulations under sections 12 and 21 are subject to the affirmative procedure.

(3) Otherwise, regulations under this Act are subject to the negative procedure.

21 **Power to modify application of Act**

(1) The Scottish Ministers may by regulations make provision for or in connection with disapplying section 4(2) or 7(2) in such circumstances as the regulations may specify.

(2) Regulations under subsection (1) may include provision for or in connection with—

(a) deeming a person to have chosen Option 3 of the options for self-directed support,

(b) disapplying or modifying any other section.
22 Interpretation

(1) In this Act, unless the context otherwise requires—

“the 1968 Act” means the Social Work (Scotland) Act 1968 (c.49),
“the 1995 Act” means the Children (Scotland) Act 1995 (c.36),
“adult” means a person who is 18 years of age or over,
“child” means a person who is under 18 years of age,
“community care services” has the meaning given by section 5A of the 1968 Act (except that it does not include a reference to services which a local authority provides, or secures the provision of, under any of the provisions of that Act mentioned in section 1(5)),
“direct payment” has the meaning given by section 3(2),
“options for self-directed support” is to be construed in accordance with section 3(1),
“support” has the meaning given by section 3(2).

(2) In this Act, references to a person’s being ineligible to receive direct payments are to be construed in accordance with section 4(6).

23 Consequential repeals

Sections 12B and 12C of the 1968 Act (which make provision in relation to direct payments in respect of community care services) are repealed.

24 Ancillary provision

(1) The Scottish Ministers may by order make such supplementary, incidental or consequential provision as they consider appropriate for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.

(2) An order under subsection (1) may modify any enactment.

(3) An order under subsection (1) containing provisions which add to, replace or omit any part of the text of an Act is subject to the affirmative procedure.

(4) Otherwise, an order under subsection (1) is subject to the negative procedure.

25 Transitional provision etc.

(1) The Scottish Ministers may by order make such provision as they consider necessary or expedient for transitory, transitional or saving purposes in connection with the coming into force of any provision of this Act.

(2) An order under subsection (1) may modify any enactment.

(3) An order under subsection (1) is subject to the negative procedure.

26 Commencement

(1) This section and sections 13, 20, 22, 24, 25 and 27 come into force on the day after Royal Assent.
(2) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.

(3) An order under subsection (2) may contain transitory or transitional provision or savings.

27 Short title

The short title of this Act is the Social Care (Self-directed Support) (Scotland) Act 2012.
Social Care (Self-directed Support) (Scotland) Bill
[AS INTRODUCED]

An Act of the Scottish Parliament to enable local authorities to provide support to certain carers; to make provision about the way in which certain social care services are provided by local authorities; and for connected purposes.

Introduced by: Nicola Sturgeon
On: 29 February 2012
Bill type: Executive Bill
SOCIAL CARE (SELF-DIRECTED SUPPORT) (SCOTLAND) BILL

EXPLANATORY NOTES

(CONTENTS

1. As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Social Care (Self-directed Support) (Scotland) Bill introduced in the Scottish Parliament on 29 February 2012:

- Explanatory Notes;
- a Financial Memorandum;
- a Scottish Government Statement on legislative competence; and
- the Presiding Officer’s Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 10–PM.)
These documents relate to the Social Care (Self-directed Support) (Scotland) Bill (SP Bill 10) as introduced in the Scottish Parliament on 29 February 2012

EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

SUMMARY

4. The policy objective of the Social Care (Self-directed Support) (Scotland) Bill (“the Bill”) is to make legislative provisions relating to the arranging of care and support (“community care services” and “children’s services”) in order to provide a range of choices to individuals as to how they are to be provided with their support. The Bill provides general principles to guide and inform decisions made under the Bill’s framework of duties and powers. It introduces the language and terminology of self-directed support into statute. It places a duty on local authorities (“authorities”) to offer four options to individuals who they assess as requiring care and support under section 12A of the Social Work (Scotland) Act 1968 (“the 1968 Act”), section 2 of this Bill (support for adult carers) and section 24 of the Children (Scotland) Act 1995 (“the 1995 Act”). It requires authorities to provide information and assistance to individuals in order that they can make an informed choice about the options available. It provides a discretionary power to authorities in order that they can provide support to carers following a carer’s assessment under section 12AA of the 1968 Act or section 24 of the 1995 Act (section 2). It repeals and reframes provisions relating to direct payments as currently contained within sections 12B and 12C of the 1968 Act.

COMMENTARY ON SECTIONS

Section 1 – General principles

5. Section 1 places a duty on an authority to have regard to certain general principles in carrying out its functions under the Bill, Part 2 of the 1968 Act (with the exception of the provisions mentioned in subsection (5)) and sections 22 to 24 of the Children (Scotland) Act 1995. This means the principles will apply to authorities’ social welfare responsibilities (the provision of care and support) to both adults and children.

6. The principles provided under subsections (2), (3) and (4) are, in short-hand terms, related to “involvement”, “informed choice” and “collaboration”. Under the principle provided in subsection (2) (“involvement”) a person must have as much involvement in the assessment of their social care needs and the provision of support or services as the person wishes. Under the principle provided in subsection (3) (“informed choice”) a person must be provided with reasonable assistance in order that they can express their own views about the choices available to them and make an informed decision about their preferred choice. Under the principle
These documents relate to the Social Care (Self-directed Support) (Scotland) Bill (SP Bill 10) as introduced in the Scottish Parliament on 29 February 2012

provided in subsection (4) (“collaboration”) authorities are required to collaborate with a person in both the assessment of the person’s needs and the provision of support or services following the assessment.

7. When local authorities are carrying out their functions in relation to the provisions set out in subsection (5), they do not have to have regard to the principles in this Bill (nor offer the options for self-directed support).

8. Subsection (6) clarifies various references which appear in the principles. References to “assessment of a person’s need” mean references to assessments under sections 12A, 12AA of the 1968 Act or, as the case may be, sections 23(3) or 24A of the 1995 Act. References to the “provision of support for a person” are references to the provision of section 2(4) in the Bill. References to the “provision of services for a person” are references to the provision of community care services under section 12 of the 1968 Act or, as the case may be, the provision of services under section 22 of the 1995 Act.

Section 2 – Support for adult carers

9. Section 2 provides a power to authorities to provide support to a carer following an assessment completed under section 12AA (carers assessments relating to carers of those aged 18 or over) of the 1968 Act or section 24 (carers assessments relating to carers of those under the age of 18) of the 1995 Act. Under both of those provisions a carer who provides care by virtue of a contract of employment or as a volunteer for a voluntary organisation is ineligible for a carers assessment. As a result, such a carer will not be eligible for support under this provision.

10. Subsection (2) requires the authority to consider the outcome from the relevant assessment and to decide if the carer has needs in their own right as regards their ability to care. Subsection (3) requires the authority, where it has decided that the adult has needs, to consider whether those needs could be satisfied fully or in part by support. The definition of “support” in subsection (5) means that this is support that would help the adult to care or to continue in their role as an unpaid carer. If an authority decides that those needs could be met by support, subsection (4) provides a discretionary power to the local authority to provide support to the carer.

11. Subsection (5) provides definitions of “person cared for” and of the support which could be provided to a carer under subsection (4). That support is any form of services or assistance which will help the adult to provide, or continue to provide, care. This is distinct from any need which the carer has for community care services (i.e. needs they have as an individual and not in their role as a carer), which would be assessed separately under section 12A of the 1968 Act.

12. Where the local authority has decided to provide such support section 6 would apply, meaning that the carer would be given the choice of the four options for self-directed support set out in section 3.
Sections 3 to 12 – Options for self-directed support

Section 3 – Options for self-directed support

13. Section 3(1) provides the four options for self-directed support, which will be available to individuals when they are assessed as needing care and support or support as an adult carer. The options are:
   - Option 1: the local authority makes a direct payment to the supported person in order that the person can then use that payment to arrange their support.
   - Option 2: the supported person chooses their support and the local authority makes arrangements for the support on behalf of the supported person.
   - Option 3: the local authority selects the appropriate support and makes arrangements for its provision by the local authority.
   - Option 4: a mix of options 1, 2 and 3 for specific aspects of a person’s support. This is to recognise that some individuals may wish to take one of the options for particular aspects of their support needs, but to receive their remaining support under one or other of the remaining options.

14. Section 3(2) defines a “direct payment” as a payment of an amount that the local authority considers is a reasonable estimate of the cost of securing the provision of support to which the direct payment relates, for the purpose of enabling the person to arrange for the provision of support by any person (including the authority). It also provides that references to “supported person” and “support” must be read in accordance with sections 4, 6 and 7.

Sections 4 to 7 – Choice of options

15. Sections 4, 6 and 7 apply to the three groups of supported people: adults assessed as requiring support under section 12A of the 1968 Act; adult carers; and children (and/or their families) receiving support under section 22 of the 1995 Act (which includes children who are carers). All three sections require the authority to give the supported person the opportunity to choose one of the options for self-directed support. All three sections clarify the authority’s duties where the person is deemed to be ineligible to receive direct payments.

Section 4 – Choice of options: adults

16. Section 4 applies to adults provided with support by an authority following an assessment under section 12A of the 1968 Act (commonly known as a “community care assessment”) (subsection (1)).

17. Subsection (2) places a duty on the local authority to offer the four options to adults who have been assessed under section 12A of the 1968 Act as needing a service, unless that adult is ineligible for direct payments. The grounds for ineligibility for direct payments will be provided for in regulations made under section 13.

18. Subsections (3) and (5) make provision for what the local authority must do if they consider the supported person ineligible to receive direct payments. If the local authority deem the supported person ineligible for direct payments, the local authority is required to inform the
supported person in writing and, if necessary, such other form as is appropriate of the reason why they are deemed ineligible and inform them that they may seek a review of that decision if there is a material change in their circumstances relevant to that decision (see section 10).

19. Subsection (3)(b) requires the authority to give the person a choice of the remaining eligible options for self-directed support (Options 2, 3 and, in so far as the person is eligible, Option 4). Subsection (4) provides that that if the supported person makes no choice then they are deemed to have chosen Option 3, whereby the local authority selects the support and makes arrangements on the person’s behalf in order to meet their assessed needs. Subsection (6) provides that an individual is ineligible to receive direct payments if they are a person described in regulations under section 13.

Section 5 – Choice of options under section 4: assistance

20. Section 5 places a duty on authorities to take reasonable steps to identify and involve people to assist the individual to make a choice with regards to their options for self-directed support under section 4. This applies only where it appears that because of mental disorder or difficulties in communicating due to physical disability, the person would benefit from receiving such assistance. This duty would apply, for example, where an individual, because of a particular mental illness encounters difficulty in understanding or selecting their choice of self-directed support on their own.

21. Subsection (3) places a duty on the authority to take reasonable steps to enable the adult to choose from the four options for self-directed support set out in section 3 or, where they are deemed ineligible for direct payments, a choice of the options other than direct payments. This means that a local authority is obliged to allow someone to make a choice even if they have difficulties in doing so.

22. Subsection (4) places the further duty on the local authority to take reasonable steps to identify people with an interest in the care of the supported person (this would usually be relatives and friends of the individual) and to involve the relevant people in making decisions relating to the supported person’s options for self-directed support.

23. Subsection (2) sets out conditions which must be satisfied before subsections (3) and (4) can be applied. The duty should not be applied when there is a guardian or welfare attorney with relevant powers present, or when an intervention order has been granted which relates to the provision of assistance with the assessment. Such an attorney or guardian (or individual empowered by an intervention order) would have the power to make self-directed support decisions on the adult’s behalf (in accordance with the principles of the Adults with Incapacity (Scotland) Act 2000).

24. Subsection (5) provides definitions for the various terms used in subsections (1) to (4).

Section 6 – Choice of options: adult carers

25. Section 6 makes provisions with the same effect for adult carers as section 4 makes for adults as regards the choice of options for self-directed support (the procedure for which is set
These documents relate to the Social Care (Self-directed Support) (Scotland) Bill (SP Bill 10) as introduced in the Scottish Parliament on 29 February 2012

out in paragraphs 15 to 19 above). Section 6 applies where a local authority decides to provide support under section 2(4).

Section 7 – Choice of options: children and family members

26. Section 7 provides that the four options must be available to children, and/or their family, where a local authority decides to provide services under section 22 of the Children (Scotland) Act 1995. Provision of services under section 22 can involve a range of types of support and various categories of supported children including children who are carers, disabled children and any other child deemed to be “in need” within the definition of section 93(4) of the 1995 Act. Services under section 22 can also be provided to a member of the child’s family.

27. Section 7(2) requires the authority to offer the four options to the “supported person” unless they consider the supported person ineligible to receive direct payments (as may be defined in regulations under section 13). If the authority consider that the supported person is ineligible to receive direct payments subsection (3)(a) requires the authority to inform the supported person of the reason for that decision and to inform them that they can request a review of the decision. As with services for adults, where this is the case the authority is required to give the person a choice of the other options for self-directed support (subsection (3)(b)).

28. Subsection (9) provides definitions of “appropriate person” and “supported person” which are important to the wider operation of this section. In general terms an “appropriate person” is a person with parental rights and responsibilities, or their equivalent under the laws of England, Wales and Northern Ireland. The definition under subsection (9) sets out the relevant enactments which provide for those rights.

29. It is the “supported person” who has the ability to make the choice under subsection (2). The supported person is first of all identified on the basis of whether they receive any support under section 22 of the 1995 Act (which may be whole or partial). If the supported person is a child (i.e. under 18) who is either 16 or 17 they will make the choice. If the supported person is a child who is under 16 it is an “appropriate person” who makes the choice but that person must give the child an opportunity to express a view on the choice (subsections (5) and (6)). If the supported person is an adult, then that person makes the choice.

30. As with the provisions on adults, subsection (7) provides that when the supported person does not make a choice they are deemed to have chosen option 3 whereby the local authority selects and makes arrangement for the provision of services.

Section 8 – Provision of information about self-directed support

31. Section 8 imposes certain duties on the local authority to provide information and advice about the options (available under section 3) and the provision of support under any of those options. These duties are imposed where under section 4, 6 or 7 a person is given the opportunity to choose an option for self-directed support.

32. Section 8(2)(a) places a duty on the local authority to explain what each option means in practice to the person. An example may be the opportunities and responsibilities that go with the option. Subsection (2)(b) requires the local authority to provide the person with information
about how they might manage their support after they have chosen their preferred option. Subsection (2)(c) requires the authority to provide the person with information about persons who can provide help or further advice to them to help them to choose an option. This includes sources of advice or information other than the authority itself. In practice this will include organisations known as direct payment or self-directed “support organisations”. Subsection (3) requires the authority in all three instances to provide the relevant information both in writing and, where appropriate, in alternative formats appropriate to the person’s communication needs.

Section 9 – Local authority functions

33. Section 9 sets out a local authority’s functions when a choice is made under section 4, 6 or 7.

34. Subsection (2) requires the authority to give effect to the option selected by the person under section 3 and accompanying section 4, 6 or 7.

35. Subsection (3) provides that a local authority has fulfilled its duty to provide support under either the 1968 Act or the Children’s (Scotland) Act 1995 when it has offered the options as set out in section 3 and when it has given effect to the chosen option.

36. Subsection (4) provides that compliance with subsection (2) does not extinguish any other function of a local authority. It is similar to provision made by section 12C of the 1968 Act (to be repealed by section 23 of the Bill). If for example, a person’s needs were not being met by the support they were being provided a local authority’s duty has not been extinguished by virtue of their already having provided support. In particular subsection (4)(b) states that the exercise of an authority’s power to make available assistance in cash to or in respect of the person in an emergency persists.

Section 10 – Eligibility for a direct payment: review

37. Section 10 places a duty on the local authority to review their decision (on the request of the supported person) to deem a person ineligible for a direct payment where there is a material change in the circumstances which led to the person being deemed to be ineligible.

Section 11 – Further choice of options on material change of circumstances

38. Section 11 places a duty on the local authority to offer the supported person the opportunity to change their choice of the options set out in section 3. This duty applies after an individual has made a choice and where the local authority becomes aware of a material change in the person’s circumstances after the choice has been made. This could, for example, cover the situation where someone has received a direct payment, has managed the direct payment payment with assistance from a family carer, but where the carer is no longer able to provide this assistance. In such circumstances the individual must then be offered a choice once again (subsection (2)). Subsection (3) provides that the authority and the person may agree additional circumstances under which the opportunity to review might apply (for example, by agreeing to an annual review).
Section 12 – Power to modify section 3

39. Section 12 provides for a regulation-making power for Scottish Ministers to modify the four options and, in so far as necessary, to modify the accompanying section 4, 6 or 7 in consequence of any changes made to section 3.

Sections 13 to 14 – Direct payments

Section 13 – Power to make further provision about direct payments

40. Section 13(1) provides for Scottish Ministers to make regulations about direct payments and the provision of support to which they relate.

41. Subsections (2)(a) to (j) set out specific powers included within the power in subsection (1).

42. Subsection (2)(a) provides the power to specify descriptions of persons who will be ineligible for direct payments. This will inform the definition of ineligibility for direct payments throughout the Bill. Section 4(6) states for the purposes of section 4 that a person is ineligible for direct payments if they are of a description prescribed in regulations (under this power) and that definition is applied to the whole Bill by section 22.

43. Subsection (2)(b) provides the power to specify circumstances where the local authority will not be required to offer the supported person option 1 (a direct payment) or option 4 so far as it relates to option 1. This would include, for example, excluding a direct payment from being used to secure a particular service.

44. Subsections (2)(c) to (e) provide power to prescribe how direct payments are paid, circumstances in which a contribution to the cost of support may be required and how individuals are assessed to ascertain the individual’s ability to contribute. They also provide power to describe how the repayment of a direct payment may be made following the assessment or reassessment of an individual’s ability to contribute. For example, enabling deduction from direct payments, separate repayment or payment by instalments.

45. Subsection (2)(f) provides circumstances that may be specified where a local authority may, must or may not terminate a direct payment.

46. Subsection (2)(g) gives power to set out the circumstances when the local authority would be able to make a direct payment to a person other than the supported person. Subsection (2)(h) gives power to specify persons to whom such direct payments may not be paid.

47. Subsection (2)(i) and (j) provide that regulations may set out descriptions of persons who are prohibited from providing support to which a direct payment relates, other than where specified circumstances apply and where specified conditions have been met.
These documents relate to the Social Care (Self-directed Support) (Scotland) Bill (SP Bill 10) as introduced in the Scottish Parliament on 29 February 2012

Section 14 – Misuse of direct payment: recovery

48. Section 14 provides for the local authority to require repayment of all or part of the direct payment from the supported person if they have used all or part of the direct payment on things other than the assessed services or support required or where the person has contravened any regulations made under section 13.

Sections 15 to 18 – Local authority functions

Section 15 – Assessments under section 12A of the 1968 Act: assistance

49. Section 15 inserts section 12AZA after section 12A of the 1968 Act. It applies where the authority is assessing a person’s needs under section 12A of the 1968 Act. It is similar to, although at an earlier stage than, the duty under section 5 requiring assistance to an adult making a choice of an option for self-directed support.

50. Section 12AZA places a duty on authorities to take reasonable steps to identify and involve people to assist the individual where it appears that because of mental disorder or difficulties in communicating due to physical disability, the person would benefit from receiving such assistance. This duty would apply, for example, where an individual, because of a particular mental illness encounters difficulty in understanding or selecting their choice of self-directed support on their own.

51. Subsection (3) places a duty on the local authority to take reasonable steps to identify people with an interest in the care of the supported person (this would usually be relatives and friends of the individual) and to involve the relevant people in making decisions about matters to do with the assessment.

52. Subsection (2) sets out conditions which must be satisfied before subsection (3) can be applied. The duty should not be applied when there is a guardian or welfare attorney with relevant powers present, or when an intervention order has been granted which relates to the provision of assistance with the assessment. Such an attorney or guardian (or individual empowered by an intervention order) would have the power to make self-directed support decisions on the adult’s behalf (in accordance with the principles of the Adults with Incapacity (Scotland) Act 2000).

53. Subsection (4) provides definitions for the various terms used in subsections (1) to (3).

Section 16 – Power to charge for services provided under section 2

54. Section 16 amends Section 87 of the 1968 Act (authorities’ power to charge for services or support). This has the effect that authorities may charge for support provided to carers under section 2 of the Bill.

Section 17 – Promotion of options for self-directed support

55. Section 17 places a duty on a local authority to take steps to promote the options available to individuals.
Section 18 – Delegation

56. Section 18 amends section 15 of the Community Care and Health (Scotland) Act 2002. The effect is that Ministers can lay regulations which prohibit delegation of functions which would otherwise be permitted to be delegated by a local authority entering into an arrangement in accordance with section 15 of the 2002 Act. A prohibition under the new power in section 18 would state that certain functions may only be delegated where the arrangement entered into also delegates the appropriate self-directed support duties in the Bill.

Sections 19 to 27 – General

Section 19 – Guidance and directions

57. Section 19(a) amends section 5(1) of the 1968 Act in order to require authorities to perform their functions under this Bill under the general guidance of Scottish Ministers. Paragraph (b) amends section 1B of the 1968 Act to enable Scottish Ministers to issue directions to authorities, either individually or collectively, as to how they are to exercise their functions under this Bill.

Section 20 – Regulations: general

58. Section 20 provides for general ancillary powers to the other regulation making powers under the Bill. In particular it allows the regulations to make different provision for different cases and to make such ancillary provision (i.e. supplementary, incidental, consequential, transitory and transitional provision and savings) as the Scottish Ministers consider appropriate. Subsections (2) and (3) set out the Parliamentary procedure to which regulations will be subject.

Section 21 – Power to modify application of Act

59. Section 21 (1) provides a power to Scottish Ministers to make regulations which specify circumstances when the duties on the local authority to give the supported person a choice of the four options will not apply. Subsection (2) provides that such regulations may include provision for or in connection with deeming a person to have chosen Option 3 or disapplying or modifying any other section in consequence of this.

Section 22 – Interpretation

60. This section defines terms that are used frequently in the Bill. In particular “community care services” has the meaning given by section 5A of the 1968 Act except that it does not include a reference to services under any of the provisions mention in section 1(5) of the Bill: sections 27 to 27B, 28 and 29 of the 1968 Act.

Section 23 – Consequential repeals

61. This section repeals sections 12B and 12C of the 1968 Act which are replaced in substance by the power to make regulations under section 13, and the provisions of section 14, of this Bill.
Sections 24 and 25 – Ancillary provision and Transitional provision etc.

62. These sections give the Scottish Ministers the power to make consequential, supplemental, incidental, transitional, transitory or saving provisions by order for the purpose of giving full effect to the Act. Under section 24 any order which makes textual amendments to primary legislation will be subject to the affirmative procedure, otherwise an order will be subject to the negative procedure. Orders under section 25 will be subject to the negative procedure.

Section 26 – Commencement

63. Section 26(1) provides for certain provisions of the Bill to come into force on the day after Royal Assent. Subsection (2) gives power to Ministers to appoint a day for the coming into force of the other provisions of the Bill. Subsection (3) provides that a commencement order may include transitory, transitional or saving provision.

Section 27 – Short title

64. Section 27 gives the short title of the Bill.

FINANCIAL MEMORANDUM

INTRODUCTION

65. This document relates to the Social Care (Self-directed Support) (Scotland) Bill (“the Bill”) introduced in the Scottish Parliament on 29 February 2012. It has been prepared by the Scottish Government to satisfy Rule 9.3.2 of the Parliament’s Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament. The Memorandum summarises the costs implications of the Bill across the following areas:

- The Bill’s “framework” provisions, encompassing the legislative principles; duties on local authorities to offer a range of self-directed support options; duties to involve “circles of support” to assist people who have difficulties making informed decisions on their own; and, the provision of information and advice to individuals. (Note: costs associated with general training and awareness, publicity and transformation associated with the Bill are included in this section);
- Powers to provide support to carers, and to ensure choice as to how that support is provided;
- Duties in relation to direct payments; and
- Joint working, specifically with NHS professionals and NHS bodies.

66. The analysis and estimates contained in this memorandum draw on a variety of sources including consultation responses to the draft Business Regulatory Impact Assessment, a variety of research publications (including a study by Stirling University commissioned by the Scottish
Government\(^1\)) and a range of formal and informal surveys and meetings with COSLA, local authorities, care and support providers and the Bill Steering Group. It should be read in conjunction with the Policy Memorandum, which sets out more fully the reasoning behind the Bill and a range of non-financial benefits associated with it. The Policy Memorandum also sets out how the Bill, including financial costs, will be monitored and evaluated.

67. The purpose of this Bill is to underpin the aim to deliver choice and control for those who receive social care and support as set out in the Scottish Government’s 10-year National Self-Directed Support strategy. The specific impacts of the Bill provisions themselves are relatively narrow. However, there are a range of costs associated with transforming culture, systems and approaches to social care provision in response to the Bill and the wider Strategy. This Memorandum therefore attempts to distinguish between the costs associated specifically with the Bill and wider financial support which the Scottish Government is providing to translate the Bill’s principles and aims into real changes to the experiences of those who use care and support.

SUMMARY OF GOVERNMENT INVESTMENT

68. Table 1 summarises Scottish Government investment in self-directed support

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<th>Table 1: Summary of Scottish Government investment (£m)</th>
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<tr>
<td><strong>2011/12</strong></td>
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<tr>
<td>a) Costs directly associated with Bill implementation</td>
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<tr>
<td>Framework:</td>
</tr>
<tr>
<td>i) Workforce development (specifically training on Bill duties for relevant staff members) (paragraphs 96 and 107 to 109)</td>
</tr>
<tr>
<td>ii) Information and advice (signposting to relevant services) (paragraph 98)</td>
</tr>
<tr>
<td>Duties in relation to direct payments (paragraphs 123 to 129)</td>
</tr>
<tr>
<td>Support to carers (paragraphs 114 to 122)</td>
</tr>
<tr>
<td>Joint working with the NHS (paragraphs 130 to 135)</td>
</tr>
<tr>
<td>Subtotal</td>
</tr>
</tbody>
</table>

These documents relate to the Social Care (Self-directed Support) (Scotland) Bill (SP Bill 10) as introduced in the Scottish Parliament on 29 February 2012

b) Costs indirectly associated with Bill implementation (associated with the wider strategy)

<table>
<thead>
<tr>
<th>Framework:</th>
<th>1.12</th>
<th>6</th>
<th>11</th>
<th>6</th>
<th>24.12</th>
</tr>
</thead>
<tbody>
<tr>
<td>i) Transformation (local authorities) (paragraphs 101 to 106)</td>
<td>1.1</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>7.1</td>
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<tr>
<td>ii) Transformation (care and support providers) (paragraphs 110 to 113)</td>
<td>0</td>
<td>0.2</td>
<td>0.888</td>
<td>2</td>
<td>3.088</td>
</tr>
<tr>
<td>iii) Workforce development (awareness raising amongst the wider workforce) (paragraph 97)</td>
<td>1</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>7</td>
</tr>
<tr>
<td>iv) Information and advice (capacity building) (paragraph 99)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td>3.22</td>
<td>10.2</td>
<td>15.888</td>
<td>12</td>
<td>41.308</td>
</tr>
</tbody>
</table>

| Total (all costs) | 3.22 | 10.5 | 17 | 12 | 42.72 |

*If the Bill is passed, it is expected to commence in the latter half of 2013/14, with the first full year of implementation being 2014/15.

69. This table refers to short-term implementation costs only. In terms of long-term recurring costs, self-directed support is expected to be cost neutral (see paragraphs 79 to 81). The table also splits costs into those directly associated with Bill implementation, and those indirectly associated with Bill implementation. The costs directly associated with the Bill are limited to specific training on the duties contained in the Bill (to include both local authority and NHS staff) signposting to relevant information and advice services, support to carers and duties in relation to direct payments. The costs indirectly associated with the Bill are those associated with the wider strategy, building on the Bill’s framework in order to ensure the maximum possible range of choices for users. The Bill can be enacted without this investment, and consequently they are not considered to be direct costs. However, if these wider transformational changes are ignored, the Bill is likely to be weak and ineffective in the long term, much as existing direct payment law is seen to be. The additional investment marks out the difference between basic compliance and genuine cultural change.

70. The short-term costs are best estimates for the implementation of this Bill and significant costs are not expected to extend beyond 2014/15. Commencement and implementation of the Bill will be overseen by a joint committee of stakeholders, coordinated by Scottish Government officials and including COSLA and the Association of Directors of Social Work (ADSW).

BACKGROUND

Bill content

71. The Bill contains provisions relating to social care (or “community care”) assessments undertaken by local authorities and children’s services. It imposes a range of duties on local authorities and, through regulations, enables them to be placed on the NHS, though in relation to
These documents relate to the Social Care (Self-directed Support) (Scotland) Bill (SP Bill 10) as introduced in the Scottish Parliament on 29 February 2012

the NHS the duties are imposed only where the relevant authorities have chosen to delegate the relevant social care functions to the NHS. The aim is to ensure that people eligible for social care and support can choose from a range of options on how they will receive that support. The policy memorandum provides further detail on the policy aims.

Statistics

72. There has been a steady increase in the number of people in receipt of direct payments in Scotland, from 207 in 2000/01 to 4,392 in 2010/11. However direct payments remain a fairly small portion of overall provision. In terms of financial data the value of direct payments increased to £50.2m in 2010/11 from £2.1m in 2000/01. To put this in context, Scottish local authorities’ total net expenditure on social work services was £2.4bn in 2007/08, £2.7bn in 2008/09 and £2.8bn in 2009/10, with the resources allocated through direct payments in these years totalling £28.8m, £33m and £39.3m. This shows that direct payments are increasing very slowly as a percentage of social work expenditure, from 1.2% in 2007/08 to 1.4% in 2009/10.

73. People with physical disabilities remain the largest client group of direct payment recipients, comprising 40% of all recipients. The volume of direct payments amongst other groups such as people with learning disabilities, people with mental health problems (including dementia) and frail older people are growing, but direct payment users remain a small proportion of the overall social care client base. Take up amongst the over 65s remains lower than in younger age groups, but has increased over the last 10 years (7% of direct payment users were over 65 in 2000/01, 33% were over 65 in 2010/11).

Wider financial context

74. Self-directed support aims to reshape the way that social care and support is provided in future years, to improve outcomes for those requiring support and to ensure better value for money. Demand for services is increasing as the demography of Scotland changes. Projections suggest the number of people in Scotland aged over 65 will be 21% greater in 2016 than in 2006, and 63% greater by 2031. For those 75 and over, the increase is 21% and 83% respectively. This, combined with both the current fiscal situation and rising expectations from those requiring support, will place social work budgets under significant pressure. It is generally accepted that

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3 The Scottish Government collects statistics on direct payments only. Existing data collection forms are being revised to capture more information on different self-directed support mechanisms, and this will be used to monitor progress in future years. A small cross organisational working group has been established (July 2011) to review the self-directed support statistical evidence with a view to collect and publish improved evidence from 2012. Limited ‘Individual Budget’ information was collected from local authorities for the first time in 2011 (optional item) as part of the Home Care Statistical Return.

4 Figures extracted from Scottish Government (2011) Scottish Local Government Financial Statistics 2009-10. [Online] Available from: http://www.scotland.gov.uk/Publications/2011/02/21143624/0 [Accessed 9 January 2012]. Due to changes to accounting practices for PFI/PPP projects, some elements of the PPP/PFI unitary charge payments previously included in social expenditure are now recorded elsewhere. As a result, published total social work expenditure data for 2009-10 is not, strictly speaking, comparable with previous years. However, in respect of social work services this affects only two authorities (Angus and City of Edinburgh) and has a total value of under £1 million. It is therefore not considered material and is ignored for the purposes of this memorandum.

reform to health and social care is necessary in order to respond to these challenges. As research from the Centre for Public Policy for Regions noted, “local authorities could simply allocate diminishing resources to the growing client group, increasing the likelihood that the services provided are actually inappropriate or inadequate”. A variety of studies have concluded that current services and approaches fail to fully and appropriately meet need and that doing nothing is not a feasible option. The Scottish Government’s response to the Christie Commission’s report cited the Bill on self-directed support as one part of its response, helping to “underpin new models of support, placing greater control and responsibility in the hands of citizens and thereby enhancing people’s independence and wellbeing”. People have made it clear that they want greater choice and control over the services and support that they receive - more of the same will not work. Self-directed support gives people more choice and control over their social care and support. Research has shown that it can lead to better outcomes and improved quality of life for individuals.

**COSTS**

75. Self-directed support is about improving outcomes for individuals. Such benefits are often measured in qualitative, rather than quantitative ways, meaning they are hard to set against monetarised costs. Self-directed support enhances the empowerment of individuals to gain equality of opportunity and sustain their citizenship. It contributes to improving health and wellbeing and tackling health inequality, and shares the common ambition of improving the quality of life and opportunities in life for people across Scotland. The costs discussed below should therefore be considered in the light of the additional qualitative benefits of self-directed support, discussed in the Policy Memorandum.

**DUTIES ON LOCAL AUTHORITIES TO OFFER A RANGE OF SELF-DIRECTED SUPPORT OPTIONS (FRAMEWORK PROVISIONS)**

76. The Bill requires local authorities – in practice social workers or care managers - to provide individuals with a choice of all the self-directed support options for which they are eligible, and to abide by and uphold whatever choice is made, so long as it meets the agreed

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10 There are limited categories of people who are not eligible for a direct payment – these are to be set out in regulations.
outcomes for the individual. This applies both to adults and to children and their families. The local authority is required to provide information about the implications of each option and to signpost the individual to sources of information and advice, to help them to understand, make and manage a decision. Taken together, these provisions comprise the main duties within the Bill, or the “framework” provisions. Local authorities have been placed under a duty to offer and provide direct payments since 1996 and some local authorities have made tentative steps to implement alternative mechanisms such as Individual Service Funds. However, local authorities will need to ensure that they provide the framework of choice which the Bill seeks to underpin. This will give rise to a range of costs associated with transforming culture, systems and approaches to social care provision in response to the Bill and the wider Strategy, and these are detailed below.

Long-term recurring costs and savings

77. Consultation, research and discussion with stakeholders, including a survey of local authorities by COSLA, identified a number of potential areas for recurring costs associated with the Bill’s framework provisions. These mainly related to changes in assessment practice in order to embed genuine choice and to involve the individual in co-producing their agreed outcomes and support plan, and increased demand for support and advice services. Administratively, the range of self-directed support options will lead to increased numbers of contracts as there is a shift from block contracting to individualised purchasing of support. There is a view that the desirability of tailored support will result in more individuals presenting for assessment. It is difficult to estimate costs for any of these, as they will vary significantly by local authority and in relation to individual choice (for example, the number of people choosing to leave block contracting arrangements).

78. To balance these, potential recurring savings are thought to be possible with more people electing to arrange support at home as opposed to in residential accommodation. There is also evidence that people who are given direct control of a resource can and do use it in more cost-effective ways as they can be more flexible and creative. In contrast to the increased demand for support that is self-directed, there may also be a reduction in “wasted” or “unwanted” provision of arranged services, as individuals tailor their needs to a specific budget rather than simply use whatever services are provided. Systems changes should also reduce bureaucracy with some administration costs transferring to individual citizens (for instance, costs of liaising with providers).

79. In the long term (that is, once change has been effected) a shift towards self-directed support (in practice, greater uptake of options 1 and 2 in the Bill) is expected to be broadly cost-
neutral, so the recurring costs and savings will be expected to cancel each other out. This is borne out in the Scottish context by research commissioned by the Government from the University of Stirling, which found that self-directed support packages are roughly similar to standard arrangements in terms of hours. The study found no significant difference between direct payment users and those receiving traditional community care services in terms of hours of care, and predicted no significant rise in demand or reduction in service as a result of self-directed support. The study acknowledged that the cost of providing social care services in Scotland will continue to rise but noted that this would not be as a result of the shift to self-directed support, but from increased need for services, which arise from changing demographics.  

80. The IBSEN study in 2008, a study of the personalisation pilot sites in England, found that the difference in the mean weekly cost of support funded by an individual budget and for standard mainstream services was not statistically significant.

81. Taken together with the Stirling findings, the Government views this as an indication that, in the long term, self-directed support is broadly cost-neutral, with increases in social care costs more likely to arise from wider changes in demographics and other associated factors. As costs are difficult to estimate for the multiple factors which feed into cost-neutrality, implementation activity associated with the Bill and the strategy will include ongoing monitoring of this situation.

82. In terms of recurring savings, or, more accurately, the potential for avoided costs, there is tentative evidence that people directing their own support can help to avoid or reduce costs to other public agencies. For example, Alzheimer Scotland conducted a pilot project across three local authorities in Ayrshire, supporting people with dementia and their families to choose self-directed support. Interim reports indicated that costs of self-directed packages can be significantly lower than the cost of residential care which is the main alternative for many people with dementia. Data from the pilot revealed that the total cost of direct payment packages for 6 people with dementia was £880 per week. This compared to the equivalent weekly cost of a residential care placement at £474 per person per week, amounting to £2,845 per week across the 6 individuals. The study estimated a potential cost saving of £1,965 per week, equating to £102,180 per year. Though small in scale and limited in terms of social care client group this evidence demonstrates that personalised, creative and flexible care plans, underpinned by direct payments or other self-directed arrangements, have the potential to assist people with dementia to stay in their own homes for longer, and thus defer the costs of residential care.

**Costs to Scottish Government**

83. As self-directed support is expected to be cost-neutral in the long term, there is not expected to be a long-term demand for increased funding within the annual local government finance settlements arising from this new framework of choice. Some of the savings that are expected to accrue from self-directed support, in terms of the long term health benefits, may

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accrue to bodies such as the NHS rather than local authorities.\textsuperscript{16} However, as health and social care become more integrated, it is expected that the boundaries between these budgets will be more flexible.\textsuperscript{17}

\textit{Costs to local authorities}

84. All local authorities are at different stages in the growth of the self-directed support agenda, meaning that costs will vary widely.

\textbf{Social care assessments}

85. Self-directed support is predicated on outcomes-based assessment, which is considered best practice and for social workers who already conduct assessments in this way, change will be minimal. For those who do not, there may be an increase in length and complexity of assessment as discussion of outcomes and choice of self-directed support options are built in. Responses to a recent COSLA survey of local authorities varied considerably on the need for increased capacity amongst care managers to cope with these changes, and reflected the different stages of local authority development. In mitigation of any increased cost that might arise from a longer and more complex assessment, review and monitoring, the Stirling study found that 2 out of 3 local authorities thought the level of monitoring and review needed for direct payments was not significantly greater than that needed for traditional care management and indeed that as systems for assessment and monitoring became more streamlined, more responsibility could be handed to users, potentially freeing up care manager time to be reinvested elsewhere.\textsuperscript{18} Savings were anticipated from the reduced role that local authorities would play as care commissioners, which could offset the costs associated with transformation, although the timescale for such savings is unclear. A separate study in England noted that ‘the fact that the support planning process took longer was seen as offset by the fact that the plans were less likely to require revision because of the process by which they had been completed’.\textsuperscript{19}

86. Some stakeholders, including local authorities and user-led organisations, have speculated that there may be a growth in demand for social care assessments as new clients present. This would arise from people who are eligible for local authority support but have chosen not to take it in the past, now attracted by the increased choice and control available to them. It is difficult to quantify how many people, if any, this might involve, and the Stirling study concluded that what it terms the ‘woodwork effects’ of self-directed support are uncertain.\textsuperscript{20} This effect was seen with greater than expected uptake of local authority free personal care services, following the passing of the Community Care & Health (Scotland) Act 2002. However, that Act made freely available a service which previously users had faced charges for. The most flexible form of self-directed support, the direct payment, has been legally available in Scotland since 1996 and has not resulted in a noticeable increase in demand for


\textsuperscript{18} Rummery, K., Bell, D., Bowes, A., Dawson, A. & Roberts, E. (2012) op. cit.


\textsuperscript{20} Rummery, K., Bell, D., Bowes, A., Dawson, A. & Roberts, E. (2012) op. cit.
These documents relate to the Social Care (Self-directed Support) (Scotland) Bill (SP Bill 10) as introduced in the Scottish Parliament on 29 February 2012

social care provision overall. Therefore, it is the view of the Government that it is unlikely that there will be a significant increase in people presenting to local authorities for assessment as a result of this Bill. Any increase in presentations is more likely to be a result of demographic change and an ageing population and additional costs in response to the Bill are not anticipated in this respect.

Information about self-directed support

87. Section 8 in the Bill requires local authorities to explain the nature and effect of each of the options for self-directed support, to give people information about how to manage their support and to signpost people to sources of information and advice, including independent sources. All of these must be given in writing and in any other form as is appropriate to the needs of the person. The requirement to provide information in writing and any other form as is appropriate is in line with the duty to make reasonable adjustments set out in the Equality Act 2010, section 20(6). Local authorities already have a duty to comply with this. Where they do not already do so, it is expected that local authorities will develop generic material to describe the nature and effect of options, and this will come under short-term transformation costs, discussed below. Local authorities already provide funding to self-directed support advice organisations in their area. Some provide an in house service (about a quarter of local authorities), others outsource the service (about a half). Some do both, and some make other arrangements. In addition, there are independent sources of advice and support which may not receive local authority support.

88. Nevertheless the Stirling study noted the importance to self-directed support users of investment in advice and advocacy services. The Government’s view is that local authorities will not require to set up or fund significant numbers of new organisations, but will need to work with existing organisations to ensure efficiency, effectiveness and value for money. One of the aims of the short-term funding for independent support and advice services (see paragraph 99) is to help address this. The National Strategy Implementation Group subgroup on support will be monitoring and evaluating all the activities funded by this money, with a view to identifying which provide best value for money. This is intended as a guide for local authorities seeking to commission services and support in the future, to ensure cost effectiveness as well as sustainability and capacity.

89. Taking account of the Stirling study’s findings, and with the growth of self-directed support, there is expected to be a change in the size and shape of demand for access to information and advice. Current self-directed support policy is focused on direct payments, which are generally the most resource-intensive choice in terms of requirements for information and advice. However, they can also remove certain burdens from the local authority such as day-to-day administration, which typically transfer to individuals.

Assistance for service users

90. The Bill also requires local authorities to take reasonable steps to ensure that supported people can make an informed choice, which can include involving relatives and friends of the supported person to assist them in making decisions about relevant matters. This concept of ‘circles of support’ is in line with best practice under the Adults with Incapacity (Scotland) Act

2000. Guidance under the Bill will clarify what “reasonable steps” under section 5(4) in the Bill will mean in practice. For instance, it should not involve unreasonable and costly processes. The involvement of close family and friends is common practice for social work, particularly where the supported person requires such assistance and therefore no additional costs specific to this Bill are expected to arise.

Costs to others

Care and support providers

91. Recurring costs for providers are expected to centre around administrative and workforce issues. Changes to contracting - a move away from block contracting to framework and spot contracting - and requirements for a more flexible workforce will create greater uncertainty around business planning and incur higher risk premiums. As with local authorities, providers are at different stages in adopting self-directed support. Some are already offering the flexible, personalised services that individuals want, and expanding into new areas to meet demand; others are further behind. This makes it difficult to estimate potential costs, because they will vary so widely. However, providers will be able to focus on providing good, high quality services that people want. Evidence from England suggests that service users are willing to pay for the factors they consider important. Providers have the opportunity with self-directed support to grow and expand in flexible ways, providing a tailored and valued service.

Individuals

92. Individual service users, and in some cases their carers, may face an increased administrative burden if they choose to take the direct payment option. This is not new – this choice has been legally available since 1996, and this Bill does not increase the existing burden. They may choose to outsource some tasks but if not this requires an investment of their time. They will need to find and secure the support they require, keep detailed records and submit returns as required. Where a person chooses to become an employer they also take on the administrative duties associated with that, such as advertising a post, interviewing, setting up contracts, dealing with tax, national insurance and other requirements and managing staff. There is a scarcity of specific cost data in relation to this aspect. However, although individuals may face an increased administrative burden, and a financial cost if they choose to outsource tasks (for example to a brokerage organisation or a payroll provider), this is through their own choice and is not imposed upon them.

Short-term implementation costs

93. Consultation, research and continuing dialogue with stakeholders confirms that short-term implementation costs associated with the ‘framework’ provisions of the Bill are expected to be in the following areas:

- Transformation costs;
- Activities to support culture change, training and workforce development and publicity activities associated with the Bill; and
- Access to information and advice.

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Costs to Scottish Government

94. A shift to self-directed support is already happening in Scotland, but the Bill accelerates the pace of change. Although no direct costs fall on the Scottish Government as a result of the Bill, implementation of the legislation will lead to a range of costs to the sector which the Government will fund, in particular the short term non-recurring costs needed to effect a change in approach and culture. The Government invested £3.4m in 2011/12 and will invest a further £39.5m over the next 3 years, providing additional funding to local authorities, care and support providers and support organisations to support the implementation of the Bill and associated strategy.

Transformation costs

95. A large portion of the available Scottish Government funding - £2.22m in 2011/12 and an expected £29m over the next 3 years – is allocated to transformation costs which fall on both local authorities and care and support providers. More detail on this is set out in paragraphs 101 to 106 and 110 to 113 below. Transformation costs are not considered to be directly associated with Bill implementation. They are associated with a shift in culture and processes, which is vital to the spirit of self-directed support, but not necessarily required by the law. Transformation requirements will be different for each local authority and provider, and are not prescribed by the Government.

Training and awareness

96. Costs arising from training and awareness raising can be split into two – specific Bill related training and awareness raising in the wider workforce. Costs for those parts of the workforce with specific duties to carry out under the Bill – social workers and some NHS staff – are set out in paragraphs 107 to 109 and 130 to 135. Together, these Bill-specific costs amount to £1.412m (£0.682m under this framework heading and £0.73m under the heading of joint working with the NHS). These costs will be spread over two years (2012/13 and 2013/14) as these will be the key years for preparation for and then enactment of the Bill. These costs arise directly from the Bill as they are essential to ensuring that the relevant professionals know about the duties being placed on them and are aware of how they should be fulfilled.

97. In addition, the Government recognises that it has an important role in raising awareness and enshrining the values and principles of self-directed support amongst the wider workforce at a national level. This is not directly associated with Bill implementation as it is for people who do not have any duties placed on them by the Bill. As with transformation costs, the Bill can be enacted without this but it is a key part of the accompanying cultural shift in the national self-directed support landscape. The National Strategy Implementation Group workforce subgroup is looking at what activity is necessary, and the Government will provide £3.088m over 3 years to achieve this.

Advice and support services

98. Section 8 in the Bill requires authorities to direct individuals to sources of assistance or information to help them to make decisions about the options and to manage their support. The duty itself is relatively narrow, and is considered to have minimal cost as it is simply signposting. However, to ensure that the Bill is implemented in an effective way there must be sufficient capacity amongst advice services. Although there are already a variety of sources of
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independent advice and support in Scotland, the sector will need to build its capacity to meet a change in the size and shape of demand. Sustainability and geographical spread are also important, to ensure that everyone who wants to access them can do so in addition to any local authority provided services.

99. The Government recognises a short-term need to help the independent sector to identify areas for development and support growth. After a bidding process, £1m was allocated to begin this process in 2011/12. A further £2m per annum will be allocated over the next 3 years. These costs are not considered to arise directly from the Bill. It is not intended to set up a large number of new organisations in order to meet demand. Independent advice and support services already exist in Scotland and the Bill simply requires local authorities to signpost individuals to them. Potential increases in demand for these services are difficult to estimate, given that this will very much depend on individual choices, and difficult to assign specifically to the Bill, given that the Bill is expected to have a gradual impact on the choices that individuals make. These costs are therefore considered to be part of the wider strategy push to ensure that individuals have access to an effective, convenient choice of services.

Costs to local authorities

100. Direct payment guidance issued in 2007 indicated the necessity for local authorities to begin shifting the basis of their existing budgets to take account of self-directed support and at that time an additional £2m per annum was provided in the Grant Aided Expenditure (GAE) to mainstream self-directed support. However, this has not been sufficient to deliver the necessary changes and further investment is required.

Transformation costs

101. The majority of short-term implementation costs associated with the Bill will fall to local authorities, and therefore the majority of Government funding will be invested here. Transformation costs are the largest area. This heading covers a number of areas, including:

- Bridging finance;
- Leadership;
- Commissioning and contracting;
- Systems (such as IT and accounting);
- Development of information material;
- Administration (including back office requirements); and
- Reporting requirements.

102. Of these, bridging finance has been the most difficult to estimate with any certainty. The case for bridging finance arises from the fact that local authorities will have social care contractual commitments spread over several years with a provider or groups of providers, or significant investments in buildings-based facilities such as day centres. Should service users choose to move away from these services under self-directed support, local authorities would continue to be expected to comply with commitments to retain day centre facilities or block contracts until the end of their contract period. Depending on the number of people that choose
to move, this would carry the potential to create double funding pressures for local authorities, who would be required to fund both the new care packages and the existing contracts. However, while many in local authorities have said that bridging finance is necessary the evidence sources available to the Scottish Government have demonstrated that there is little clarity on how much is required. Variables affecting the level of bridging finance necessary include:

- the stage the local authority has already reached with the reform of their contractual commitments and disinvestment in or diversification of buildings-based facilities - in many local authorities this is occurring independently of self-directed support;
- the numbers of supported people who actually choose to change the mechanism by which their support is provided. Unlike England, in Scotland there are no targets in this regard as it is believed that self-directed support should be available to all yet imposed on no one. The Government does not anticipate a ‘big bang’ shift in individuals directing their own support;
- the mechanism chosen by an individual wanting more control over their support. (Bridging finance needs will be most acute where an individual chooses a direct payment and local authorities are therefore required to liquefy resources. However, evidence from England is that increasing numbers are choosing to direct the available resource, rather than take a direct payment\textsuperscript{23}); and
- the numbers of people choosing to direct their own support who will seek radical change (a study in England found that, of people who had received a direct payment or personal budget, 41% had changed nothing about their support, 29% had changed a little, 23% had changed a lot and only 7% had changed everything\textsuperscript{24}).

103. Bridging costs are therefore sensitive to a variety of circumstances. While the Stirling University study concluded that the systems required to support self-directed support would not be significantly different from traditional community care services and direct payments, it also concluded that some costs would be incurred in the development and implementation of these systems.\textsuperscript{25}

104. In England, £520m was made available to local authorities for transformation over 3 years (2008-2011) to support reform and redesign of the system. Based on a 10% share, a Scottish equivalent would be £52m over 3 years. However, in the absence of a formal evaluation it is difficult to come to firm conclusions on how this money has been spent and how effective it has been. In addition, the money in England was to meet specific and stretching targets which included moving 30% of service users on to a personal budget by April 2011.

105. Various estimates of the cost of bridging and transformation in a Scottish context have been made, with varied results, as set out in table 2 below. There has been no published estimate of macro-level whole systems transformation in Scotland and therefore the various projections below are used as a best estimate of potential scenarios.

\textsuperscript{24} Wood, C. (2010) op.cit.
\textsuperscript{25} Rummery, K., Bell, D., Bowes, A., Dawson, A. & Roberts, E. (2012) op. cit.
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Table 2: Estimates of the cost of bridging and transformation in Scotland (£m)

<table>
<thead>
<tr>
<th>Source</th>
<th>Amount per annum</th>
<th>Timescale</th>
<th>Scope</th>
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<tr>
<td>Glasgow^26</td>
<td>0.52m</td>
<td>3 years</td>
<td>Transformation of all learning disability services</td>
<td>4.6 pa*</td>
</tr>
<tr>
<td>West Dunbartonshire^27</td>
<td>0.14</td>
<td>3 years</td>
<td>33% of learning disability daycare recipients moving to direct payments per annum</td>
<td>8.96 pa**</td>
</tr>
<tr>
<td>Edinburgh^28</td>
<td>0.393</td>
<td>3 years</td>
<td>2.35% of homecare clients switching to direct payments and moving away from local authority services</td>
<td>5.632 pa**</td>
</tr>
</tbody>
</table>

*2010 prices **scaled up to 2011/12 prices from 2003/04 prices using a factor of 1.28, taken from the indices for Personal and Social Services, for Local Authorities, Child and Adult Services, published by PSSRU

106. The estimates above average out at £6.397m per annum, or £19.192m over 3 years. It is possible that costs may be slightly higher, because of the breadth of transformation required and therefore the Government will provide £23m over the next 3 years to assist with transformation, based on an implementation period of 3-5 years. This equates to £6m in 2012/13, £11m in 2013/14 and £6m in 2014/15 – the increase in year 2 is to support the expected increase in activity as the Bill comes into force. It will build on the commitment of £1.12m in 2011/12 - £0.035m per local authority, to build on existing work and support the development of self-directed support in every local authority. The Government is currently in negotiation with COSLA about how this transformation funding will be allocated. Any additional transformation costs not covered by this funding would need to be covered from within local authority budgets. At the current time, and for the next few years, the Change Fund for Older People will provide a potential source of additional transformational resource. Although this is specifically for older people, this encompasses the majority of social care clients.

Activities to support culture change, training and workforce development and publicity activities associated with the Bill

107. The Bill places duties on staff who have responsibility for social care assessments and for the arrangement and ongoing monitoring of support packages. This means that there will be additional costs associated with providing training to the relevant staff - local authority social workers, social work teams and their managers - on their legal obligations under the Bill. These Bill-specific training costs have been estimated on the basis of a) the development of a comprehensive training module and materials and b) delivery of training to all relevant staff.

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^27 Direct Payments Scotland (2003) Direct Payments Finance Project Report. Direct Payments Scotland. This report is also known as the Reid report.

^28 ibid.
Costs are based on estimates from other comparable pieces of legislation\textsuperscript{29}. The estimated cost for the training module is £0.1m. If costs are higher, there is flexibility for this to be met from within the allocation for wider workforce development (discussed above at paragraph 97). The estimate for delivery to relevant staff is £0.582m. This is based on an assumed cost of £500 per day for the services of a consultant to deliver training (although this may be done by the SDS lead in some local authorities). It assumes one day’s training per person, with an average of 15 people per session. This was scaled up to take account of all relevant staff who will require training on the duties set out in the Bill. It is not possible to be accurate about how many relevant staff there are across Scotland. However, using the most recent breakdown of the overall social care workforce, the number is likely to be between 13,446\textsuperscript{30} and 17,462\textsuperscript{31}. The cost calculation is based on the higher figure, although this is likely to be an overestimate, to allow for contingencies. The overall cost for Bill-specific training to local authority staff is therefore calculated at £0.1m for the training module and £0.582m for delivery, or £0.682m overall. This will be spread over two years, 2012/13 and 2013/14, as these are the key years for preparation for, and then enactment of, the Bill.

108. The Scottish Government will cover this cost. However, local authorities will need to allow staff time for the relevant awareness raising and training. It is expected that this will fit into existing staff training time allowances.

109. It is envisaged that training on the Bill provisions will eventually form part of Continuous Professional Development requirements for the relevant social care staff, and will also feature in training programmes for new entrants. Work to further integrate the principles and practice of SDS into existing and planned professional programmes is already underway through the strategy implementation workforce subgroup. This group is contributing to the review of National Occupational Standards for social care and liaising with NHS Education for Scotland (NES) and Scottish Social Services Council (SSSC).

\textit{Costs to others}

110. There are no direct duties on care and support providers in the Bill and therefore no direct costs on them arising from it. However, they will need to reform how they deliver services to respond to the changing climate. The Government will assist with this reform, incurring costs to itself. It is expected that transformation costs for this sector will centre around:

\begin{itemize}
  \item Systems (such as IT and accounting); and
\end{itemize}

\textsuperscript{29} Protection of Vulnerable Groups (Scotland) Act 2007 and Adult Support and Protection (Scotland) Act 2007.
Calculation is based on table 9, and includes all staff counted under the following categories: senior managers etc, social workers, other qualified fieldwork staff and social work/OT assistants.
Calculation is based on table 17, and includes all staff of class 3 and above. This is based on the function descriptions provided in the equivalent 2010 report (Scottish Government (2010) \textit{Staff of Scottish Social Work Services, 2009}. [Online]. Available at: \url{http://www.scotland.gov.uk/Publications/2010/07/01092227/0} [Accessed: 10 January 2010]) at 11.18. This is likely to be an overestimate for the purposes of this Bill, as it includes some categories of staff who are unlikely to have responsibilities set out above. However, in the absence of more accurate data it is a useful guide.
These documents relate to the Social Care (Self-directed Support) (Scotland) Bill (SP Bill 10) as introduced in the Scottish Parliament on 29 February 2012

- Administration (including back office requirements).

111. There has been no estimate of transformation finance requirements for providers, and as with local authorities, these will be uncertain and will vary by provider. As supported people exercise more choice and control, it may be that some providers will lose business or need to significantly change the services that they provide in order to survive. However, it is likely that other providers will thrive and flourish, leading a vibrant, innovative provider sector.

112. The Government has provided £0.1m in 2011/12 to the Coalition of Care and Support Providers in Scotland (CCPS) to oversee transformation for providers, and this funding will continue (likely at a rate of approx. £0.07m per annum) for the next 3 years. In addition, after a bidding process, the Government has allocated £1m in the second half of 2011/12 to deliver increased capacity and transformation amongst providers. The Government intends to sustain this funding, at a level of £2m per annum for the next 3 years, to build on and sustain this approach. It is expected that this will equip providers with the tools to be more personalised and flexible in their approach.

113. As with costs to local authorities, any transformation costs to providers not covered by Scottish Government funding would need to be covered from within their own budgets. As these costs are not known, and will vary by organisation, it is difficult to estimate what these might be.

SUPPORT TO CARERS

114. The Bill provides a power for local authorities to provide support to carers in their own right. A similar power has been available to local authorities in England since 2002.

Potential savings arising from support to carers

115. Support to carers in order to help them to continue in their caring role can help to avoid or minimise costs that might otherwise have to be borne by the state. Demographic change and the current fiscal situation are likely to impact on both the number of carers and the pressure on resources and the Bill’s power to support carers allows for greater flexibility in the allocation of scarce resource. Research into the economic value of the support provided by carers puts the figure for Scotland at £10.38bn per annum based on an estimated 517,387 unpaid carers nationwide. The available evidence points to current and potential future savings across health and social care arising from effective support to carers. Support to carers, as underpinned by the Bill, is an example of preventative spend, where comparatively modest expenditure in the short-term can avoid or negate significant costs to other agencies at a subsequent date.

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Current support for carers

116. The Scottish Government invested £15.8m in support to carers and young carers during the period 2007-11. In 2011-12, the budget for carers support increased to £8.4m. Spend over the current Spending Review cycle is projected to be £8.7m per annum. In addition, at least 20% of the Change Fund for older people will be dedicated to supporting carers. In 2012-13 this Change Fund is £80m, therefore the share for support to carers should amount to approximately £16m. Local authorities’ net revenue expenditure on support for carers, including respite care, was £100m in 2006-07, £117.034m in 2007-08 and £134.74m in 2008-09.

Costs to Scottish Government

117. The Bill provides a statutory basis for what is already a routine and ongoing cost for local authorities. As such, the Bill itself should not place any new costs on the Scottish Government. It simply adds a further dimension to carers’ support, in providing that carers can direct their own support, and local authorities will have to consider how they respond to a demand for increased flexibility in the provision of support to carers. As such, there will be no specific additional costs arising to the Government from this part of the Bill.

Costs to local authorities

118. Again, as the Bill provides a statutory basis for existing actions the overall funding pot available to support carers will not be affected by the Bill.

119. The main reform is in how carers might choose to access the available resource and, consequently, in how local authorities provide it. It is impossible to forecast with any degree of certainty how support to carers might divide in future years between the main options of i) information and advice, ii) service provision, or iii) self-directed support options such as direct payments. However, it is possible to examine data from England, where a similar power has been in place for around a decade, and consider the potential distribution if Scotland was to follow a similar pattern. English data from 2008/09 indicated that of those carers receiving some form of support around 42% received “information and advice only “and 58% received what was termed a “carer specific service”. A smaller proportion of the overall carers support “interventions” (around 10%-15%) appear to have been direct payments. This represents approximately 0.5% of total carers. Spend on direct payments for carers is a voluntary return, and so data is only available for 20% of local authorities in England. For these local authorities, the average direct payment to a carer was £1,775 per year. The average conceals some degree of variation, with around half of local authorities reporting an average value of direct payment to carers of less than £600 per year. This compares to the average cost of a direct payment to a supported person of £6,377 per year.

120. If Scotland were to follow a similar pattern to England and approximately 0.5% of carers were to choose to access support from local authorities as a direct payment, this would mean around 3,000 carers receiving direct payments. Putting a monetary value on this support is

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difficult, due to the range in support discussed above, but it may be between £2.1m and £5.8m.\textsuperscript{35} This does not represent increased financial requirements for local authorities, but is rather a transfer of resource between service types.

121. A further financial impact, raised by some respondents to the Bill consultation, was the potential for an increase in the number of carers seeking assessment in response to publicity surrounding the Bill. The Scottish Government does not collect data on the number of carers assessments completed annually. However, several Freedom of Information (FOI) requests have been made to local authorities in recent years, and these would suggest that it is reasonable to conclude that around 6,000 - 7,000 “formal” local authority-led carers assessments take place per annum; in other words, assessments completed by local authorities in relation to carers who provide a substantial amount of informal care on a regular basis. This is thought to mask quite a high number of informal assessments completed locally by carers’ organisations and self-assessments\textsuperscript{36}. It is reasonable to conclude that the volume of carers’ assessments in Scotland is not significantly lower than in England and would not be expected to rise substantially in response to the Bill. Equally, however, the Carers Strategy, published in 2010, suggests that there is a need to improve both the uptake and quality of carers’ assessments. There may well continue to be an increase in both formal and informal assessments, but this will be in response to wider work on the implementation of the Carers Strategy rather than in response to the Bill.

**Costs to others**

122. Carers’ centres may face increased demand for their services, if more carers look to them for advice and support. However, they can access the Government funding intended to support access to information and advice which can help them manage this demand. Where a carer takes on a direct payment, then they also take on the additional administrative burdens that entails. As with supported people, it is important to note that, although individuals may face an increased administrative burden, and a financial cost if they choose to outsource tasks, this is a choice available to them and is not a cost that is imposed on them. Carers’ Information Strategies (funded through existing Government investment outlined above) and more general self-directed support information and advice services will assist the carer in making informed choices and managing their support.

**DUTIES IN RELATION TO DIRECT PAYMENTS**

123. Existing legislation relates to direct payments rather than self-directed support (direct payments are a mechanism of self-directed support). The Bill and regulations made under it will consolidate existing laws on direct payments, clarifying the rules for service users and providers and modernising the law.

**Costs to Scottish Government**

124. No costs to the Scottish Government arising from this section of the Bill have been identified.

\textsuperscript{35} The lower figure assumes a cost of direct payment of £650, the median cost in England, and the upper a cost of £1,775, the English mean.

\textsuperscript{36} For example, Glasgow City Council has developed self-assessment for carers in partnership with a wide range of statutory and voluntary agencies.
Costs to local authorities

125. This section of the Bill includes regulation making powers. The exact content of regulations has yet to be determined but is likely to include the following:

- the ability to employ a close relative in certain circumstances; and
- the ability to choose whether to receive a direct payment gross or net.\(^{37}\)

Employment of close relatives

126. The ability to employ a close relative is not thought to give rise to additional costs. It would be to replace costs that would otherwise be incurred through the provision of services to the supported person. Under the regulations the decision on whether or not to sanction the employment of a close relative will continue to rest with the local authority and will be subject to meeting a range of tests regarding “appropriate” and “inappropriate” circumstances. It will require the same monitoring and review as any direct payment.

Costs arising from a person’s ability to choose whether to receive their direct payment gross or net of their individual contribution or “charge”

127. Under the Bill and associated regulations, it is expected that individuals will be able to choose whether they wish to receive their direct payment gross or net of their individual contribution or charge. This reflects current statutory guidance on self-directed support. Payments on a gross basis incur administrative costs to local authorities that are otherwise avoided with a net payment. This is due to the separate billing and collection systems and, in a small number of instances, potential loss of resource due to an element of non-recovery or write off of charges which are avoided by the individual. If all people in receipt of a direct payment chose to take it gross, then this would give rise to administrative costs for local authorities who do not currently pay them that way. In practice, however, it is not anticipated that significant numbers of people will choose this. For most people, net payments will be more administratively convenient, and so we would expect the cost impact to be minimal.

Direct payments for residential accommodation

128. A further regulation making power is around the use of direct payments to fund residential care. It is the intention of the Government to work towards removing the current restriction on using direct payments in this way. This may have some effect on the National Care Home Contract, which is in any case renegotiated on a regular basis. Any regulations on this matter would be consulted on and known far enough in advance for negotiations to take them into account.

Costs to others

129. Where an individual acquires administrative duties in relation to choices they have made as a result of regulations laid, as with supported people and carers, it is important to note that,

\(^{37}\) Currently most local authorities pay direct payments net of individual contribution. However, some direct payment users would like to be paid gross – this is a point of principle, to ensure parity with non-direct payment users, who are not charged for services in advance.
although individuals may face an increased burden, and a financial cost if they choose to outsource tasks, this is through their own choice and is not imposed upon them.

JOINT WORKING WITH THE NHS

130. Where social work functions are delegated to the NHS the Bill will enable the self-directed support duties to be delegated as well.

131. Costs are associated with the training and awareness-raising implications of this delegation, with specific implications for the awareness of those health professionals who are most likely to undertake social care assessments or joint assessments. For NHS staff, unlike local authority staff, no prior knowledge of self-directed support can be assumed and therefore awareness raising will need to address their specific needs and take account of the greater cultural shift required. These costs arise directly from the Bill as they are essential to ensuring that the relevant professionals know about the duties being placed on them and are aware of how they should be fulfilled.

Costs to Scottish Government

132. Activity to raise awareness in the wider NHS workforce will fall under the wider strategy workforce awareness raising mentioned above at paragraph 97. In addition to this general activity, Bill-specific costs arise for the variety of NHS professionals who will need to be aware of the duties that they may have to discharge as a result of the Bill, if duties are delegated to them. The National Strategy Implementation Group workforce subgroup is working with NHS Education for Scotland (NES) to talk about training requirements, and self-directed support pilots in NHS Lothian and NHS Fife have been developing a training module for health service staff, which will be available to all by the time this Bill is enacted. The NHS Lothian pilot is also in negotiation with Napier and Queen Margaret Universities in Edinburgh about an e-learning module for pre-qualification training for NHS staff. This means that the development of training modules has already been funded, and the costs arise from delivery of training to the relevant staff. The estimate for this is £0.73m. This is based on the same formula as described in paragraph 107 – an assumed cost of £500 per day for the services of a consultant to deliver training, and one day’s training per person with an average of 15 people per session. This has been scaled up to take account of the number of relevant staff. The workforce subgroup has determined that this group is likely to comprise occupational therapists, physiotherapists, community nurses, mental health nurses and community psychiatric nurses. This is a potential 21,883 people.\(^{38}\) As with local authority staff, this is likely to be an overestimate. However, bearing in mind the health and social care integration agenda and the need to look ahead and build capacity for joint working in the future, it seems sensible to provide contingency for large numbers.


Sum of the following categories: in Nursing and Midwifery – community nurses, district nurses, mental health nurses, learning disability nurses, other; in Allied Health Professionals – occupational therapists, physiotherapists, speech and language therapists, multi-skilled.
133. The £0.73m estimated cost is all concentrated in 2013/14. This is the year in which, if passed, the Bill is expected to be enacted, and therefore training costs are expected to arise there. However, there is flexibility within the allocation for wider workforce development (discussed above at paragraph 97) which would allow costs to spill into other years if necessary.

**Costs to local authorities**

134. No costs to local authorities arising from this section of the Bill have been identified.

**Costs to others**

135. NHS boards will need to allow staff time for the relevant awareness raising and training. It is expected that this will fit into existing staff training time allowances, and that there would be no additional costs falling to NHS Boards.

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**SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE**

136. On 29 February 2012, the Cabinet Secretary for Health, Wellbeing and Cities Strategy (Nicola Sturgeon MSP) made the following statement:

“In my view, the provisions of the Social Care (Self-directed Support) (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

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**PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE**

137. On 28 February 2012, the Presiding Officer (Tricia Marwick MSP) made the following statement:

“In my view, the provisions of the Social Care (Self-directed Support) (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Social Care (Self-directed Support) (Scotland) Bill introduced in the Scottish Parliament on 29 February 2012. It has been prepared by the Scottish Government to satisfy Rule 9.3.3(c) of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 10–EN.

POLICY OVERVIEW

“Self-directed support is a term that describes the ways in which individuals and families can have informed choice about the way support is provided to them. It includes a range of options for exercising those choices…. available resources can be used so people can have greater levels of control over how their support needs are met, and by whom.”

Scottish Government, Self-directed Support Strategy (November 2010)

“The Commission supports the wider principle of individuals having a greater say in how public resources are used, and how services are provided…take-up of current opportunities for self-directed support has been low and action is needed to build capacity and awareness to encourage broader participation.”

Christie Commission on the Future Delivery of Public Services, June 2011

2. Demographic change, reductions in budgets and rising expectations from citizens present three significant challenges for Scotland’s health and social care sector. In response our public services should be of the highest quality, continually improving, efficient and responsive to people’s needs. The Scottish Government is addressing the challenges ahead through a range of policies including the NHS Quality Strategy, reshaping care for older people, the closer integration of health and social care and a variety of strategies on carers and young carers, people with dementia, autism, people with mental health problems and, in relation to children and young people, Getting it right for every child.¹

3. The Scottish Government’s policy to grow and develop self-directed support for social care (a concept which embraces direct payments but goes beyond one particular mechanism) helps to address the Christie Commission’s recommendation and it helps to address the third of the challenges listed above: rising expectations from users. In recent years a number of prominent reports, including the Scottish Independent Budget Review, NESTA’s Radical Scotland and the 2020 Public Services report, have recognised the necessity, in the words of the Christie Commission, to ensure that services are “built around people and communities, their needs, aspirations, capacities and skills”. The further development of self-directed support will help to respond to this call.

4. It is also clear from the available statistics that there is scope to increase the number of people who direct their support. Since 2001 the number of people receiving direct payments (one of the mechanisms of self-directed support) has increased from 207 (in 2001) to 4,392 (in the year to 31st March 2011). However, direct payment users remain a small proportion of social care clients. It is estimated that more than 200,000 adults and nearly 16,000 children receive some form of social care and support. This includes approximately 64,000 people who receive home care, 111,000 with Community Alarms or Telecare systems, 10,000 who receive meals services, 23,000 who attend day centres and 38,000 people in care homes. Also, direct payments remain more common among physically disabled people compared to other client groups such as people with learning disabilities, people with mental health problems, older people and people with dementia. This means that despite the strides taken in the past 10 years the conclusions of the Scottish Parliament’s Health Committee in 2006 remain pertinent:

“direct payments in Scotland are still running at half the level of England and Wales. There is also a wide variation in take-up across Scottish local authority areas. There is significant scope for those local authorities that still exhibit low take-up rates to engage at the level of those with higher take-up rates.”

BACKGROUND

5. The roots of self-directed support can be traced to the activism of disabled people in Hampshire in the late 1970s where direct payments were one of a range of solutions to a lack of choice and control for disabled people. In recent years there has been a further evolution in approach. A number of authorities have worked with people to develop new mechanisms which can include the direct payment option. Examples include individual budgets, personal budgets...
This document relates to the Social Care (Self-directed Support) (Scotland) Bill (SP Bill 10) as introduced in the Scottish Parliament on 29 February 2012

and individual service funds. The Bill reflects this evolution in practice whereby the direct payment option is one of a range of options of self-directed support.

6. A significant body of research evidence has concluded that people using self-directed support can achieve a better quality of care and support and an improvement in the outcomes which they achieve.

7. The key benefits are summarised below:

- Individuals can enhance their health and wellbeing through exercising greater choice and control over their support. Self-directed support can encourage and sustain independent living (the principle that all disabled people having the same freedom, choice, dignity and control as other citizens at home, a work and in the community) foster better engagement with the community and provide a greater sense of citizenship. In addition, unpaid carers can benefit indirectly when the person they care for has greater choice and control over their support. A study completed by Stirling University on behalf of the Scottish Government noted that individual budgets were found to positively impact on carers’ quality of life.

- Local authorities and providers have a close interest in delivering high-quality services which respond to and meet individual needs. Self-directed support enables people to have the support that they want, and when and where they want it. It focuses on maximising individual choice and control, eliminating waste and providing a system that is accessible and better suited to the needs of the whole person.

- For the public sector as a whole good quality, well targeted support can help to reduce pressure on the health sector and those parts of social care services which deal with crisis or emergency assistance. This supports Scottish Government targets for the NHS, and fits with the aims to stay healthier longer and to tackle health inequality.

8. Drawing on this body of evidence - and recognising the pressing need for change - the Scottish Government, together with COSLA, published in November 2010 the National Strategy on Self-Directed Support. The strategy seeks to encourage a significant increase in the number of people who actively direct their own support. The Bill’s contribution will be to lay a clear framework in law, one which will enable professionals and citizens to deliver improved outcomes for individuals.

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CONSULTATION

9. Proposals for legislation were first discussed by the Self-directed Support National Reference Group in 2009.

10. In summer 2010 the Scottish Government completed a 12-week consultation on outline proposals for legislation. The government received 130 written responses and held 12 consultation events across Scotland. The analysis from the consultation concluded that there was strong support for legislation from the majority of respondent groups.

11. Between December 2010 and March 2011 the Scottish Government held a further consultation on a draft Bill. Written responses were invited, including responses via an on-line questionnaire. A total of 113 responses were received including 28 from local authorities. On behalf of the then Minister for Public Health and Sport, officials held six consultation events across Scotland involving more than 200 attendees. This included events with the Glasgow Centre for Inclusive Living, Alzheimer Scotland and a national discussion event in Stirling which was attended by local authority social workers, lawyers and commissioning staff. Mirroring the first phase of consultation there was strong support to introduce a Bill but a range of views on items of detail. The relevant consultation documents, analysis reports and Scottish Government responses can be found at the following hyperlinks.

Consultation on outline proposals (March – June 2010)
- Consultation documents
  [http://www.scotland.gov.uk/Publications/2010/03/23102019/0](http://www.scotland.gov.uk/Publications/2010/03/23102019/0)
- Analysis report
- Scottish Government response

Consultation on a draft Bill (Dec 2010 – March 2011)
- Consultation documents and draft Bill
- Analysis Report
  [http://www.scotland.gov.uk/Publications/2011/06/15152937/0](http://www.scotland.gov.uk/Publications/2011/06/15152937/0)
- Scottish Government response

12. The Scottish Government adapted its proposals in response to the views that it heard in consultation with users, professionals and organisations. In particular, it adapted its proposals in relation to the question of whether there should be a “default position” in law, and whether this should be direct payments, individual budgets or arranged services. Ministers concluded that choice itself should be the default rather than any particular mechanism. The Bill’s role should be to set out a clear set of choices and to impose duties on authorities to offer those choices and to give effect to the citizen’s preferred choice.
This document relates to the Social Care (Self-directed Support) (Scotland) Bill (SP Bill 10) as introduced in the Scottish Parliament on 29 February 2012

13. The Scottish Government convened a Bill steering group in 2010. This included representatives from a range of organisations and individuals with an interest in social care and support. Its remit was to advise about the opportunities and challenges presented by the Bill, to guide the development of the legislation, to comment on the potential impact on practice and to comment on any work to investigate the financial and other costs and benefits of the Bill. As of February 2012 the steering group had met a total of six times and it had discussed a range of matters associated with the Bill.\(^\text{10}\)

14. In addition, Ministers and officials met with officials from a range of stakeholders including:

- The Convention of Scottish Local Authorities (COSLA);
- The Association of Directors of Social Work (ADSW);
- The Coalition of Care and Support Providers in Scotland (CCPS);
- The Princess Royal Trust for Carers, Carers Scotland, Coalition of Carers in Scotland, Shared Care Scotland and VOCAL;
- Alzheimer Scotland;
- The Care Inspectorate;
- The Scottish Consortium for Learning Disability;
- The Scottish Social Services Council;
- UNISON;
- Scotland’s Commissioner for Children and Young People, and
- The Royal College of Nursing.

15. The Scottish Government will continue to engage with representatives from the bodies listed above in order to discuss the Bill and its implications. The steering group will continue to meet throughout the Parliamentary process.

POLICY OBJECTIVES

16. The Bill, which applies both to adult and children’s social care, aims to provide people with choice and control over their support. The wider policy aims are to ensure that services and support become more flexible and responsive to people’s needs (in line with the Christie Commission’s recommendations), and to drive a cultural shift around the delivery of support that views people as equal citizens with rights and responsibilities rather than people who receive services. If Parliament enacts the Bill this would mean that in implementing the strategies and policies listed in paragraph 2 local authorities and the NHS (where social care functions are delegated to them) would be under a legal requirement to ensure that the options for self-directed support and associated Bill duties are part of the assessment and review process for every client.

\(^{10}\) Agenda and minutes from steering group meetings are available on the Scottish Government website at: [http://www.scotland.gov.uk/Topics/Health/care/sdsbill](http://www.scotland.gov.uk/Topics/Health/care/sdsbill)
SECTION 1: GENERAL PRINCIPLES

17. The general principles provided in section 1 of the Bill help to define self-directed support. They provide general assumptions under which professionals and individuals should operate. They set the tone for the legislation and they mark out the way in which the Bill is to be interpreted. Where exercising discretion as to how to implement the legislation, both parties should return to the principles on the face of the Act together with the statutory guidance which would accompany the Bill.

Principle 1 (Section 1, subsection (2) in the Bill)

A person must have as much involvement as the person wishes in relation to: a) the assessment of the person’s needs for support and services, and; b) the provision of support or services for the person.

18. Social care is at its best when it helps people to achieve their desired outcomes, independent living and better wellbeing. The individual should be empowered to play a full and equal part in informing the initial assessment of need. This should lay the foundation for them to determine and then to meet their agreed outcomes. This principle is in line with current best practice on assessment.

Principle 2 (section 1, subsection (3) in the Bill)

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.

19. Local authorities should facilitate genuine and informed choice for the individual. Good quality advice and information services are an essential component in helping people to take greater control. This principle complements the duty to provide information regarding choices detailed in paragraph 24.

Principle 3 (section 1, subsection (4) in the Bill)

A local authority must collaborate with a person in relation to: a) the assessment of the person’s needs for support or services, and b) the provision of support or services for the person.

20. The professional and the individual should collaborate in producing and implementing the care and support plan. Plans should be based on a mutual relationship and should involve the two parties working together towards a positive, empowering set of outcomes. Assessment processes based on identifying strengths, assets and opportunities and agreeing desired outcomes, represent best practice in relation to this principle. For example the Talking Points: Personal Outcomes Approach is one of a range of tools and approaches which can assist health and social care partnerships in this respect. Outcomes in this context are understood both as the goals that users and carers want to achieve, in partnership with services, and the impact of services on an individual’s life. The statutory guidance accompanying the Bill will elaborate on

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individuals’ responsibilities as well as their rights, stressing that self-directed support must be based on a mutual relationship and the responsible use of public funds by both parties.

SECTIONS 3 – 4, SECTIONS 6 – 12 AND SECTION 17: THE “FRAMEWORK” PROVISIONS

21. Sections 3-4, 6-12 and 17 provide the core provisions within the Bill. Together, they help to modernise and underpin a new approach to social care assessment and planning. The new approach will be one where: individuals are provided with a range of options as to how they meet their assessed needs; individuals are provided with information and advice to help them to make their choice; the options for self-directed support are promoted by local authorities; and, people who have difficulty in making informed choices are provided with appropriate support to assist them to make the necessary decisions. The legal duty to assess a person’s social care needs is found in section 12A of the 1968 Act. While that duty will not change, the new duties placed on local authorities by this Bill will necessitate a new approach to those section 12A assessments. The diagram provided in Annex A illustrates what this will mean for adults who participate in the assessment and care planning process. Paragraphs 33 – 41 provide further detail on the impact for children and carers.

Section 3: Options for self-directed support

22. The Bill requires the authority to offer the individual a “sliding scale” of four options as to how they would like to direct their support. This recognises that some people will be willing and able to take full control (and to embrace the responsibility and accountability that comes with that decision) while others may not want to take on this degree of responsibility and control.

23. The policy intentions behind the four options are described below.

- **Option 1** describes a direct payment, whereby the local authority defines a monetary resource available to a person in order to meet agreed outcomes. As stated, social care legislation already allows for this option. The person receives the sum of money into a bank account so that they can purchase and commission support as a private individual. Money can be spent however the individual chooses provided it meets the agreed outcomes in their care and support plan. Certain choices which are not available under options 2 and 3, such as employing a personal assistant, are available using a direct payment. However a person can also choose to use their payment to purchase services from a registered care provider or from a local authority. In short, option 1 describes the maximum flexibility but also the maximum responsibility which a person can choose to take.

- **Option 2** describes situations where the individual selects the support that they want and the local authority makes various administrative arrangements on the person’s behalf. Under current law there is no specific restriction preventing local authorities from providing this option. However, it is also the case that there is no clear right for a person to request or to receive this option. The Bill seeks to address this gap. Typically, individuals are informed of a transparent, single amount of money or resource. 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. In contrast to Option 3 (below) the individual will have greater ongoing control and will be able to...
determine how the available resource is used. There are a number of mechanisms which may be available. One example is the Individual Service Fund where the individual has access to an identified resource, where they choose what support they would like and the local authority contracts with one or more care and support providers on the individual’s behalf.

- **Under option 3** the local authority selects the appropriate support in consultation with the individual and commissions services on the individual’s behalf. In contrast to option 2 the individual will tend to leave certain decisions to the local authority, though the authority should continue to maximise the degree of choice and control available to the individual in line with the Bill’s guiding principles. While the support should be based on meeting agreed outcomes the individual is not seeking direct and ongoing involvement in deciding how the available resource is used.

- **Option 4**, a combination of eligible options, recognises that some people will want their authority to arrange services to cover some but not all of their support. This seeks to underpin a “mix and match” approach, ensuring maximum flexibility in the options available.

**Section 8: Provision of information about self-directed support**

24. People must be empowered to make an informed choice and information should be made available to individuals as soon as possible in the assessment process. The Bill requires authorities to take steps to promote the availability of the options for self-directed support (section 17). It also requires local authorities to explain the nature and effect of each self-directed support option and to point people towards available advice and information, including independent sources (section 8). This means that authorities will be required to provide information in writing and, where necessary, in a format suitable to individual’s communication needs. In order to ensure that these duties translate into practice the Scottish Government is investing in support organisations over the course of the current spending review period. In addition, officials from the Scottish Government will work with national and local support organisations through the Self-directed Support National Implementation Group. The Group will review the capacity of support organisations. It will evaluate existing models of support provision to inform a more efficient and sustainable approach at both local and national level, suitable for all client groups. Further detail on the investment provided to support organisations is provided in the Financial Memorandum.

**Section 11: Review**

25. A person may decide that they no longer wish to continue with their initial choice. This is why all options will be subject to review. Section 11 in the Bill makes it clear that where there is a material change in circumstance either the individual or the local authority (or both) can trigger a review of the options and the selection of a different option. The Bill’s section 10 contains an additional right to review in relation to a person’s eligibility for direct payments. Paragraph 47 provides further detail on the policy aims of section 10.
Other matters associated with decision-making under the Bill’s framework provisions

Individuals’ responsibilities and risk enablement

26. Individuals and families must understand the responsibilities that come with the choices available to them, particularly in managing and choosing to take risks. The greatest degree of control comes with the decision to employ a personal assistant, as current legislation permits. This choice is available under option 1 (direct payment). The Scottish Government does not wish to place restrictions on the categories of people that may be employed by an individual. However the statutory guidance under the Bill will recommend robust approaches to ensure that individuals understand their duties as an employer and the risks in failing to adopt safe recruitment practice.

Local authorities’ discretion to deny a person their preferred choice

27. The duty to give effect to the preferred option (Section 9, subsection (2) in the Bill) will make the full range of choices available to all rather than to those considered as being likely to benefit. Self-directed support does not replace or overrule legislation to protect people at risk of harm, nor does it affect the duty on local authorities to arrange suitable and adequate support. Local authorities must comply with these broader duties and will still need to be satisfied that the option chosen can meet the desired outcomes. This means that there may be certain exceptions to the rule to give effect to the person’s choice. For instance:

- where it is clear that the option itself or the implementation of a particular option will fail to meet assessed needs and desired outcomes. This reflects the local authority’s ongoing duty of care to meet assessed needs, or
- in the case of direct payments, where the individual or type of support selected is one of the people or circumstances defined in regulations as being ineligible for direct payments.

28. Balancing empowering practice with support for people to manage risk will require the input of skilled social care professionals and statutory guidance will elaborate on this question in greater detail.

SECTIONS 5 AND 15: ASSISTANCE

29. The consultation on the Bill signalled that a certain proportion of social care clients will encounter difficulties in expressing informed decisions. In some cases a person may lack capacity in terms of the definition provided in the Adults with Incapacity (Scotland) Act 2000 (AWI Act). In other cases, the person may not lack capacity in the AWI sense but may have profound difficulties in making choices or coming to informed decisions without some kind of assistance.

30. This presents a challenge in relation to the type of decisions made under the Bill which, by their very nature, involve passing over greater choice and control to the individual.

31. The Scottish Government’s policy is to ensure equal access for all clients to all of the self-directed options. The opportunity to choose Options 1 or 2 must be available to people with mental health problems, people with dementia and people with severe learning difficulties and
any other individual who has difficulty making decisions on their own. Individuals must be given the opportunity to receive an appropriate level of assistance to help them to make informed choice, in line with AWI best practice. The emphasis throughout should be on finding ways to support people to direct their support and to facilitate a wide range of assistance mechanisms to help both individuals and their circles of support.

32. Where a person has a guardian or attorney with the relevant powers authorities must allow the appointed proxy to decide how they want to arrange support for the supported person. Where the authority assesses that a person lacks capacity in the AWI definition, and where that person does not have a guardian or attorney, the authority should proceed to make decisions and arrange support, utilising its powers, in line with guidance, under section 13ZA of the Social Work (Scotland) Act 1968 or, where required, by seeking an appropriate order under the AWI legislation.

SECTION 7: CHILDREN AND FAMILY MEMBERS

“Self-directed support has meant increased freedom and choices for both me and my eight year old daughter. Our social work home help service was unable to adapt to our needs and the times we needed support when I attended college. Self-directed support has enabled me to employ a person that we are both happy with, this person comes at a time that meets my needs and the needs of my family. The flexibility this provides means I am able to change the times my P.A\textsuperscript{12} comes to our home so I no longer have to worry about my other commitments fitting in with someone else’s timetable. This means both of us have a better quality of life and are able to be more spontaneous.”\textsuperscript{13}

33. Getting it right for every child (GIRFEC) is at the heart of the Scottish Government’s approach to children and young people. GIRFEC aims to improve outcomes for children, making sure that all agencies respond appropriately to needs and risks. It provides mechanisms for identifying and planning how we help children and young people. It seeks to improve services and measure the impact they have on a child’s well-being as expressed through the eight well-being indicators. It directly supports work to achieve many of the agreed national outcomes, such as ensuring that our children have the best start in life, and our public services are high quality, continually improving and responsive to people’s needs.

34. Direct payments have been available to children supported under section 22 of the Children (Scotland) Act 1995, through their parents or guardians since 1996. However, all of the self-directed support options can offer a range of innovative practical solutions amidst the logistical complexities of families’ daily lives. For instance, approaches under Options 1 and 2 may be particularly valuable for those whose needs have been recognised as being less well served by available local authority services.

35. Parents should be encouraged and supported to use self-directed support with a view to enabling their children and young people to access the same kinds of opportunities and activities as their non-disabled peers and self-directed support should play a key role in sustaining and

\textsuperscript{12} Personal Assistant.
delivering the GIRFEC approach. Reflecting this, the Bill’s framework of choice and control will apply to children’s social care and support in the same way that it applies to adults’ support. This will mean that:

- where children are aged between 16 and 18 they will be able to choose and to manage all available options, including the direct payment;
- where children are under 16 their parent or the person/s with parental responsibility will be able to choose the relevant self-directed support option, and they will have full powers to manage the available resource or direct payment where that is their preference, and;
- to ensure compliance with duties under both the Children (Scotland) Act 1995 and the UN Convention on the Rights of the Child, the child should be able to exercise the maximum possible input to the initial decision and all subsequent decisions on how to meet their assessed needs. Children aged 12 or over will be presumed to be of sufficient age and maturity to form a view as to how they wish to receive their support.

36. This will mean that a wide range of children supported under section 22 of the 1995 Act will have access to self-directed support including disabled children, children who are carers and relatives of children who are either disabled or young carers.

37. Local authorities already have wider powers and duties in relation to their responsibility regarding child protection. The Bill in no way interferes or negates these wider duties, though its framework of choice should extend to the full range of positive, enabling interventions which local authorities may choose to take under section 22 of the 1995 Act. Statutory guidance will clarify what this should mean in practice and how local authorities should go about balancing their duties on protection with their duties on self-directed support.

SECTIONS 2, 6 AND 16: PROVISIONS RELATING TO CARERS

38. Without the contribution of Scotland’s carers the health and social care system would be unsustainable.

39. Caring Together, the Scottish Government’s strategy for carers published in July 2010, lays out a ten-point plan with specific commitments to help carers. This includes creating a Carers Rights Charter, investing in carers training, improving the identification of carers by health and social care services, making carers’ own health and wellbeing a priority and promoting carer-friendly employment practices and encouraging income maximisation.

40. The Bill helps to deliver the strategy by providing a power to local authorities to release support to a carer following a carer’s assessment. This power applies both to carers of adults (addressed under the 1968 Act) and carers of children (under section 24 of the 1995 Act). No

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15 In line with other community care responsibilities local authorities would have the discretion to charge for support provided to carers under this Bill. This discretion is underpinned by section 16 in the Bill which modifies section 87 of the Social Work (Scotland) Act 1968.
This document relates to the Social Care (Self-directed Support) (Scotland) Bill (SP Bill 10) as introduced in the Scottish Parliament on 29 February 2012

specific power exists for this at present although in practice authorities can and do provide a range of services and support to carers.

41. The impact of the Bill will be to ensure that choice and flexibility is factored in to this decision. Where a local authority decides to provide some form of support to a carer they will be under a duty to offer the carer the four options of self-directed support. A local authority may choose to define a resource to support the carer in the tasks and demands associated with caring. If the carer elects to take this as a direct payment this may be a positive alternative to the other options, for example a local authority paying for provision of a service to the carer. Specific examples are provided in the Bill consultation document.¹⁶

SECTION 18: DELEGATION

42. On 15 December 2011, the Cabinet Secretary for Health, Wellbeing and Cities Strategy announced the Scottish Government’s plans for the closer integration of adult health and social care. The proposals, which will include legislation, will help to address a major policy question which has challenged successive governments both north and south of the border.

43. A small number of direct payment recipients benefit from jointly funded health and social care budgets. These can allow individuals to tailor support that holistically promotes their health and wellbeing. In order to encourage further reform the Scottish Government provided funding to NHS Lothian and NHS Fife in order to promote and address the barriers to self-directed support through jointly funded budgets at individual level, particularly to promote a greater health involvement in self-directed support for those with complex care packages. A full evaluation from the pilots will be published later in 2012 but it is clear already that jointly funded self-directed support packages to meet health and social care outcomes can and do demonstrate integration in action at individual level.

44. Positive, empowering social work practice such as self-directed support should be at the heart of any new landscape emerging from the integration agenda. It is with this in mind – and building on the positive experiences in the pilot and the relatively small number of people who have benefitted from jointly funded direct payments – that the Bill and accompanying regulations and guidance will ensure that self-directed support duties and principles apply in the following circumstances:

- where health and social care budgets are combined in the form of a direct payment;
- where a healthcare professional undertakes a social care assessment on behalf of a local authority under section 12A of the 1968 Act; and
- where a local authority delegates to an NHS partner relevant 1968 Act social care responsibilities, as per the delegated arrangements currently under implementation in the Highland partnership (NHS Highland and the Highland Council).

¹⁶ All consultation documents associated with the Bill are available at http://www.scotland.gov.uk/Publications/2010/12/15105332/14
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45. The Bill will bring forward an amendment to the Community Care and Health (Scotland) Act 2002 which will allow Ministers to amend the 2002 Act regulations. An amendment to those regulations will mean that where 1968 Act social care functions are being delegated to NHS bodies the SDS Bill’s duties will automatically follow alongside the 1968 Act duties. Health authorities will be required to implement the Bill’s duties and will have the full range of SDS powers where they are assuming social care functions. This will not mean that direct payments will be obligatory for all clinical NHS care (such as general practice or accident and emergency) but it will require more effective partnership working across services to develop a system for enshrining choice and control for those who require both health and social care. The Financial Memorandum contains further information on the funding which will be invested to deliver self-directed support training to NHS professionals.

SECTIONS 10 AND 13 – 14: DIRECT PAYMENTS

46. Despite the steps taken to improve uptake of direct payments there has been limited success in terms of the practical delivery of existing law. Experience has ranged from good practice – giving people freedom to meet outcomes flexibly - to quite rigid “time and task” approaches which in reality offer little more than arranged services. Reflecting on this experience the Bill seeks to both consolidate and modernise the current 1968 Act duties and powers in relation to direct payments. All forms of self-directed support, including the direct payment, should be flexible and able to be utilised in any way provided they meet the agreed outcomes and assessed needs set out in the individual’s care and support plan. By placing direct payment provisions within a wider framework the Bill points the direct payment mechanism towards its ultimate purpose, and the one for which it was intended: flexible support and better outcomes for individuals.

47. Local authorities will of course retain a range of duties and powers in relation to direct payments. Some of these are set out on the face of the Bill. Others will be contained in Regulations. Local authorities must have the necessary discretion in order to allow practitioners the freedom and flexibility that they need to develop creative, empowering solutions for individuals. However, authorities’ powers must not extend authorities’ discretion to the point of impinging in an excessive or unfair way on people’s rights to determine their own support. For example:

- If a person meets certain criteria which will be set down in regulations, a local authority may decide they are ineligible for direct payments. The reason for the decision may, however, materially change and in such a situation a person has a right to request a local authority to reconsider whether that person is still ineligible. If they are not, they must be provided with the full range of choices. This right to return to the direct payment option, when circumstances change, is underpinned by section 10 of the Bill.

- Local authorities must have the necessary powers to stop direct payments or to require repayment of some or all of the direct payment amount. However, their discretion to do so should be limited to instances of gross misuse or instances where a person’s assessed needs or agreed outcomes are not being met. It should not be a discretion without limit, encompassing strategic or administrative convenience.

17 “Time and task” is used to describe approaches whereby a certain numbers of hours of care are provided to assist a person with a certain list of prescribed tasks.
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- Ministers should be able to restrict access to direct payments, but they should only do so where there is clear policy justification and where it would be an inappropriate method for particular circumstances or for particular groups of people. Ineligible groups should be as narrow as possible and should not be based on general assumptions about particular client groups and their competence to manage the money.
- In general, regulations laid by Scottish Ministers should not place a restriction on access to direct payments simply because a person wishes to choose a particular form of social care service.
- Local authorities should be empowered to allow the employment of close family members where this is the supported person’s and carer’s informed choice and where it is appropriate to do so. The Bill therefore contains a power for Ministers to issue regulations in order that they can guide authorities who may need to sanction such arrangements.
- Local authorities will continue to use criteria to determine someone’s eligibility for support. With the exception of free personal and nursing care authorities will continue to be able to charge individuals. However, there should be no differential treatment for those who choose to direct their own resource.

ALTERNATIVE APPROACHES

48. The two alternatives to the Bill which was introduced to the Scottish Parliament in 2012 were: a) to deliver the national strategy in the absence of a comprehensive legislative framework to underpin this approach in social care law, and b) to introduce a default assumption that all social care and support will be provided under a direct payment only.

a) Implement the national strategy for self-directed support in the absence of legislation

49. The Scottish Government considered progressing with its strategy in the absence of any reform to legislation. However, it concluded that the current legislation, which addresses the direct payment mechanism only, failed to place direct payments in their proper context and failed to provide a comprehensive framework of choice. It concluded that social care law should provide a consistent, clear and comprehensive framework, which is essential in order to empower professionals and individuals. Despite the progress made over the past two decades it is still the case that under the current legal framework, the default assumption for the vast majority of clients remains that of direct delivery, with comparatively little emphasis on the individual’s role to shape their own care and support plan. The current legislation does not include provisions on advice services to help people to make an informed choice. It does not include guiding principles to set the tone for further detailed statutory guidance. Current legal duties in relation to carers’ assessments do not include a specific power to support carers as partners in care. The Scottish Government concluded that it was clear that despite numerous policy drivers for outcome-focused and person-centred support the right to choice needed to be embedded in the legal framework. The Scottish Government’s self-directed support strategy takes a longer term approach to the cultural change needed and it supports the necessary changes to systems and processes.
b) Introduce a default assumption in law in favour of direct payments

50. The initial phase of Bill consultation considered a proposal for the direct payment mechanism to be the favoured mechanism for arranging social care and support. This “assumption in favour of direct payments” would apply to all users. It would replace the current assumption perceived, by some, to be in favour of services which are selected and arranged by the local authority, with minimum opportunity for the user to direct their support. However it was clear that very few respondents supported a bias in favour of one particular mechanism of any kind, whether that bias was to be in favour of the direct payment, arranged services or any other particular way of arranging support. The Scottish Government considered the full range of views and it decided that the most appropriate presumption should be one which is based on choices for the individual. This would be an assumption in favour of providing a range of choice, empowering individual citizens to make their own decision rather than prescribing one option or another. It is this assumption – that of a sliding scale of choices referred to in paragraph 22 – which is reflected in the Bill.

EVALUATION AND MONITORING

51. The Scottish Government will monitor compliance with the Bill through a number of existing or soon to be established measures. The Scottish Government is undertaking a review of the statistics collected on direct payments, with a view to amending the categories of information and to cover a wider range of self-directed support options. Implementation of the self-directed support strategy will be subject to ongoing monitoring and review through the activity of the national Self-directed Support Implementation Group. This group includes Scottish Government officials, the Association of Directors of Social Work, the Convention of Scottish Local Authorities, user-led organisations and provider-led organisations. In addition to the review of data collection, implementation will look to shift to measuring improved outcomes for people directing their support. This will be achieved through a number of routes including the Community Care Outcomes framework, the work of the Care Inspectorate and specific evaluation of progress in co-production with citizens who require support.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Human Rights

52. The Bill does not give rise to any issues under the European Convention on Human Rights. In fact, it is arguable that the Bill goes further in enhancing the relevant rights under the Convention for social care users. For example, it could be argued that local authority intervention into an adult’s life could have impacts on their article 8 right to protection of private and family life. The Bill will ensure that those impacts are minimised by allowing the individual to exercise control over how their care and support is provided to them. The Bill also ensures that individuals are given as much information and assistance as is possible to allow that individual to make a choice.

53. The national strategy for self-directed support reiterates that public bodies are subject to human rights and equalities legislation and that self-directed support, if implemented in line with its core values and principles, can enhance wider human rights principles beyond those
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enshrined directly in legislation. The key human rights principles in this respect are equality and non-discrimination (the principle that all individuals are equal as human beings and by virtue of the inherent dignity of each human person) and participation and inclusion (the principle that all people have the right to participate in and access information relating to the decision-making processes that affect their lives and well-being). Self-directed support sustains an approach in which those who use care and support are viewed as being entitled to have control and responsibility over both their support in particular and their lives more generally. It allows individuals to integrate their care and support into their social and private lives and maximise their opportunity to achieve independent living. The Bill makes its own specific contribution in this respect by helping to sustain the human rights principles of participation (underpinned by the Bill’s principles of collaboration and involvement) and inclusion (underpinned by the Bill’s principle of informed choice along with the associated duties contained within sections 3 and 8).

Equal Opportunities

54. An Equality Impact Assessment (EQIA) has been carried out and will be published on the Scottish Government website. The Scottish Government considered the potential impacts, both positive and negative, across the five protected characteristics required for EQIAs.

55. The EQIA concluded that the Bill’s provisions are not discriminatory on the basis of age, gender, race, disability, religion or sexual orientation.

56. The Bill will help to empower individuals to gain equality of opportunity and to sustain their citizenship. It will ensure that the law plays its part to underpin genuine co-production, to move away from direct delivery models towards person-centred support and a focus on designing solutions on the basis of ensuring improved outcomes for individuals.

57. The EQIA found that, while the key benefit of self-directed support - improved health and social care outcomes - applies equally to everyone receiving support, the available evidence indicates that there are positive impacts for individual groups that share a protected characteristic, for example reduced discrimination and the ability to receive care consistent with faith or lifestyle. Self-directed support is key to the progress of independent living. It enables disabled people to increase their participation in, and exercise greater choice and control over, key aspects of their lives, helping to secure them the same independence, freedom and dignity as any other member of society. Encouraging independence and wider participation in society advances equality of opportunity.

58. The Bill has been drafted in order to ensure that social care recipients and practitioners are aware of their rights and responsibilities. Existing laws on direct payments will be consolidated in one place together with new provisions for other options of self-directed support. This will help to encourage better access for groups that are currently underrepresented. Finally, the Bill and accompanying regulations, if implemented as planned, will extend self-directed support to a wider group of individuals by extending to those who have been excluded up to this point such as carers and people who use residential care.

59. The EQIA did not identify any group that would be adversely affected by new legislation on self-directed support. However, the assessment acknowledged that there is limited evidence
around the effects of self-directed support on groups that share certain characteristics. The Scottish Government’s Health Analytical Services Division is currently reviewing data collection on self-directed support in relation to the protected characteristics of age, disability, gender and race.

Island Communities

60. The Bill will apply to all local authority areas and therefore to all communities across Scotland, including island communities. Self-directed support does not resolve all of the challenges of providing social care in island communities. In particular, choice of provider may be restricted to a greater degree, compared to urban areas. However, by placing greater choice and control in the hands of individuals, social care provision can be more responsive to the needs of island populations. Methods under Options 1 and 2 within the Bill can unlock greater flexibility in order that individuals and professionals can work together to produce creative solutions. This is in contrast to a “one size fits all” direct delivery model of support. Self-directed support may, therefore, offer a solution where there is a limited supply of appropriate care and support providers and where there are suitable family carers who are willing to become paid employees for the supported person.

Local government

61. The Bill will directly impact on local authorities in discharging their duties under social care legislation. The effect is already set out in this Policy Memorandum and in the other Accompanying Documents to the Bill.

Sustainable Development and Environmental Issues

62. The Bill will have no negative impact on sustainable development and will have a strong positive effect on the health and wellbeing of the people of Scotland by helping to make social care and support more responsive to individual needs.

63. The environmental impact of the Bill has been considered and the Scottish Government considers the policies within the Bill as a qualifying plan within the meaning of section 5(4) of the Environmental Assessment (Scotland) Act 2005. It is considered that the Bill is likely to have minimal effect in relation to the environment and, as such, is exempt for the purposes of section 7 of the 2005 Act. A pre-screening report has been completed. This confirmed that the Bill will have minimal or no impact on the environment and consequently that a full Strategic Environmental Assessment did not need to be undertaken. The pre-screening report is published on the Scottish Government website under case number PRE\00259.18

18 The pre-screening report is available at: http://www.scotland.gov.uk/Topics/Environment/environmental-assessment/sea/SEAG/Q/edtmode/on/forceupdate/on
Annex A: Adult assessment and support planning journey following enactment of the Bill

The gateway

1. Referral to local authority social work department

2. Social work department conducts a "pre-assessment screening"

Assessment and support planning

Guided by an approach based on achieving agreed outcomes, in line with the Bill’s principles of collaboration, informed choice and the involvement of the citizen

3. Am I eligible for support? Are my needs:
   - Critical
   - Substantial
   - Moderate
   - Low

   Eligible? Yes/No

4. Yes: I discuss my outcomes in collaboration with my social worker

5. I make an informed choice with advice from my social worker and I am informed about sources of independent advice

   Direct payment
   Direct available resource
   Mix of approaches
   Local authority to arrange support

6. We discuss the resources available for my support – the budget is defined

7. The local authority decides if I need to make a financial contribution, and if so, how much – charging

8. We complete a care and support plan to achieve my agreed outcomes

Support provided

9. I manage and receive my support
   
   Support provided

10. I ask for a review, or the local authority asks for a review
SOCIAL CARE (SELF-DIRECTED SUPPORT) (SCOTLAND) BILL

DELEGATED POWERS MEMORANDUM

PURPOSE

1. This Memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament’s Standing Orders, in relation to the Social Care (Self-directed Support) (Scotland) Bill. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This Memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

2. The contents of this Memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

Outline of Bill provisions

3. The Bill contains provisions to:
   - Give individuals the power to direct the support which they are provided with by a local authority. This applies to services provided under the Social Work (Scotland) Act 1968, the Bill itself (section 2, for carers) and children’s services under section 22 of the Children (Scotland) Act 1995;
   - Put duties on local authorities to inform individuals about their choices so as to allow them to make an informed choice;
   - Consolidate and modernise the provisions on direct payments; and
   - Introduce a new power for local authorities to provide support to carers.

4. Further information about the Bill’s provisions is contained in the Explanatory Notes and Financial Memorandum published separately as SP Bill 10–FM, and in the Policy Memorandum published separately as SP Bill 10–PM.

Rationale for subordinate legislation

5. The Bill contains a number of delegated powers which are explained in more detail below. In deciding whether legislative provisions should be specified on the face of the Bill or left to subordinate legislation, the Scottish Government has had regard to the need to:
strike the right balance between the importance of the issue and providing flexibility to respond to changing circumstances with the benefit of experience, without the need for primary legislation;

- anticipate the unexpected, which might otherwise frustrate the purpose of the provision in primary legislation approved by the Parliament;

- make proper use of valuable parliamentary time;

- allow detailed administrative arrangements to be kept up to date with the basic structures and principles set out in the primary legislation; and

- consider the likely frequency of amendment.

**Delegated powers**

6. Section 20 contains the general provisions regarding regulations made under the Bill. Subsection (1)(a) allows different provision to be made for different cases. Subsection (1)(b) enables the powers to be used to make incidental, supplementary, consequential, transitional, transitory or saving provisions as the Scottish Ministers think appropriate. As these powers are parasitic on other powers within the Bill they will be subject to the same procedure as the powers which they are being used with.

**Section 12 – Power to modify section 3**

**Power conferred on:** The Scottish Ministers  
**Power exercisable by:** Regulations  
**Parliamentary procedure:** Affirmative procedure

**Provision**

7. Section 12 provides that Scottish Ministers may, by regulations, amend section 3 (which contains the options for self-directed support) and make any consequential changes necessary to sections 4, 6 and 7.

**Reason for taking this power**

8. One of the key aims of the Bill is to encourage flexibility in the way that support is provided to individuals. At present, four different options for self-directed support are set out but Ministers are keen not to unnecessarily limit any future practice which may not have been foreseen at the time of the Bill. As a result this provision provides flexibility for Ministers to adapt the options (by amendment or by addition/removal) so as to reflect future practice. Obviously there are no current plans to use the powers.

**Choice of procedure**

9. Ministers recognise that as this power enables amendment of one of the core provisions of the Bill, this provision should, accordingly, be subject to the affirmative procedure.
Section 13 – Power to make further provision about direct payments

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative procedure

Provision

10. Subsection (1) provides a general power for Ministers to make regulations about direct payments.

11. Subsection (2) provides for further specific powers to complement the general power in subsection (1). It provides specific power to:

- specify descriptions of persons who are ineligible to receive direct payments. This will define what ineligibility for direct payments means in terms of section 4(6) of the Bill (subsection (2)(a));
- specify circumstances in which authorities are not required under sections 4, 6 or 7 to give a person a choice of a direct payment (subsection (2)(b)). This might for example mean that direct payments were not available for a particular type of service;
- specify the circumstances in which a local authority may require a person to contribute to a direct payment; (subsection (2)(c))
- enable local authorities to assess or reassess an individual’s ability to contribute (subsection (2)(d));
- specify how direct payments are to be paid and repaid. For example, enabling deduction from direct payments of an individual’s contribution, and enabling payment by instalments (subsection (2)(e))
- specify circumstances in which local authorities must, may or may not terminate a direct payment (subsection (2)(f));
- specify circumstances in which a local authority may pay all, or part, of a direct payment to another person instead of to the person whom the authority is required to make the direct payment to. This would allow so called “third party direct payments” (subsection (2)(g));
- specify persons who may not receive a third party direct payment (subsection (2)(h));
- specify persons who are prohibited from providing services or support under a direct payment other than in prescribed circumstances. This will allow Ministers to limit direct payments to be paid to, for example, family members of the supported person unless certain circumstances apply (subsection (2)(i)); and
- specify conditions which must be satisfied by such a person before they provide services or support (subsection (2)(j)).
Reasons for taking power

12. As with the previous direct payments regime (under section 12B of the 1968 Act and the Community Care (Direct Payments) (Scotland) Regulations 2003 (SSI 2003/243)) it is not considered appropriate for all of the detail regarding direct payments to be within primary legislation. The matters set out above will be technical in nature and Ministers will require flexibility to allow them to adjust to changes in direct payment practice. Importantly it will allow Ministers to adjust the provisions from time to time to ensure that direct payments are available as widely as possible.

13. The power in subsection (1) will provide a general power for Ministers to address any matters regarding direct payments which have not been foreseen in the more specific powers in subsection (2).

14. The powers in section 13 will be used immediately and will provide for a discretion for local authorities to assess a person’s means for contributing to the cost of securing the person’s support and also give the authority the discretion as to whether or not to recover that contribution (as is the position with charging for other social care services). Furthermore, regulations will set out the circumstances when the payments should be paid net or gross of the individual’s contribution.

15. One of the central policy aims of the Bill is to enable direct payments to be made to any individual who wants one. Ministers are keen to avoid creating barriers as to the delivery of direct payments and so they do not plan to use any powers to restrict access readily. It is, however, foreseen that Ministers will use this power to provide for those who are ineligible for direct payments; this is expected, for example, to include those who are subject to certain criminal justice orders (for example a person who is released on licence under section 22 of the Prisons (Scotland) Act 1989 or under section 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993). There may also be particular services which are not considered appropriate for the use of direct payments; for example, at present direct payments are restricted for securing residential accommodation. If Ministers were to create restrictions of this nature they would propose to consult on such changes with relevant stakeholders to ensure that any restrictions on access to direct payments are appropriate and to ensure that no unnecessary restrictions are placed.

16. As noted above, it is expected that regulations using many of these powers will be made immediately on the coming into force of the Bill to provide the administrative framework for direct payments. There may be periodic changes required in the future to deal with changes in practice.

Choice of procedure

17. As with their predecessors, these delegated powers merely allow Ministers to set out matters of detail regarding the framework which is provided for direct payments in the Bill, so it is proposed that these regulations be subject to negative procedure.
Section 18 – Delegation

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative procedure

Provision
18. This section amends section 15 of the Community Care and Health (Scotland) Act 2002 to give Ministers extra powers to prohibit the delegation of specified local authority functions unless the local authority also delegates functions under the Bill.

Reasons for taking power
19. This power is taken for the purposes of allowing Ministers to make provision by regulations to prescribe that, where the functions which this Bill are parasitic on are delegated, then the functions of this Bill must also be delegated. It is expected that this power would be used for the purposes of ensuring that where the functions of Part 2 of the Social Work (Scotland) Act 1968, section 22 of the Children (Scotland) Act 1995 or section 2 of this Bill are delegated, the appropriate self-directed support duties are delegated with them. As with the current balance of subordinate and primary legislation in the Community Care and Health (Scotland) Act 2002, it is considered appropriate for these changes to be made by regulations rather than on the face of the Act itself.

Choice of procedure
20. As regulations under the Community Care and Health (Scotland) Act 2002 are under the negative procedure we would propose these changes be subject to negative procedure as well.

Section 21 – Power to modify application of Act

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Affirmative procedure

Provision
21. This section allows Ministers, by regulations, to disapply sections 4(2) and 7(2) in specified circumstances. It also allows provision to be made which deems a person in those specified circumstances to have chosen Option 3 of the options for self-directed support (i.e. selection of the support by the local authority and the making of arrangements for it by the authority). Finally, it allows any other section of the Bill to be disapplied or modified depending on those circumstances.

22. In simple terms this power will allow Ministers to remove the options from either people or services for which self-directed support is not considered appropriate. This is distinct from the related provisions, dealt with in section 13, relating to ineligibility, or the unavailability, of direct payments.
This document relates to the Social Care (Self-directed Support) (Scotland) Bill (SP Bill 10) as introduced in the Scottish Parliament on 1 March 2012

Reasons for taking power

23. This power allows Ministers flexibility to disapply the self-directed support framework for particular persons or for particular services when it is considered necessary. There may be persons or services which do not currently, or may not in future, lend themselves to the self-directed support approach and this power will allow Ministers to make appropriate provision. This power only applies to services for adults and children as Ministers are of the view that no such restriction would be appropriate for the new support for carers available under the Bill.

24. As is stated above, it is Ministers’ view that self directed support should be available to all those who want it but there may be some services which are not appropriate for self-directed support. As a result, Ministers would not foresee using these powers readily. Views are currently divergent as to which services this may be, but some suggestions are services for people with substance abuse issues and services for those fleeing domestic abuse. There are also questions around services which are provided to children under the Children (Scotland) Act 1995 which relate to child protection rather than those which are provided for disabled children.

25. If Ministers were to create restrictions of this nature we would propose to consult on such changes with relevant stakeholders to ensure that no unnecessary restrictions are placed on the functioning of the Bill.

Choice of procedure

26. As these regulations would allow Ministers to disapply important aspects of the Bill, these regulations should be subject to the affirmative procedure.

Section 24 – Ancillary provision

Power conferred on: The Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Negative/Affirmative

Provision

27. Subsection (1) of this provision allows Ministers to make supplementary, incidental or consequential provision for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.

Reasons for taking power

28. This power will allow Ministers to make a modest number of changes to other enactments which currently refer to section 12B of the 1968 Act (which is repealed by section 23). It also allows the flexibility for Ministers to make any necessary, unforeseen, adjustments to the complex landscape of social care legislation. As the amendments required immediately will be minor and technical in nature it is not considered appropriate for these to be placed on the face of the Bill and, hence, they are more appropriate for subordinate legislation.
Choice of procedure

29. As with similar ancillary powers in other Bills it is considered appropriate for such an order to be subject to the negative procedure unless the order makes textual modifications to primary legislation. In which case, the order should be subject to the affirmative procedure.

Section 25 – Transitional provision etc.

Power conferred on: The Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Negative

Provision

30. Subsection (1) of this provision allows Ministers to make transitory, transitional or saving provisions in connection with the coming into force of any provision of the Bill.

Reasons for taking power

31. This power will allow Ministers to ensure that there is a smooth transition from current social care provision to social care provision in line with the provisions of this Bill. In particular it will allow Ministers to deal with direct payments which were made under section 12B of the 1968 Act and continue local authorities’ ability to pay direct payments and recover any part of such a payment which is misused.

Choice of procedure

32. As with similar ancillary powers in other Bills it is considered appropriate for such an order to be subject to the negative procedure.

Section 26 – Commencement

Power conferred on: The Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Subject to the default laying requirement under section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010

Provision

33. Subsection (2) allows Ministers to bring into force the provisions of the Bill which are not brought into force by subsection (1) by order.

Reasons for taking power

34. This will allow Ministers to time the commencement of the Bill to coincide with any necessary subordinate legislation and also allow Ministers to plan commencement appropriately with stakeholders.
Choice of procedure

35. As is common with simple commencement orders these orders should only be subject to the requirement to lay the instrument as soon as possible after making as laid down in section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010.
Health and Sport Committee

10th Report, 2012 (Session 4)

Stage 1 Report on the Social Care (Self-directed Support) (Scotland) Bill
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Health and Sport Committee

Remit and membership

Remit:

To consider and report on health policy, the NHS in Scotland, anti poverty measures, equalities, sport and other matters falling within the responsibility of the Cabinet Secretary for Health, Wellbeing and Cities Strategy apart from those covered by the remit of the Economy, Energy and Tourism Committee.

Membership:

Bob Doris (Deputy Convener)
Jim Eadie
Richard Lyle
Fiona McLeod
Duncan McNeil (Convener)
Nanette Milne
Gil Paterson
Dr Richard Simpson
Drew Smith

Committee Clerking Team:

Clerk to the Committee
Douglas Wands

Senior Assistant Clerk
Rodger Evans

Assistant Clerk
Rebecca Lamb

Committee Assistant
Myra Leckie
The Social Care (Self Directed Support) (Scotland) Bill seeks to ensure adults and children (including carers and young carers) are given more choice and control over how their social care needs are met. The Bill would enshrine “self-directed support” (SDS) into legislation, and stipulate the forms of SDS that must be offered by local authorities to those assessed as requiring community care services, namely: Direct Payments; directing the available resource; local authority arranged support; or a mix of the first three options.

The Committee has scrutinised the Bill closely focusing on the impact it would have on service users and service providers. The Committee recognises that under the Bill, service users and their carers will require information and advice in order to make informed choices about their care and support. Local authorities will need to redesign services to become more flexible and responsive to people’s needs and wishes. The independent and voluntary sector providers will also need to adjust to a market for social care in which many more individuals purchase their own bespoke care packages.

The Committee recognises that these changes present significant challenges for service users and service providers alike. However, the Committee believes that self-directed support is a policy which should be promoted and progressed. SDS offers an opportunity for service users to achieve greater independence. Placing SDS in legislation will ensure uptake and promote greater consistency of approach across local authorities.
INTRODUCTION

Procedure

1. The Social Care (Self-directed Support) (Scotland) Bill ("the Bill") was introduced by Michael Matheson MSP, Minister for Public Health ("the Minister") on 29 February 2012. The Scottish Government also produced an Equality Impact Assessment on the Bill, which was published on the Scottish Government’s website.

2. On 6 March the Parliamentary Bureau designated the Health and Sport Committee as the lead committee to report to the Parliament on the general principles of the Bill.

Purpose of the Bill

3. The Bill concerns a new regime for implementing Self-directed Support (SDS). If passed, it would make provision for adults and children to be given greater choice about how they are provided with social care services and support. The Bill would enshrine “self-directed support” into legislation, and stipulate the forms of SDS that must be offered by local authorities to those assessed as requiring community care services: Direct Payments; directing the available resource; local authority arranged support; or a mix of the first three options.¹

4. Whilst current legislation does not prevent these options from being offered already, the Bill would place a specific duty on local authorities to offer the different options together with other obligations, such as in providing advice and support to service users in order to be able to make the best choice for them.²

Parliamentary scrutiny

5. The Committee issued a call for written views on the Bill, from 1 March to 24 April, to which it received 101 submissions. The Committee took oral evidence on the Bill at four meetings between 8 May and 29 May, hearing from service users, social care providers, academics, support organisations, local authorities, professional bodies and the Minister. The Committee thanks all those who provided written views and oral evidence to the Committee.

6. As part of the Committee’s scrutiny of the Bill it also conducted an informal fact-finding visit to Glasgow on 14 May. During the course of the visit the Committee met with representatives of Glasgow City Council Social Work Services. The Committee also held discussion sessions, with carers and service users, co-ordinated by the Princess Royal Trust for Carers and the Independent Living in Scotland Project. These discussion sessions provided the Committee with an opportunity to engage directly with those individuals who would be affected.

by the proposals in the Bill. The Committee thanks those who attended for giving up their valuable time to contribute to the discussions.

GENERAL PRINCIPLES OF THE BILL: KEY ISSUES

General principles – Section 1

Background

7. Section 1 of the Bill places a duty on local authorities to have regard to three principles, which it calls the general principles, – involvement, informed choice and collaboration – when undertaking their functions in relation to community care assessments and the provision of community care services under the Social Work (Scotland) Act 1968, the Children (Scotland) Act 1995 and the Bill itself.3

8. The Policy Memorandum explains that the Scottish Government expects these principles to underpin decisions made under the Bill by professionals and individual service users and to influence how the legislation is implemented. The Policy Memorandum states that, should issues arise in implementing provisions in the Bill, it will be assumed that the parties involved will have regard to the principles when resolving them.4

Evidence received

9. There was significant support for the general principles set out in section 1 of the Bill, in the evidence the Committee received. The Scottish Association of Social Work (SASW) believed that the changes would fit with its code of ethics and the principles by which it wanted to work.5 Several local authorities believed that the principles underpinned their current policy and activities and were fundamental to underpinning good social work practice.6 Andy Martin of East Dunbartonshire Council told the Committee—

“I think that there is strong commitment to and support for not only the principles of SDS but the practicalities of delivering it across social work in Scotland.”7

10. The Committee did however receive evidence calling for the principles to be developed further to enshrine the right to independent living, citizenship and human rights. In written evidence Independent Living in Scotland (ILIS) stated—

“Whilst we welcome the existing principles, we still feel they are too focussed on process and imply that SDS is an end itself. This does not account for the wider independent living context in which SDS plays a part.”8

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4 Social Care (Self-directed Support) (Scotland) Bill. Policy Memorandum (SP Bill 10-PM, Session 4 (2012)), paragraph 17. Available at: http://www.scottish.parliament.uk/S4_Bills/Social%20Care%20(Self%20directed%20Support)%20(Scotland)%20Bill/Policy_Memo.pdf
6 Shetland Islands Council and NHS Shetland, written submission; NHS Fife, written submission; Aberdeen City Council, written submission.
11. This view was supported by Angela Henderson of The Scottish Consortium for Learning Disability (SCLD) who also emphasised the importance of the principles focusing on the outcomes of SDS—

“The strong focus on choice and control in the general principles of the Bill would be enhanced by a more explicit connection to the outcomes for individual citizens that we are looking for and a more explicit connection with human rights and the goal of independent living for people who access community care services.”

12. In oral evidence, Pam Duncan of ILIS called for the Bill to have a “statement of intent” and an amended set of principles that recognised the role of SDS in promoting and preserving human rights and independent living. ILIS proposed that the statement of intent should include the following text—

“SDS is one type of provision society makes, among several, which underpins disabled people’s right to independent living. Together with the other rights of independent living, it is intended that SDS, through this Bill, will empower those using self-directed support, to lead independent lives, to have the same freedom, choice, dignity and control as other citizens at home, at work, and in the community, so that they may participate in society and live an ordinary life.”

13. The Scottish Disability Equality Forum’s written submission also called for more of the language of independent living to be used within the principles and believed that it would help demonstrate a commitment to upholding a disabled person’s right to independent living under Article 19 of the UN Convention on the Rights of Disabled People.

14. Self Directed Support Scotland (SDSS) recommended that the Bill should contain an amended set of principles that included: freedom; choice; dignity; control; better outcomes for individuals; mutuality; equality and portability. SDSS’s written submission provided details of each of the principles it proposed and stated that each principle would be in keeping with a human rights based approach to policy making—

“It is our belief that without such principles, not only are we missing an opportunity on which to build on the rights of disabled people and other service users, but that the basic underlying intentions of SDS; control and choice, citizenship, equality; cannot be truly realised.”

Scottish Government
15. Asked about why independent living was not referred to explicitly in the Bill, the Minister told the Committee that it was a key part of the independent living

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8 Independent Living In Scotland. Written submission.
11 Independent Living In Scotland. Written submission.
12 Scottish Disability Equality Forum. Written submission.
13 Self-directed Support Scotland. Written submission.
14 Self-directed Support Scotland. Written submission.
agenda as it would provide choice and flexibility for the individual about their care arrangements—

"Of course, all that fits very well with the concept of promoting independent living and, given that the principle behind the Bill is to deliver just that, I see no particular reason to say anything specific about it in the Bill. That said, in light of the evidence received, I am more than happy to explore with the committee how that might be expressed more explicitly and in a way that members might find useful. Any such move will, of course, need to fit in with necessary technical drafting requirements if the Bill itself is to work."”

Conclusion
16. The Committee supports the inclusion of specific principles within the Bill. They provide a reference point for the implementation of the Bill and will underpin the work of local authority social work professionals in the future.

17. The Committee recognises that the principles of independent living, in which all citizens have the same freedom, choice, dignity and control in their lives, is at the heart of what this Bill is striving to achieve.

18. Whilst independent living is implicit, the Committee recommends that consideration should be given to making the principles of independent living more explicit with direct reference being made on the face of the Bill. The Committee therefore welcomes the commitment by the Minister to give further consideration to this issue.

Options for self-directed support

Background
19. The Scottish Government refers to the SDS support framework provisions as “the core” of the Bill, as they provide the framework for service users to choose how they wish their care and support to be delivered. The Policy Memorandum states that these provisions will “help to modernise and underpin a new approach to social care assessment and planning”.

20. Section 3 of the Bill provides that, following a care assessment and if an individual is assessed as needing care and support, or support as an adult carer, they must be offered a “sliding scale” of four options (the SDS options) for directing their own support needs.

21. The Policy Memorandum explains why a suite of options, with no single option being a default, would be offered under the Bill—

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17 Policy Memorandum, paragraph 21.
18 Policy Memorandum, paragraph 22.
“... some people will be willing and able to take full control (and to embrace 
the responsibility and accountability that comes with that decision) while 
others may not want to take on this degree of responsibility and control.”19

22. The four options as to how support can be directed are listed in the Bill as the 
following—

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

- Option 2: The selection of support by the supported person and the 
making of arrangements for the provision of it by the local authority on 
behalf of the supported person.

- Option 3: The selection of support and making of arrangements for the 
provision of it by the local authority.

- Option 4: The selection by the supported person of Option 1, 2 or 3 for 
each type of support.

23. There is currently nothing to prevent the SDS options being offered to service 
users. The Bill would, however, place a duty on local authorities both to offer them 
and act on the service user’s choice.

Views on self-directed Support
24. There was broad support for a duty to be placed on local authorities to 
provide SDS. One of the reasons given for the need for legislation was that in 
comparison with England overall uptake of direct payments had been low. In 2010-
11 whilst England had an uptake of 23.9 per 10,000 population, Scotland had just 
8.4.20

25. The Committee noted that the Christie Commission had stated in its report on 
the Future Delivery of Public Services, that—

“The Commission supports the wider principle of individuals having a greater 
say in how public resources are used, and how services are provided...take-
up of current opportunities for self-directed support has been low and action 
is needed to build capacity and awareness to encourage broader 
participation.”21

26. John Alexander of Dumfries and Galloway Council told the Committee that 
whilst progress could be made without legislation by working on an informal basis 
to change the culture and approach, legislation was “extremely helpful.” Mr

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19 Policy Memorandum, paragraph 22.
Bill. SPICe Briefing 12/32.
Alexander believed that placing duties on and assigning powers to local authorities would send a clear message regarding what was required. 22

27. Written evidence from the Scottish Social Services Council (SSSC) was positive about the underlying philosophy of personal choice and empowerment in the Bill. 23 The submission from ILIS highlighted how the Bill recognised disabled people and other community care users as people with equal rights and as equal citizens in the delivery of social care, which ILIS viewed as “not only morally, but legally and financially just.” 24

28. The Committee also received evidence which supported the range of options for SDS listed in the Bill. NHS Lothian believed the range took into consideration the degree of control, willingness or capacity that an individual may have to manage the options. 25

29. The Committee heard from Elaine Torrance, Scottish Borders Council, that the Bill would offer people greater choice and control. 26

30. While supportive of the continuance of a central focus on SDS, COSLA did not support the need for legislation. COSLA’s written submission stated it was—

“… unable to support a legislative agenda at this time. It is our view that the self-directed support strategy needs to be given sufficient time to fully influence practice, before there can be a clear case for taking the next step of introducing legislation.” 27

31. Ron Culley of COSLA told the Committee that it was premature to introduce legislation. COSLA considered it to be an admission that, collectively, the objectives under the current statutory framework had not been met—

“In 2010, we developed along with the Scottish Government a strategy on self-directed support. That was a 10-year strategy and we want to implement it over that period, so we feel that it is premature to legislate. Of course, that is not to say that we would never arrive at that point but with such a relatively young agenda, we wanted to take things forward in a more developmental way. That was the rationale behind our overall position of not endorsing the legislative route.” 28

Scottish Government

32. The Minister explained that a duty on local authorities was necessary to promote greater consistency of provision across local authorities—

“It is worth keeping in mind the Bill’s purpose, which is to put the choices that people must be provided with on a statutory footing. Local authorities will be

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23 Scottish Social Services Council. Written submission.
24 Independent Living in Scotland. Written submission.
25 NHS Lothian. Written submission.
27 COSLA. Written submission.
legally obliged to provide people with the options that are set out in the Bill when taking forward their care […]

Local authorities cannot decide that they will not provide one of the four options because they do not offer that option—people have a legal entitlement to all the options.”

**Conclusion**

33. The Committee recognises that self-directed support is a tool which can be used to give service users greater independence and a chance to take control of the care they receive. The Committee supports the range of options proposed in the Bill to give people the opportunity to choose the degree of control that they wish over managing their care.

34. Whilst it notes the view from COSLA that it is premature to introduce legislation on self-directed support, the Committee believes that legislation is necessary to ensure uptake and promote greater consistency of approach across local authorities.

**Delivery of self-directed support**

*Implementation of self-directed support*

35. Whilst it endorses the need for legislation, the Committee explored issues during its consideration around the practical implementation of the legislation.

36. A recurring theme during the Committee’s consideration of the Bill was the scale of the change for local authorities, providers and service users that would need to occur for the policy to be delivered successfully.

37. ADSW told the Committee that SDS would bring changes in the balance of the relationship between the parties involved in SDS.

38. Local authorities described the changes that they would need to undertake as “seismic”, a “major mindset shift” and requiring a “whole-system change”.

39. David Williams of Glasgow City Council explained that the infrastructure to support individuals wishing to take up SDS would need to be well established—

“…That involves care managers and social work professionals taking a different view about how they should go about their business. It involves infrastructure to support the availability to service users of the range of resources and provision that is out there and the development of a different marketplace for the provision of services. There are also infrastructure issues to do with how we assess need and involve individuals in the assessment of need so that there is genuine co-production.”

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40. Dee Fraser of the Coalition of Care and Support Providers in Scotland ("CCPS") explained that under SDS potential changes for providers could include delivering a more flexible and skilled workforce, responding to a higher demand for out-of-hours services and moving from dealing with large block contracts to individual contracts.33

41. John Alexander of Dumfries and Galloway Council felt that the potential move to providers having multiple commissioners was where the real challenge for providers lay.34 CCPS expressed a similar concern—

“The core anxiety for providers relates to core costs and how they carry an increased business risk-to be frank-when they are moving to a less assured funding stream.”35

Transition to self-directed support

42. The Committee received evidence on the state of readiness of local authorities and providers to deliver SDS. Duncan Mackay of ADSW explained that the 32 local authorities were in a variety of states of readiness, with some local authorities requiring a greater level of investment to make the transition. He explained that some of the factors determining a local authority’s readiness to deliver SDS were whether it had decommissioned group services, created individual budgets around packages, and embedded the concept of SDS in its own assessment and care management procedures.36

43. Duncan Mackay painted a similar picture for providers. He told the Committee that his local authority’s experience of working with 18 providers over the course of implementing SDS had shown that some had changed their financial systems, tackled their cultural issues, and become flexible and dynamic in their practice. Other providers, however, had struggled to make the transition, were perhaps wedded to existing ways of doing things, and would ultimately find it more difficult to meet the expectations that people would have through the allocation of individual budgets.37 Mr Mackay added that in relation to providers—

“… those who adapt will be well placed to be cutting-edge providers in the new world.”38

44. One further issue explored in relation to the transition to SDS was how the system would operate where local authorities were required to run dual services. Whilst a system would need to be in place to offer SDS options to individuals, there would still be a need to maintain services for people choosing direct provision of support by their local authority. RCN raised concern of a risk that core services would be lost as more people opted out and took the SDS route.”39
45. However, ADSW felt that core local authority services would survive if they delivered what the service user wanted—

“Our experience is that, when traditional services are highly flexible, outcome focused and delivered at times and in ways such that people can have their needs met and have an active choice about who supports them and about where, how and when they are supported, they often choose the traditional services and do not necessarily seek a direct payment to have the support provided in a different way.”

46. A recurring example given in relation to service delivery was the provision of day centres. Elaine Torrance of Scottish Borders Council highlighted the practical consequences of the transition towards SDS—

“If an individual chooses to have an activity in the community, as is right and proper, and not to take a day centre place, the cost per head can go up substantially until the number of places drops and we can free up that day centre or do something different with it. There are issues about how we fund that.”

**Scottish Government**

47. When asked about the readiness of local authorities to deliver SDS, the Minister explained that the strategy meant that SDS had been the direction of travel for some years—

“The way in which social care is delivered and local authorities engage in that process has constantly evolved. Self-directed support is a further phase in that process, and local authorities must manage the process of change as people take more control and are more discerning about their choices. The challenge for councils is to ensure that they provide people with flexibility and choice in the decisions that they make.”

48. The Minister told the Committee how he envisaged services would be delivered in the long term. He believed that in 10 years’ time people would be using a variety of services, some provided by the local authority and some by the voluntary or independent sectors.

49. The Minister considered that the challenge for some local authorities concerned the point at which some of the services being provided were felt to be no longer sustainable because user numbers were insufficient. A local authority’s experience would differ depending on whether its resources lay in capital infrastructure or if it used spot purchasing of services from the independent and voluntary sectors and was therefore less restricted. The Minister added—

“Each local authority will have to look at the model that is used to deliver services. If people are voting with their feet because they do not wish to use a service, the challenge for local authorities will lie in ensuring that they

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redirect the resource towards the services that people wish to use and in how they manage that process. That will happen over a number of years, as people gradually take more control of the way in which their care is organised.”

Conclusion

50. The Committee notes that self-directed support will require fundamental changes in the balance of the relationship between the supported person, the commissioner and the provider of services. The Committee recognises that this will present a number of challenges to local authority, independent or voluntary sector providers.

51. However, the Committee heard evidence, that there are existing examples where providers have risen to these challenges and have adapted to provide highly flexible, outcome-focused services. The Committee therefore believes that, with appropriate forward planning, support and assistance, providers will be able to deliver the types of service envisaged in the Bill.

Allocation of budgets

Local authorities determining allocation

52. A key issue raised during the Committee’s consideration of the Bill was how local authorities determined the relevant amount for an individual’s social care package.

53. This issue was raised in particular within the context of Glasgow City Council’s implementation of SDS.

54. Glasgow City Council initially developed SDS in the east of the city with people with learning disabilities. The Council implemented a new system which allocated resources on the basis of people’s needs. Every individual was reassessed with a new outcome-based support plan. The previous system had meant that the level of support and service that was provided for someone with an identified learning disability need was dependent on the point at which they entered the system.

55. David Williams of Glasgow City Council explained its approach—

“We need to ensure ahead of legislation that, regardless of their disability, people with particular identified needs can be involved in a system that is fair and equitable. The way in which we have developed personalisation in Glasgow provides for that. Other local authorities may not choose to take that route, but citizens throughout the country have the right to fair and equitable services.”

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45 Further information is available in the Scottish Parliament Information Centre. (2012) Social Care (Self-directed Support) (Scotland) Bill. SPICe Briefing 12/32.
56. The Committee, however, received a volume of evidence, particularly during its fact-finding visit to Glasgow, which raised concerns that Glasgow City Council’s personalisation agenda had been perceived by some as an attempt to cut budgets. The Committee received evidence from service users of dissatisfaction with the reassessment process which had been conducted in parallel with the implementation of SDS. The Committee was told that some individuals had received 50-70% cuts to their budgets.47

57. Experiences of personalisation in Glasgow chimed with other people’s perceptions of how SDS was being implemented. Peter Brawley of the Scottish Personal Assistants Employers Network (“SPAEN”) commented—

“As for individuals, all I can say is that under the resource allocation programme there seems to be a push to reassess and cut people’s packages. At a time when we are looking for money to implement this new system, the resource allocation to people—those who, I would argue, are the most important because with individualisation they will hold the purse strings—is being cut. That is sad.”48

58. The Committee heard evidence about the challenges faced by local authorities with the introduction of SDS during a period of tightening resources. ADSW told the Committee—

“In the situation that we face, there will have to be some budget reductions because resources in future will not be at the level that they are at now. There is a risk that self-directed support gets slightly discredited because it is being introduced at a time when cuts are having to be made. The message to the public has to be that the cuts must be made regardless of whether self-directed support exists [...]”49

59. ADSW added that SDS may offer a legitimate opportunity to release resources that can be used for reinvestment, or indeed to contribute to the savings agenda—

“Self-directed support offers a way to navigate through some of the funding problems that face statutory agencies, because our experience is that people will choose to use the resources on what are not necessarily formal services but are perhaps more economic and more directly related to outcomes.”50

Scottish Government

60. The Minister was asked about concerns regarding implementation of SDS being perceived as part of a cuts agenda. He told the Committee that local authorities’ responsibilities would remain the same under SDS—

“It is important to realise from the outset that a local authority’s duty of care will not change as a result of the implementation of the Bill’s measures. There will be no change to the local authority’s duty to perform an

47 Note of meeting with service users. Annexe D.
assessment and meet an individual’s needs, I understand that local authorities can sometimes find that challenging.\(^{51}\)

61. The Minister explained that some of the transitional resource provided by the Government would be used to assist local authorities in looking at best practice from other local authority areas in order to help them to manage the process. He also highlighted that communication between the social worker and the individual who has concerns about changes in their care packages should be a key part of managing the transition.\(^{52}\)

**Conclusion**

62. The Committee heard strong views expressed about the implementation of self-directed support alongside a reassessment process in Glasgow. The Committee is firmly of the view that self-directed support must not be, or be seen to be, a cover for cuts.

63. The Committee recommends that the Scottish Government makes clear that in implementing self-directed support, local authorities must ensure that the assessment process is robust and service users are offered a package which meets their needs.

**Local authority eligibility criteria**

64. Another issue raised in connection with local authorities’ determination of social care allocations was the application of eligibility criteria. Annexe A of the Policy Memorandum shows the adult assessment and support planning journey as it would be if the Bill was passed. It highlights that local authorities would still use eligibility criteria to determine whether the individual required services to meet their assessed needs.\(^{53}\)

65. According to the Scottish Government’s Self-directed Support Strategy, the Social Work (Scotland) Act 1968 recognises the central role of the local authority in determining where there is a need for the provision of community care services and how such need should be met—

“The legislation describes assessment as a two-stage process: first the assessment of needs and then, having regard to the results of that assessment, the local authority shall decide whether the needs of that person call for the provision of services. The use of eligibility criteria applies to this second stage of the assessment process; they are used by councils to determine whether a person assessed as needing social care requires a service to be put in place in order to meet those needs.”\(^{54}\)

66. There is a national eligibility framework which employs a four criterion approach, categorising risk as being critical, substantial, moderate or low. However, it is a matter for each local authority to manage the framework in their own area and set the thresholds. The Scottish Government’s Self-directed Support Strategy stated—

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\(^{53}\) Policy Memorandum, Annexe A.

“While councils undoubtedly value the ability to set eligibility thresholds in line with local priorities, a key concern amongst people who use services is the fact that provision can vary in different council areas in Scotland. To that end, further work will be undertaken by the Scottish Government and COSLA to assess whether there is merit in establishing national thresholds for access to formal support across all client groups.”

67. The Committee received evidence which raised concerns regarding the level at which local authorities were setting eligibility for services. ILIS told the Committee—

“As eligibility criteria rise, disabled people are finding that they are getting support only to get up, go to bed and be fed; in fact, we have heard horrific stories of people celebrating the discovery of 12-hour incontinence pads, because it means they do not have to send someone in every six hours to change those being cared for. This massive issue is a result of the fiscal challenges that we face. I realise that that sounds quite provocative, but some people are having to live with this reality and until we address the wider public issue of the funding of social care and examine the current resources, self-directed support will have only limited potential.”

68. Duncan Mackay explained that as part of the steering group which developed the Bill, ADSW had made the point that the capacity to meet people’s needs, whether through an individual budget or traditional services, was not infinite—

“… if the Bill did not recognise eligibility in some way, it might be interpreted that anyone could access an individual budget. Clearly, resources would not permit that and, given the low level of need in many cases, that would not be the most appropriate way of meeting those needs.”

Scottish Government

69. The Minister told the Committee that as part of the SDS Strategy the Scottish Government had been addressing issues around eligibility—

“One of the issues is the various ways in which local authorities apply eligibility criteria for certain services that they provide, which can have a bearing on the outcome of someone’s assessment. That can leave us with a situation in which two people with very similar needs, in two local authority areas, can end up with two different care plans because of different eligibility criteria.
We are engaged in a work stream with local authorities on eligibility criteria. Is there a way of addressing those issues so that we can get greater consistency in local authority service provision? We need to respect the fact that local authorities, as corporate bodies, have a level of flexibility in deciding how to deliver services locally. We need to find a way of addressing that.”

Conclusion

70. The Committee notes concerns regarding the way in which local authorities assess need and set eligibility criteria for social care services. The Committee recognises that there are challenges associated with trying to strike a balance between applying the national eligibility framework consistently and local priorities. The Committee therefore welcomes the work of the Scottish Government and COSLA to assess whether there is merit in establishing national thresholds for access to formal support.

Call for a formal appeals process

71. The Committee also received written and oral evidence from organisations calling for the establishment of a formal appeals process for individuals who wished to challenge the outcome of a local authority care assessment.

72. Both Glasgow City Council and Dumfries and Galloway Council told the Committee that, rather than a formal appeals process, they had risk panels to which cases could be referred when there was an issue of dispute to be considered.59

73. ADSW was asked by the Committee for its view about an appeals procedure. Duncan Mackay told the Committee—

“There is an appeals mechanism-social work has to have a statutory complaints procedure. The Association of Directors of Social Work would strongly suggest that that procedure should be used, rather than creating a separate appeals mechanism.”60

74. Whilst ADSW pointed to existing complaints procedures as the route for challenging an assessment, several witnesses told the Committee that it was important that a distinction be made between appeals and complaints procedures. The Law Society of Scotland’s Mental Health and Disability Sub-Committee (“the Law Society”) explained how they differed—

“An appeals procedure is about saying that we think that something has not gone right and asking where we want to get to and what we want to put in place. Complaints procedures tend to be backwards looking and about criticising individuals.”61

75. Ranald Mair of Scottish Care also believed that there was a distinction to be made—

“T favour a basic right of appeal in relation to the package that has been allocated, which is separate from complaining about the process.”62

76. Jim Pearson from Alzheimer Scotland also called for an appeals process—

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The area of legality is where the right of appeal sits, as legality includes the need for people to have effective remedy when they disagree with a decision. The current internal complaints procedure does not deliver that. 63

77. Mr Pearson explained that an appeals process would improve accountability for decision making in local authorities—

“... an independent appeals process supported by advocacy would not only give people the right to appeal against decisions that they disagree with when the law has perhaps not been applied correctly but, ultimately, make decision makers in local authorities who are responsible for developing individual budgets and assessing individuals much more accountable for how they do that, how they explain how decisions are reached and how they explain someone’s ultimate settlement and the individual budget.”64

78. The Committee explored with some witnesses whether the additional costs required for an appeals system could be justified. Some witnesses, including the Law Society, pointed to there being more resource implications from a protracted complaints procedure than a focused and clear appeals procedure.65 Ranald Mair of Scottish Care also suggested that there were potential savings to be made, as local authorities may be more inclined to mediate if they knew that there was a right of appeal.66 He added—

“I do not know whether an appeals process would be cost neutral, cost saving or cost incurring, but I think that it would be a price worth paying to make it clear that people have rights and that they can assert them, so I will stick with that view.”67

Scottish Government

79. In response to calls for an appeals system, the Scottish Government responded that it had no plans to include the provision. The Minister said an individual can already request a review of an assessment and, for those individuals refused one of the SDS options, they can request a review of that decision. He told the Committee that an appeals system—

“... goes beyond the Bill’s purpose. There has never been a formal assessment process in social work for the outcome of a social care assessment. However, a review of the outcome of an assessment can be requested to reconsider the situation if a person feels that the agreed outcomes from their assessment are not appropriate or do not necessarily meet their needs. That review would be undertaken by the local authority. If we introduced an appeals process for the outcome of social care assessments, we would need to consider carefully the wider implications.”68

80. The Minister explained that there would need to be a wider ranging consultation on the issue to consider who would hear the appeal and how the appeal mechanism would be constructed. He also believed that consideration would have to be given to the costs of introducing an appeals process.\textsuperscript{69}

Conclusion

81. The Committee acknowledges the strength of feeling among witnesses about the perceived need for a formal appeals process to adjudicate over disputes arising from social care assessments. The Committee considers that the statutory complaints procedure is inappropriate for this purpose and believes that local authorities need to make a clear distinction between complaints and appeals.

82. The Committee notes the evidence from the Minister that a review of the outcome of a social care assessment can already be requested by a service user. The Committee also notes that some local authorities have established risk panels to review disputed decisions. These represent two alternatives to the creation of a statutory appeals system. The Committee therefore invites the Scottish Government to provide its view on how best practice in this area can be identified and shared.

Advocacy

Evidence received

83. The Committee received several written submissions from advocacy organisations and others which expressed the view that, to ensure people can engage effectively, the Bill should explicitly include reference to independent advocacy, “as distinct and separate from provision of information and advice”.\textsuperscript{70} Independent advocacy was thought to offer recognisable advantages, not least an independent source of information.

84. In its submission, the Scottish Independent Advocacy Alliance (SIAA) set out the role of an independent advocate—

“An independent advocate helps people express their views and make informed decisions. An advocate helps people to find out information, explore options and decide for themselves what they want. An advocate can be a voice for the person and encourage them to speak out for themselves. Advocates do not tell or advise someone what they think they should do.”\textsuperscript{71}

85. To ensure that advocacy was explicitly recognised in the Bill, SIAA suggested that—

“The Bill should be amended to include a right of access to independent advocacy as defined by Section 259 of the Mental Health (Care and Treatment) (Scotland) Act 2003. This right should be available to all who are


\textsuperscript{70} Scottish Independent Advocacy Alliance. Written submission.

\textsuperscript{71} Scottish Independent Advocacy Alliance. Written submission.
offered SDS under the legislation, including adults, children and young people... and carers.”72

86. The right of access to independent advocacy under section 259 applies to anyone with a mental disorder. The term "mental disorder" is defined in section 328 of the 2003 Act and means any mental illness, personality disorder or learning disability, however caused or manifested.73

87. In oral evidence, representatives of both the SCLD and ILIS expressed support for the submission from SIAA in order to ensure that disabled people and other care users had adequate support to make informed choices.74

88. Peter Brawley, SPAEN, expressed support for the role of the advocate but stated that advocacy was “under-resourced”. He told the Committee—

"Investment to ensure that advocacy is high profile for the people who need it is good investment.”75

89. Duncan Mackay told the Committee that ADSW “would be content with a statement that people should have access to advocacy, because some people will need that”.76

90. George Kappler, of the Mental Welfare Commission (MWC), was firmly of the view that advocacy had a role to play. He said—

“...I am not sure whether it is necessary to put it in the Bill—I am open to debating that—but advocates definitely have a role. The problem is that advocacy is a bit overstretched in many areas. Some attention would have to be paid to the funding of advocacy services if they are to be formally extended.”77

Scottish Government
91. Asked whether the Scottish Government had considered giving a right of access to independent advocacy as part of the Bill, the Minister replied—

“We have considered it, and one of the reasons why it is not in the Bill is because not everyone will want or require independent advocacy to help them to make their choice. We have put section 8 in the Bill to place a duty on local authorities to provide information and advice on the implications of the decisions that they make, and to direct people towards services that can provide such advocacy support. Some of the financial support that we have provided around the Bill is to support organisations that can provide that advocacy role.”78

72 Scottish Independent Advocacy Alliance. Written submission.
92. The Minister confirmed that under section 8—

“The authority must give the person ... information about how to manage support, and ... information about persons (including persons who are not employed by the authority) who can provide ... assistance or information ... to assist the person in making decisions about the options”.79

Conclusion

93. The Committee recognises the valuable role an independent advocate can play in helping a person to express their views and make informed decisions. This type of support will be of undoubted benefit to many people faced with making decisions about self-directed support. The question is whether a right to independent advocacy should be enshrined in the Bill.

94. Although there are previous precedents for the inclusion of such a right in existing statute law, the Committee is not convinced that they should be considered analogous with self-directed support. The advocacy provisions of the Mental Health (Care and Treatment) (Scotland) Act 2003, for example, are intended to support people with a mental disorder.

95. The Committee accepts the evidence of the Minister that not everyone will want or require independent advocacy to help them to make their choice about self-directed support and was reassured that, as presently drafted, section 8(2)(c)(i) of the Bill requires local authorities to direct people towards services that can provide such advocacy support.

Support for adult carers

Background

96. Under the Social Work (Scotland) Act 1968 (in relation to adults) and the Children (Scotland) Act 1995 Act (in relation to children), adult carers are able to request an assessment of their own needs in relation to their caring responsibilities.

97. However, section 2 of the Bill would provide local authorities with a discretionary power to provide support services following an assessment. Where a local authority decides to provide some form of support to a carer, they would be under a duty to offer the carer the four options of SDS.80

98. The Bill acknowledges the role that carers play in the provision of social care in Scotland. The Policy Memorandum states that “[w]ithout the contribution of Scotland’s carers the health and social care system would be unsustainable.”81

99. In exploring the issues of support for adult carers, the evidence received by the Committee emphasised the key role played by unpaid carers in meeting individual support needs. VOCAL highlighted, for example, that the current shift

79 Social Care (Self-directed Support) (Scotland) Bill, section 8.
80 Policy Memorandum, paragraph 41.
81 Policy Memorandum, paragraph 38.
towards more personalisation would not be achievable without the support and participation of unpaid carers.82

**Power or duty?**

100. The Committee received several written submissions from carers’ organisations calling for the discretionary power proposed in the Bill to be changed to a duty.

101. Carers Scotland stated in its written submission—

> “Carers Scotland supports the proposal to extend self-directed support to carers and young carers. However, we continue to believe that this should be made a duty… rather than simply a power. We believe that enacting the legislation, simply as a power will result in inequity with significant variances in practice, and thus support for carers, across local authorities…”

102. In its written submission, Cross Reach told the Committee—

> “It is important that carers, including the many who are unpaid, are able to access assessment and support […] including the same range of 4 options, to help them to continue to care. However, as this is only a ‘power’ and not a ‘duty’ local authorities are under no legal obligation to provide services for carers than they have been to date. Thus, it is of concern that, in a period of continuing financial austerity, this may be unlikely to change.”

103. Scotland’s Commissioner for Children and Young People (“SCCYP”) considered that not making the provision a duty would result in significant variation in provision of support for carers across Scotland and added—

> “… in the majority of cases, support is unlikely to be offered to adult carers in the current financial situation.”

104. This view was supported by the evidence the Committee heard during its discussion session with carers in Glasgow. Some carers told the Committee that they had never been offered a carer’s assessment. Other carers suggested that, although they had received an assessment, it had not led to support being put in place for them. As a consequence, repeated calls were made for the Bill to include a duty rather than a discretionary power.

105. Carers Scotland also considered that there was a strong economic case for supporting carers—

> “Providing small interventions at an early stage and/or at the right time can prevent a crisis and a consequent breakdown of care, necessitating the provision of significantly more costly services. Providing support at the right time can also prevent carers from having to give up paid employment and...”

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82 VOCAL. Written submission.
83 Carers Scotland. Written submission.
84 CrossReach. Written submission.
85 SCCYP. Written submission.
activities that sustain their life outside caring, resulting in negative consequences for their finances, health and wellbeing.”

106. In oral evidence to the Committee, Florence Burke of the Carers Trust emphasised this point—

“Potentially, a small investment for carers in Scotland who want to take up self-directed support in their own right could help to maintain the £10 billion savings to the public purse that carers provide by giving unpaid support. Making it a duty to offer carers access to SDS is certainly something that carers and carers organisations want to push.”

107. In its written submission, however, COSLA expressed concern at this possibility—

“COSLA would not support any move to fundamentally alter the balance of this relationship to place more responsibility on the state, for example through replacing the proposed power to support carers with a duty.”

108. In oral evidence, Ron Culley explained the reasons for COSLA’s position—

“… first, it could leave us with a Bill that has not been properly costed, which would be quite significant, and secondly, there is the philosophical issue about the role that we want carers to play in our society and whether remuneration should come with that. It raises a whole set of issues that require, at the very least, further discussion. We would be strongly against the inclusion of any prescription in respect of the powers that have been given to local authorities on the carers agenda.”

109. One specific concern, regarding the inclusion in the Bill of the discretionary power, was the potential impact on the resources available for service users. The SCLD stated that it did not believe additional support for carers should in any way affect or detract from the support that the disabled person chooses. ILIS expressed a similar view—

“We believe that any move to offer support to unpaid carers directly, must be supported by a separate system of assessment and a ring fenced budget for this provision, so that provision of support to a user doesn’t impact on the funding available to the carer and vice versa.”

Conclusion

110. The Committee recognises the vital role that unpaid carers play in the provision of care in Scotland. The Committee welcomes acknowledgement by the Scottish Government that without the contribution of Scotland’s carers the health and social care system would be unsustainable.

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86 Carers Scotland. Written submission.
88 COSLA. Written submission.
90 Scottish Consortium for Learning Disability. Written submission.
91 ILIS. Written submission.
111. The Committee believes that it is extremely important that carers’ health and wellbeing is supported to ensure that they can continue to provide their caring role. The Committee acknowledges the desire of many carers and their representatives to strengthen the Bill’s provisions, so that the discretionary power proposed becomes a duty on local authorities to provide support following an assessment. During Stage 1 scrutiny, the Committee did not obtain the view of the Scottish Government on this request. The Committee therefore invites the Government to reflect on this issue and confirm its position in its response to this report.

Power to charge for services provided under section 2

Background
112. Other than personal care for over 65s, which cannot be charged for, Scottish local authorities have discretionary powers under section 87 of the Social Work (Scotland) Act 1968 to charge for non-personal services they provide to people in their own homes. Charges should be reasonable, take account of the ability to pay, and be no more than the cost of providing the service.92

113. Section 16 amends Section 87 of the 1968 Act (authorities’ power to charge for services or support). This has the effect that authorities may charge for support provided to carers under section 2 of the Bill.93 The Policy Memorandum explains that, in line with other community care responsibilities, local authorities would have the discretion to charge for support provided to carers under this Bill.94

114. Carers’ organisations reacted negatively to this proposal. For example, the Coalition of Carers in Scotland stated—

“Carers must be viewed as contributors to care provision, rather than as service users. They should not be expected to contribute financially to the cost of services provided to the person they care for, or to the cost of services which enable them to continue in their caring role.”95

115. Carers Scotland argued that this proposed approach could lead to further inequality for carers based upon whether or not their local authority chose to make charges for support or the levels of local charging.96

Conclusion
116. The Committee notes that local authorities currently have discretionary powers to charge for non-personal care services. The Committee invites the Scottish Government to clarify its policy intention regarding the power contained in section 16 of the Bill when it responds to this report.

93 Explanatory Notes, paragraph 54.
94 Policy Memorandum, footnote 15.
95 Coalition of Carers in Scotland. Written submission.
96 Carers Scotland. Written submission.
Specific choice provisions related to children and their families

Policy Memorandum

117. The Policy Memorandum stated that direct payments have been available to children supported under section 22 of the Children (Scotland) Act 1995 (“the 1995 Act”), through their parents or guardians since 1996. However, the Scottish Government considered that all of the self-directed support options “could offer a range of innovative practical solutions amidst the logistical complexities of families’ daily lives”.97

118. In this respect, section 7 of the Bill consolidates current rights for children and their families to access direct payments, but broadens this to apply across all four options in the Bill. Section 7 of the Bill stipulates that—

- children aged between 16 and 18 will be able to choose and manage all the available SDS options
- where a child is under 16, the parent or the person with parental responsibilities will be able to choose the relevant SDS option and they will have full powers to manage the available resource or DP where that is their preference
- children aged 12 or over will be presumed to be of sufficient age and maturity to form a view as to how they wish to receive their support.

119. The Scottish Government stated that the Bill would also support its efforts to improve services for children through its “Getting it Right for Every Child” (“GIRFEC”) framework—

“Parents should be encouraged and supported to use self-directed support with a view to enabling their children and young people to access the same kinds of opportunities and activities as their non-disabled peers and self-directed support should play a key role in sustaining and delivering the GIRFEC approach.”98

120. The Policy Memorandum noted that the Bill will have no effect on the child protection responsibilities and duties that local authorities have under the 1995 Act, and that statutory guidance under the Bill would—

“… clarify what this should mean in practice and how local authorities should go about balancing their duties on protection with their duties on self-directed support.”99

Issues regarding provisions related to children and their families

121. The written submissions received by the Committee were generally supportive of SDS being extended to children and families where support was identified as being required under the 1995 Act. Some submissions highlighted that including the provision built on current practice. NHS Fife recognised that it

97 Policy Memorandum, paragraph 34.
98 Policy Memorandum, paragraph 35.
99 Policy Memorandum, paragraph 37.
linked to GIRFEC and “complements well established child/family centred planning approaches practiced by integrated children’s services”.  

122. SCCYP requested that young carers should be explicitly mentioned on the face of the Bill as a group that would benefit from these provisions “given their special position of being children (some of them may be looked after themselves) and carers.”  

123. Carers Scotland also argued that young carers should be involved in discussions and decisions on self-directed support; and local authorities may want to work with young carer projects to help develop local guidance for professionals and appropriate information for young carers.  

124. While ADSW believed that there were “some exciting opportunities” in relation to the Bill’s focus on children, attaching it to Section 22 of the 1995 Act “could cause significant difficulties”. ADSW went on to explain—

“As Section 22 covers a wider multitude of childcare situations from straightforward welfare advice and assistance (where we could be very innovative) through to high profile cases where the child is on the child protection register but we do not have sufficient evidence to pursue compulsory measure of care. The reality is that in some of these situations children can come to serious harm.”  

125. While children can receive services under Section 22, public authorities suggested that it may be appropriate to restrict access to one or more of the SDS options where this situation applies. City of Edinburgh Council stated that it was concerned that the provisions of the Bill did not take adequate account of the fact that some children deemed to be “in need” under the 1995 Act were—

“… living in chaotic families who would not be able to take on additional self-directed support responsibilities or management of the child’s support.”  

126. The Committee received written evidence which welcomed planned statutory guidance highlighting where exceptions will allow local authorities to use discretion to deny the preferred choice of SDS options (where appropriate). COSLA stated that the guidance would need to provide a balance between the “presumption to entitlement and avoidance of inappropriate blanket exemptions”.  

127. A number of written submissions referred to provisions relating to age set out in the Bill. While many agreed that the current provision on this issue was reasonable, there were some concerns raised about this point. CCPS noted that
“age may not be the best determinant of a child’s capacity to exercise control”, with maturity recognised as more important. SCLD noted—

“... we would suggest that a person-centred approach would allow for discretion, so that, for example, a child under the age of 12 who had formed a view of the way they wish to receive their support, should be allowed to express this.” Inclusion Scotland further states that: “Most children will be able to understand and express their choice, and this should also be reflected in the Bill.”

128. The Committee also received evidence from SCCYP of poor practice at present, including some local authorities not being aware of the duties relating to children, families being refused direct payments as budgets were already allocated, and some families feeling rushed into accepting direct payments. SCCYP stated—

“[There is] strong cultural resistance to SDS within children’s services in Scotland, with some staff concerned about quality of care and risks to vulnerable children being exposed to the largely unregulated private market which is personal assistance. I would therefore urge the Scottish Parliament to seek assurances from the Scottish Government that it will take steps to ensure that the full range of options of self-directed support proposed in the Bill are going to be available to all eligible children and families in Scotland no matter where they live and will work to raise professionals’ awareness of the benefits of self-directed support.”

Implications of self-directed support for transitions planning

129. Another area of concern expressed by SCCYP was how the transitions from secondary school to college and generally to adulthood were being managed and the role for SDS within this—

“Young people across Scotland are experiencing serious problems because of the way transition planning is currently managed. Part of the problem is that the existing transitions planning guidance is not being implemented, but the underlying problem may be that there is no single agency responsible for coordinating transitions planning.”

130. The Committee also received evidence during its discussion session with carers that there could be a lack of forward planning when a service user moved from children to adult services. The Committee heard about a particular example where a service user with complex care needs had not been supported to make the transition from school to further education and was therefore no longer in education, placing increased pressure on the family who supported them.

131. SCCYP called for assurances that those involved in transitions planning would be made aware of the support available under the Bill and suggested that amending guidance on transitions planning may also be useful.

106 Coalition of Care and Support Providers in Scotland. Written submission.
107 Scottish Coalition on Learning Disability. Written submission.
108 SCCYP. Written submission.
109 SCCYP. Written submission.
Implementation of choice provisions related to children and their families

132. Brian Houston of Barnardo’s Scotland raised concern about the lack of comprehensive evidence from the pilots about the implications of SDS for children—

“In the test sites, not a lot of testing was done for children’s services. Young people were identified who were probably young adults moving into that transitional age. We have a concern that there has been no testing that would build collective confidence in the changes to the system among children’s services and families with children.”¹¹⁰

133. Barnardo’s Scotland believed that, as a result, the Scottish Government should consider a longer lead-in time for implementation of this section so that comprehensive evidence could be gathered and a full analysis of pilot programmes had been completed on SDS for children and young people—

“There are currently a number of projects and programmes being undertaken to assess how SDS can and will work for children and families and we believe that the findings from this work should be considered before this element of the legislation comes into force.”¹¹¹

Conclusion

134. The Committee welcomes provisions in the Bill that would extend self-directed support to children and their families.

135. The Committee notes concerns from organisations about the potential complexities of offering self-directed support to children supported under Section 22 of the Children (Scotland) Act 1995. The Committee welcomes the Scottish Government’s plans to clarify in statutory guidance how local authorities would balance their duty for protection with the new duty to offer options for self-directed support.

136. The Committee received evidence which raised concerns regarding how transition planning from children’s services to adult services (particularly from school to further education) was currently being managed and the role self-directed support could play within this. The Committee seeks further information from the Scottish Government on how those involved in transition planning will be made aware of the support available under the Bill and whether guidance on transition planning will be amended to reflect this.

137. The Committee also received evidence calling for implementation of the provisions relating to children and young people to be delayed until a full analysis of current projects regarding self-directed support and children and families had been analysed. The Committee seeks further information from the Scottish Government regarding how the findings of these pilots would be incorporated into the development of SDS for children and their families.

¹¹¹ Barnardo’s Scotland. Written submission.
Assistance

Background
138. Section 15 inserts section 12AZA after Section 12A of the 1968 Act. It applies where the authority is assessing a person’s needs under section 12A of the 1968 Act. It is similar to, although at an earlier stage than, the duty under section 5 requiring assistance to an adult making a choice of an option for self-directed support.112

Policy Memorandum
139. The Policy Memorandum stated that the Scottish Government’s policy is to ensure equal access for all clients to all of the self-directed options including, “people with mental health problems, people with dementia and people with severe learning difficulties and any other individual who has difficulty making decisions on their own”.113

140. However, the Scottish Government’s consultation on the Bill had identified that some social care clients will encounter difficulties in expressing informed decisions. The Policy Memorandum stated that, in some cases, a person may lack capacity in terms of the definition provided in the Adults with Incapacity (Scotland) Act 2000 (“AWI Act”). In other cases, the person may not lack capacity in the AWI sense but may have profound difficulties in making choices or coming to informed decisions without some kind of assistance.114

141. The Policy Memorandum explained how the Scottish Government envisaged this working in practice—

“Where a person has a guardian or attorney with the relevant powers authorities must allow the appointed proxy to decide how they want to arrange support for the supported person. Where the authority assesses that a person lacks capacity in the AWI definition, and where that person does not have a guardian or attorney, the authority should proceed to make decisions and arrange support, utilising its powers, in line with guidance, under section 13ZA of the Social Work (Scotland) Act 1968 or, where required, by seeking an appropriate order under the AWI legislation.”115

Evidence received
142. In its written submission the Office of the Public Guardian (“OPG”) expressed concern that as drafted, the provisions “could create confusion and may lead practitioners to believe they can provide assistance to incapable adults also”.116

143. In oral evidence, the OPG told the Committee—

“Our concern related to the confusions that might be created by the use of the term “assisted decision making” alongside language that is very much the kind of language that is used in relation to adults with incapacity. We do not

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112 Explanatory notes, paragraph 49.
113 Policy Memorandum, paragraph 31.
114 Policy Memorandum, paragraph 29.
115 Policy Memorandum, paragraph 32.
116 Office of the Public Guardian. Written submission.
know whether practitioners might feel that they can assist those who truly lack capacity to make a decision, which would go beyond assisted decision making and towards substitute decision making. The policy memorandum makes it clear that that is not intended to be the case, but it is not clear in the Bill.”

144. The Law Society considered that the Scottish Government’s policy intention was “not yet adequately achieved” by the present section 5 [and 15]. Its written submission continued—

“Because the legislation is not explicit that this provision is for people who have capacity to make decisions but would benefit from support, and not for people unable to make valid decisions, there remains a risk that the procedure may in fact be used for people who lack capacity.”

145. In its written submission, the MWC echoed this concern and proposed the following solution—

“To achieve the clarity in policy and legislation that the Scottish Government intends, we feel it would be best if, on the face of the Bill, it could be made clear that it is not intended that the Act be used for people lacking capacity to make decisions about self-directed support and direct payments where there is no proxy under the Adults with Incapacity Act with power to make such decisions. We also feel amending the current AWI legislation should be seen as a matter of some priority. It should be possible to amend the Act in such a way as to allow for a more proportionate response for such issues as self-directed support and direct payments while insuring proper safeguards are in place.”

Scottish Government
146. Following his appearance at the Committee, the Minister wrote to provide the Scottish Government’s response to the concerns raised by witnesses.

147. In his response, the Minister sought to provide reassurance that the purpose of Sections 5 and 15 of the Bill was to require local authorities to involve people able to assist the individual to make decisions about their care and support plan, and not to provide a power to local authorities to appoint proxies in order to make decisions as substitutes for the individual.

148. Referring to the concern related to the similarity between the definitions used at Section 5(1)(b) and 15(1)(b) of the Bill and the definition deployed in section 1(6) of the AWI Act, the Minister acknowledged that this was “a complex and challenging area of the Bill’s drafting”.

149. The response explained that people with either a mental disorder or a difficulty in communicating can fall into the category of those who lack capacity under the AWI legislation or they can fall into the category of those who have

118 Law Society of Scotland. Written submission.
119 Mental Welfare Commission. Written submission.
120 Minister for Public Health. Written submission, 6 June 2012.
capacity, and who might benefit from assistance under Sections 5 and 15 of the Bill. It continued—

“As indicated where a person has capacity the local authority should involve persons who can help that individual to make the relevant choices. There is no specific power provided to the local authority in order to appoint an individual as a proxy decision-maker, and so no such decision-making power would be created under this Bill.”¹²¹

150. The Minister’s response concluded—

“I would expect statutory guidance to elaborate on these points in detail and to make it clear that Sections 5 and 15 do not contain any power to appoint substitutes. Nevertheless I am also happy to explore this drafting issue with the Committee at Stage 2. In addition, I have asked my officials to engage with the MWC, OPG and the Law Society of Scotland in advance of Stage 2.”¹²²

Conclusion

151. The Committee welcomes the Minister’s commitment to engage with the Mental Welfare Commission, Office of the Public Guardian, and the Law Society of Scotland regarding the drafting of these complex sections of the Bill. The Committee wishes to receive an update on the outcome of these discussions in advance of the Stage 1 debate.

DIRECT PAYMENTS

Background

152. Direct payments have been available in Scotland, and in England and Wales, since 1996. Carers are entitled to have their needs assessed by local authorities but are currently unable to receive a DP themselves. Currently, DPs may not be offered to certain people who are restricted by certain mental health or criminal justice legislation (for example those on Compulsory Treatment Orders).¹²³

153. Despite steps taken to encourage the take-up of direct payments, the Scottish Government considers that there has been limited success in terms of the practical delivery of existing law in this area. In its Policy Memorandum, it stated—

“By placing direct payment provisions within a wider framework the Bill points the direct payment mechanism towards its ultimate purpose, and the one for which it was intended: flexible support and better outcomes for individuals.”¹²⁴

154. Section 13 provides for Scottish Ministers to make regulations about direct payments and the provision of support to which they relate.¹²⁵ Examples of areas

¹²¹ Minister for Public Health. Written submission, 6 June 2012.
¹²² Minister for Public Health. Written submission, 6 June 2012.
¹²⁴ Policy Memorandum, paragraph 46.
¹²⁵ Explanatory Notes, paragraph 40.
that may be covered by such regulations include: employment of close relatives as personal assistants; gross and net payment of direct payments; direct payments for residential accommodation; and eligibility of those on Community Treatment Orders to receive direct payments. Further information about each of these areas can be found in the SPICe briefing on the Bill.  

155. Section 14 provides for the local authority to require repayment of all or part of the direct payment from the supported person if they have used all or part of the direct payment on things other than the assessed services or support required or where the person has contravened any regulations made under section 13.

**Evidence received**

156. With the introduction of the Bill, ADSW noted that this should lead to a shift in emphasis that will see direct payments as only one of a range of options available to people identified as in need of support. ADSW stated that this was to be welcomed.

157. Views on the modernisation of direct payments were varied, with some respondents supportive of the suggested changes including on matters such as introducing greater consistency of provision across Scotland—

> “The Bill is a welcome step forward in rationalising legislation surrounding Direct Payments and introducing a uniformity of approach throughout Scotland.” (CrossReach)

> “Regulation and Ministerial guidance [relating to direct payments] will be critical to provide clarity, unity of purpose and achieve favourable outcomes. Regulations will help avoid regional variations that could arise from local interpretations of the new Act.” (Loretto Care)

**Issues to be addressed through regulations**

158. There were a number of issues respondents wished to be addressed through regulations. These included—

- The position with regard to possible extension of direct payments to close family members (Carers Scotland)
- Addressing some of the challenges of uptake that have faced direct payments to date, around complexity (CCPS) and take up by specific groups, e.g. older people and people with dementia (Scottish Care)
- Extending the provision of SDS to people who lack capacity and those in residential care, with clarity on the arrangements that would be put in place so that a named person, appointee or financial guardian can

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127 Explanatory Notes, paragraph 48.
128 ADSW. Written submission.
129 CrossReach. Written submission.
130 Loretto Care. Written submission.
receive direct payments on another person’s behalf, with monitoring arrangements also put in place (Loretto Care)

- Regulation, accreditation or other safety checks being put in place for unregulated support workers (SSSC), although there were recognised to be clear resource implications arising from regulating personal assistants (Loretto Care).

**Employment of personal assistants**

**Background**

159. Direct payments are often used by recipients to employ personal assistants (PAs). In 2011 around 39% of all direct payment packages involved the employment of personal assistants, 34% on service providers, and a further 3% using a mixture. The Committee noted that this had fallen recently – in 2009 51% of those in receipt of direct payments employed a PA.\(^{131}\)

**Regulation of personal assistants**

160. As part of its inquiry into the regulation of care for older people, the Committee received evidence about the challenges associated with ensuring proper scrutiny of services and protection of care at home users. At that time, the Committee was informed that under the Regulation of Care (Scotland) Act 2001 the SSSC did not regulate personal assistants in a one-to-one arrangement. The Committee concluded that concerns raised with it about the need for a regulatory framework for self-directed support would need to be addressed by the Scottish Government in the Bill.\(^{132}\)

161. A number of written submissions called for some form of regulation or registration of personal assistants to take place as part of the development of self-directed support legislation. For example, the City of Edinburgh Council expressed concern about—

"... the creation of a two tier workforce, i.e. those working in regulated services who are subject to PVG\(^ {133}\) legislation and required to undertake mandatory training in key care subjects, and those employed as Personal Assistants who are not subject to any specific requirements."\(^ {134}\)

162. In its written submission, CCPS stated—

"We would wish to see some basic level of accreditation for Personal Assistants, and as a minimum a requirement that they be made subject to PVG checks. Where the nature of the role to be performed requires it,

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\(^{133}\) Protecting Vulnerable Groups (PVG) is a membership scheme for people doing, seeking to do, or planning to do regulated work with children or protected adults. Certain professional regulatory bodies ask their members to join the PVG Scheme.

\(^{134}\) City of Edinburgh Council. Written submission.
employed staff (excluding family members) should also have an appropriate SVQ qualification.”

163. Meanwhile, RCN Scotland argued—

“...the risk could be mitigated by ensuring that local authorities (or an NHS board in terms of delegated function) develop contracts with service users that insist on the production of a PVG Scheme record for anyone engaged by a personal employer to undertake regulated work through a direct payment.”

164. The SSSC made several recommendations about regulation in its written submission—

- agencies providing personal assistants, and indeed other social service workers, should be regarded as care services and required to register with the Care Inspectorate;
- all personal assistants should be made aware of the Code of Practice for Social Service Workers and encouraged to adhere to them, and all employers of personal assistants should be made aware of the Code of Practice of Social Service Employers and encouraged to adhere to them;
- minimum induction training is made available to personal assistants, and their employers, covering things like rights-based care as has been produced by the Scottish Human Rights Commissioner in the Care About Rights programme, and professional boundaries guidance;
- complex care and care for particularly vulnerable service users is provided by workers regulated by the SSSC. The underlined terms requiring careful and consistent definition so as not to be used to limit personal choice unfairly;
- the Scottish Government should access the resource available through the SSSC sector skills council to explore workforce development and planning for personal assistants.

165. Noni Cobban, United Kingdom Homecare Association, suggested that registration under the PVG scheme would be an appropriate safeguard. She said—

“I would tend to put such a system under the umbrella of the SSSC, because it regulates the workforce.”

166. However, Peter Brawley, SPAEN, argued in favour of regulation being conducted by service users themselves—

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135 Coalition of Care and Support Providers in Scotland. Written submission.
136 RCN Scotland. Written submission.
137 Scottish Social Services Council. Written submission.
“With or without support, we will take responsibility for the PAs to ensure that our workforce within the home is regulated. Collectively, a network for good practice in personal assistance is automatically starting to be created. We are still at the dawn of the new age, but we are aware of the challenges in front of us and we are up for them. I think that we are not bad at regulating PAs just now.” 139

Scottish Government

167. In oral evidence, the Minister explained why the Scottish Government did not intend to regulate personal assistants—

“When we consulted on the Bill, it was clear that there was considerable anxiety among some stakeholders about the potential overprofessionalisation of personal assistants or medicalisation of the care they provide and the challenges and difficulties that that could create for individuals. We have to weigh that against having flexibility in the system to allow people to make informed choices on the best provision of care to meet their needs. Because of the concerns expressed in the course of the consultation on the Bill, we decided that we did not wish to regulate personal assistants.” 140

168. However, the Minister did acknowledge that there were risks associated with this approach and the Scottish Government was working with local authorities and stakeholders to consider how these could be managed—

“Some local authorities have user agreements with individuals who use direct payments for the provision of their care. Part of the user agreement is about the individual’s awareness of the protecting vulnerable groups scheme and the benefits that they can get from it. That is a way of helping to reduce some of the risks associated with being an employer.” 141

169. The Minister told the Committee that the Scottish Government would encourage someone who was going to employ a personal assistant to ensure that they were a member of the scheme. He explained that the burden of registration under the scheme would rest with PAs rather than employers—

“For individuals who wish to be employed as PAs, the message will be clear: they will be expected to be part of the scheme. Moreover, if Disclosure Scotland’s system has something on a personal assistant that would prevent them from applying for a job, the person will be committing a criminal offence if they try to do so. It is important that we maintain flexibility and choice by ensuring that individuals are aware not only of the risks, but of mechanisms to reduce the potential of such risks and by placing the onus on the person applying for the post of personal assistant rather than the cared-for person to ensure that all the checks have been done.” 142

170. In a subsequent written submission, the Minister confirmed that the cost of joining the PVG Scheme was £59.14.

**Conclusion**

171. The Committee noted in its earlier report on the regulation of care for older people that there were concerns about the regulatory framework for social care as self-directed support was rolled out. It concluded that the Scottish Government would need to address these concerns through provisions in this Bill.

172. The Committee notes the Scottish Government’s decision not to regulate personal assistants, but instead to rely upon the protecting vulnerable groups scheme in order to mitigate some of the risks for those who wish to employ a PA. However, the Committee considers that more could be done to reduce the risks associated with this form of self-directed support, while at the same time enhancing the status and value of the PA workforce. To this end, the Committee invites the Scottish Government to give consideration to the recommendations made by the SSSC in its submission to this Committee and to set out its views in its response to this report.

**Employment of close family members**

**Background**

173. The Community Care (Direct Payments) (Scotland) Regulations 2003 state that a recipient’s spouse, parent, grandparent and any other close relation cannot be employed via a direct payment, except where the local authority is satisfied that securing the support from that person is necessary to meet the recipient’s assessed need.

174. Following its consultation on a draft Bill, the Scottish Government accepted there was varied use of the exception rule across the country. It stated it would consider the range of inappropriate and appropriate circumstances for employing a relative as a PA, with a view to laying fresh regulations.

175. The Scottish Government confirmed its policy on this issue in the Policy Memorandum—

“Local authorities should be empowered to allow the employment of close family members where this is the supported person’s and carer’s informed choice and where it is appropriate to do so. The Bill therefore contains a [143][144][145][146]

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143 Minister for Public Health. Written submission, 6 June 2012.
power for Ministers to issue regulations in order that they can guide authorities who may need to sanction such arrangements.147

Evidence received

176. In its written submission, Carers Scotland welcomed the recognition that the employment of close relatives was “often the best solution for individuals and will help deliver better outcomes”. However, it argued that to prevent any inequality, “it is essential that regulations are developed in a way that provides a nationally agreed framework for consistent delivery”.148

177. When Committee members met with carers in Glasgow, participants called for a relaxation on exemptions so that family members could be PAs, particularly in circumstances where the individual service user had profound and complex needs.149

178. In its written evidence, ADSW recognised that an individual has the right to choose who to employ, and that this should be done without interference – unless there are capacity or other concerns that require the local authority to exercise a duty of care. However, ADSW made clear that current restrictions on the employment of close family members should be preserved as they are at present.150

179. In oral evidence, Peter Brawley felt that employing a family member would change the relationship with the supported person—

“I am not knocking the opportunity for some family members to be employed in exceptional circumstances, but so far nobody has come up with a very good exceptional circumstance.”151

180. Ranald Mair, Scottish Care, argued that, where it was appropriate, SDS should include the employment of family members—

“... individuals have the right to say that a family member is the person who most understands their needs, who is most available to them and who not only provides care as a relative but does a quasi-job of work so there is scope for them to be remunerated. When that happens, there must be some element of oversight. That is about non-exploitation.”152

Scottish Government

181. The Minister expressed the view that some local authorities had been inconsistent in how they had applied the threshold for direct payments with regard to individuals who might wish to employ family members. He continued—

“Under the existing threshold for direct payments, such a move is possible in exceptional circumstances. However, I feel that the threshold is too high and

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147 Policy Memorandum, paragraph 47.
148 Carers Scotland. Written submission.
149 Note of meeting with carers. Annexe D.
150 ADSW. Written submission.
is not being applied consistently and we intend, through regulations, to provide guidance on the circumstances in which the employment of a family member as a personal assistant would be appropriate. That will make the system clearer, give people more of an opportunity to take a family member on as a PA and help to address some stakeholders’ concerns about difficulties in that respect.”

Conclusion
182. The Committee respects the desire of service users to determine for themselves who is best placed to deliver their care and support and that this may be a family member. The Committee considers that the current definition of exceptional circumstances is no longer appropriate. However, the Committee believes that in order to protect the interests of the supported person, appropriate safeguards must be put in place by the local authority. The Committee would welcome additional information from the Scottish Government about how these safeguards can be applied in practice.

183. The Committee welcomes the commitment from the Minister that, through regulations, a more consistent and pragmatic approach to this question may be achieved.

Delegation

Background
184. In the Policy Memorandum, the Scottish Government noted that a “small number of direct payment recipients benefit from jointly funded health and social care budgets”. The Scottish Government wishes to encourage further reform in order to promote “a greater health involvement in self-directed support for those with complex care packages”.

185. Section 18 amends section 15 of the Community Care and Health (Scotland) Act 2002 (“the 2002 Act”) which will allow Ministers to amend the 2002 Act regulations. The effect is that where 1968 Act social care functions are being delegated to NHS bodies the SDS Bill’s duties will automatically follow alongside the 1968 Act duties. In this way, health authorities will be required to implement the Bill’s duties and will have the full range of SDS powers where they are assuming social care functions.

186. The Policy Memorandum also acknowledges the Scottish Government’s plans for the closer integration of adult health and social care, which will include legislation.

Integration of health and social care
187. In relation to the title of the Bill, a number of respondents to the Committee’s call for evidence felt that this did not accurately depict its focus and that reference to “social care” should be removed. The title of the Bill as introduced was seen

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154 Policy Memorandum, paragraph 43.
155 Policy Memorandum, paragraph 45.
156 Policy Memorandum, paragraph 42.
157 For example, see NHS Fife and ADSW written submissions.
as too limiting and failing to embrace the wider health and well-being of individuals. NHS Fife stated—

“…if reference to social care [is] removed, [this] provides more flexibility for future guidance on links between SDS and health boards particularly as integration agenda progresses.”\(^{158}\)

188. During oral evidence, the Committee explored with witnesses several issues surrounding the interaction between SDS and further integration of health and social care.

189. Discussing the care assessment process, Professor Frank Clark, Care Inspectorate, told the Committee—

“I worry about any artificial separation of health and social care, because a health condition can drive a social need and vice versa. I do not think that we should be artificially constrained by a need to separate out whose budget it is. That issue came up earlier. The assessment process must transcend the health and social care spectrum so that the right solutions are arrived at for the individual. The whole purpose of the integration of health and social care is to move away from the tribal or territorial separation of functions, and I think that that is true of SDS as well.”\(^{159}\)

190. Ellen Hudson, Royal College of Nursing Scotland, expressed concern about the delegation provisions in section 18, which would require NHS bodies to fulfil the duties in the Bill if they had been delegated functions under the 2002 Act. She argued—

“If we pool our NHS and local authority moneys within an integration agenda, the edges are bound to blur and we could incrementally end up using self-directed support moneys to pay for health services. We consider that to be scope creep. There is not enough detail on that, which is why we call for further consultation and detailed discussions on the matter.”\(^{160}\)

191. Duncan Mackay, ADSW, provided an example of social care funding being used to purchase health care services when the NHS could not deliver directly a service which met a paralysed man’s specific health care needs. But he stated—

“If the Bill continues as it stands and does not permit the use of NHS resources to meet needs, that will impair, not facilitate, integration.”\(^{161}\)

192. Acknowledging that the scope of the current Bill would preclude it, Mr Mackay nevertheless argued in favour of allowing access to health budgets as part of future integration—

“It is not a mad social experiment to use health budgets to meet individual need; the practice has been established elsewhere for some time, although it

\(^{158}\) NHS Fife. Written submission.


needs to be joined together. Overall, there is a strong body of evidence that outcomes improve for people if they not only have greater control over the support that they require but have the choice to exercise control over the resources that are allocated to providing their support.162

193. In a subsequent oral evidence session, Omar Haq, a service user in receipt of direct payments, told the Committee that he used part of his budget to pay for physiotherapy services in order to improve his mobility.163

Scottish Government

194. In oral evidence, the Minister reflected on the examples which the Committee had been told about. He explained that under present arrangements a health board could provide resources to a local authority that could be utilised as a direct payment. However, he foresaw benefits from the integration of health and social care as different budgets would be combined—

“It will not be a case of whether a person can get a direct payment under the health service; a budget will be available to help to support people through social care assessments that have health elements as a result of both the Bill and the integration of health and social care. I hope that that will give greater clarity and certainty about the process and reduce the tension that can often exist between those two areas.”164

195. The Minister stated that using a direct payment for a service such as physiotherapy was a “good example of how self-directed support gives people greater flexibility and choice” in making decisions to address their needs.165

196. Asked whether the Bill might simply result in the transfer of health responsibilities to individuals and carers, the Minister argued that examples of that nature made the case for greater integration of health and social care—

“Greater integration will enable us to ensure that local authorities and the health service are much more effectively aligned with one another and that the health service is much more focused on helping to support people in the community and giving them the advice that they require.”166

Conclusion

197. The Committee was struck by the real life experiences of people using direct payments to improve their lives. Some individuals with complex needs, often associated with a disability or long-term medical condition, will rely on a package of support which encompasses both health and social care. The Committee recognises that the flexibility offered by a direct payment can allow a person to take control of their care and meet their personal needs more effectively.

198. The Committee supports wholeheartedly all efforts to enhance collaboration between NHS boards and local authorities for the benefit of patients and service users. The long-standing resource transfer between NHS boards and local authorities associated with the resettlement of people from long-stay institutions into community care is one example of joint working which has resulted in considerable improvements to the lives of service users.

199. As the proposals for the closer integration of health and social care progress, the Committee encourages the Scottish Government to ensure that the principles of self-directed support enshrined in this Bill can be extended to address the health needs of people also in receipt of social care.

FINANCIAL IMPLICATIONS OF THE BILL

Background

200. As required by Standing Orders Rule 9.3.2, the Bill was accompanied by a Financial Memorandum.

201. Standing Orders also require the Committee to consider and report on the Financial Memorandum and, in doing so, to take into account any views submitted by the Finance Committee.

202. The Scottish Government expects SDS to be “cost-neutral in the long term”. In the Financial Memorandum it also stated that savings from self-directed support, in terms of long-term health benefits, “may accrue to bodies such as the NHS rather than local authorities”.  

203. However, the Government also considers that as health and social care become more integrated, it is expected that the boundaries between these budgets will be more flexible.

Cost estimates

Finance Committee scrutiny

204. The Finance Committee invited a number of organisations, including all 32 local authorities, to respond to a series of specific questions. Responses were received from nine local authorities and from COSLA. The Finance Committee also heard oral evidence from the Scottish Government’s Bill team.

205. The Scottish Government is to make £23 million available across the years 2012-13 to 2014-15 to assist local authorities with transformation (bridging finance, leadership, commissioning and contracting, IT and accounting systems, information material, administration and reporting requirements) to implement the

167 Social Care (Self-directed Support) (Scotland) Bill, Financial Memorandum, paragraph 83.
168 Financial Memorandum, paragraph 83.
Bill’s provisions. The Finance Committee noted that this was the main issue raised in the local authority and COSLA responses. Views were expressed that the funding was not enough and should be available over a longer period.\footnote{Scottish Parliament Finance Committee. Written submission to the Health and Sport Committee.}

206. In its written submission to the Finance Committee, COSLA stated—

“Both the financial memorandum, and indeed previous research studies, acknowledges it is difficult to accurately estimate the costs that will arise from the changes outlined above. Indeed, the timing and extent of these shifts in commissioning arrangements, administrative costs, and dual running costs are partly dependent of the choices individuals make under SDS. That said, the £23m identified falls far short of even councils’ most conservative estimates. Whilst it is difficult to fully estimate the exact cost for all Councils, from the information provided by Councils even the \textit{lowest} estimate for each of the cost areas outlined above over three years would total just over £50m nationally. Given that councils are at different stages in implementing SDS, it is highly likely that these costs would be higher, and indeed even based on the median of the estimates which were received the total cost to councils, over the next three years would be over £90m. Clearly this is very different to the actual level of funding which has been provided.”\footnote{COSLA. Written submission to the Finance Committee.}

\textit{Evidence received}

207. Several local authorities and COSLA made similar points in their submissions to the Health and Sport Committee. West Lothian Council, for example, stated that its share of the Scottish Government funding was “significantly below the costs we anticipate will be incurred in local implementation”.\footnote{West Lothian Council. Written submission.} In its written submission, Scottish Borders Council commented that it was difficult to estimate transitional costs associated with funding block contracts and building based services whilst providing a more flexible approach—

“Although commissioning arrangements are addressing this change it is taking time and the funding may not be sufficient to cover this cost, in addition to the other requirements to progress SDS. The timescale of three years may also not be sufficient to make the transition.”\footnote{Scottish Borders Council. Written submission.}

208. In oral evidence to the Health and Sport Committee, COSLA was asked to clarify its position. Ron Culley explained—

“Although the Scottish Government has set aside a generous £23 million for implementation, our survey work with our member councils indicates that that amount is insufficient to cover the Bill’s objectives. In fact, our lowest estimate for a more appropriate figure, given the Bill’s scale and ambition and the timeframe, is £50 million. That said, we have an on-going political partnership with the Scottish Government and will continue to work within the current realities of public finance.”\footnote{Scottish Parliament Health and Sport Committee. \textit{Official Report, 8 May 2012}, Col 2198.}
209. In a supplementary submission, COSLA repeated its view, based on the median of the estimates which it received from member councils, that the total cost to implement the Bill over the next three years would be over £90m. The submission stated—

“Clearly the more resource that is available to support change, the more quickly progress can be made. However, if insufficient resource is available, we may need to take a more pragmatic approach and focus on the timescales for implementation that are possible within different resource envelopes. Longer implementation timescales would help spread costs associated with assessment, supporting choices and review, but would prolong dual running costs; conversely, shorter implementation timescales may represent a more efficient approach to decommissioning, but would carry greater cost in terms of assessment, supporting choices and review.”

210. COSLA also provided the Committee with details of the pro-forma it had used to survey councils but it did not provide details from individual local authorities as it considered that it did not have permission to do so.

Scottish Government

211. In oral evidence, the Minister explained that, in total, the Scottish Government was providing £43 million for short to medium-term work on the Bill, £23 million of which would go to local authorities for assistance with transition.

212. Asked about the apparent disparity between the Scottish Government figures set out in the Financial Memorandum and COSLA’s estimates, the Minister replied—

“Although we have asked COSLA for details of how it arrived at its figures and although we have indicated that we are more than happy to explore the issue, it has been unable to provide that information.”

213. The Minister confirmed that there was an on-going dialogue between the Scottish Government and COSLA including representation on the working group preparing for implementation of the Bill should it be passed by the Parliament.

214. In a subsequent written submission, the Minister reflected further on the “on-going discussion” about the investment “required to engender a significant change in culture and approach surrounding this legislation”. He informed the Committee that he had asked his officials to convene a regular Self-directed Support Programme Board—

“One of the main tasks for this Board is to monitor and manage implementation, and this will include a remit to keep a close eye on the ongoing costs of implementation. The Board will involve COSLA and ADSW, along with a range of support organisations, user and carer groups. In addition, my officials will meet with senior COSLA and ADSW officials on a
two-monthly basis up to any Bill commencement date and beyond into the first year of implementation. The first of these meetings is set for 12 June. Finally, my officials will progress a series of meetings over the next 6 months with individual local authorities. They will use this programme of engagement to discuss a range of implementation matters, including the question of how and in what ways local authorities will make use of the transformation funding provided by Scottish Government.”

Conclusion

215. The Committee notes the extremely wide disparity between the estimates produced by the Scottish Government and COSLA regarding the costs of implementing the Bill. The Committee considers that the difference is so great that it cannot be explained simply by the use of a different methodology by the two organisations.

216. The Committee considers that the failure of COSLA to share the detail of individual council cost estimates was unacceptable as it prevented the Committee from being able to determine whether implementation of the Bill may be jeopardised by a significant gap in funding. The Committee believes that it is vital that witnesses are able to substantiate assertions made in written and oral evidence provided to the Parliament.

217. The Committee notes that there is a continuing dialogue between the Scottish Government and COSLA and welcomes the establishment of a Self-directed Support Programme Board. However, in order to allow meaningful discussions to take place between central and local authorities regarding the level of funding required to support the implementation of the Bill, the Committee encourages COSLA to share its data with the Scottish Government as soon as possible.

218. The Committee received assurances from the Scottish Government about the financial resources accompanying the Bill. Following further discussions between the Scottish Government and COSLA, the Committee seeks confirmation from the Scottish Government that these resources are indeed sufficient to facilitate the process of change required in order to implement the provisions of the Bill.

SUBORDINATE LEGISLATION

Subordinate Legislation Committee scrutiny

219. Under Rule 9.6.2 of Standing Orders, where a bill contains provisions conferring powers to make subordinate legislation, the Subordinate Legislation Committee (“SLC”) must consider and report to the lead committee on those provisions.

220. The SLC reported that it did not need to draw the attention of the Parliament to the delegated powers contained in sections 18 (new section 15(4)(h) of the Community care and Health (Scotland) Act 2002) or 26 (commencement) of the Bill.

180 Minister for Public Health. Written submission, 6 June 2012.
221. In relation to the powers contained in sections 13 (power to make further provision about direct payments) and 19 (guidance and directions) the SLC reported that the powers were acceptable in principle.

222. The SLC reported at considerable length on other delegated powers in the Bill. The report can be found on the Scottish Parliament website.¹⁸¹

223. The key conclusions from the SLC report are summarised below. The conclusions of this Committee are included at the appropriate points.

**Section 12 – Power to modify section 3**

224. Section 12 enables the Scottish Ministers to make regulations which modify section 3 of the Bill. So far as it is necessary in consequence of any modification to section 3, they may also modify sections 4, 6 and 7.

225. The SLC drew the power in section 12 to the attention of the lead Committee as it considered it to be particularly broad in its scope, and observed that it appears to be possible for it to operate in the future so as to defeat the entire policy and purpose of the Bill by reducing the options for choice in section 3 to a single option.

226. The SLC recommended that the Scottish Government consider whether the power might be revised so that it may not be used in that manner, while still enabling the Government to achieve its stated aim of preserving sufficient flexibility to adapt the Bill to keep pace with changing social work practice in future.

227. The SLC also considered that the section 12 power ought to be subject to a statutory requirement to consult interested bodies on any draft regulations. Were it subject to such a requirement, the SLC would be content that the regulations are subject to the affirmative procedure.

228. **The Health and Sport Committee endorses the recommendation of the Subordinate Legislation Committee.**

**Section 20(1)(b) – Regulations: general**

229. Section 20(1)(b) provides a “bolt on” ancillary power to allow the Scottish Ministers to include supplementary, incidental, consequential, transitory, transitional and savings provision when making subordinate legislation under any of the other regulation-making powers in the Bill (i.e. the powers in sections 12, 13 and 21). The inclusion of bolt-on provision does not alter the level of parliamentary scrutiny which applies in relation to the individual powers themselves.

230. The SLC recommended that the Scottish Government consider whether it is appropriate that the significant powers in section 12(a) and 21(1) are capable of

attracting two separate sets of ancillary powers, and whether as a result the power in section 20(1)(b) is necessary save in relation to section 13.

231. **The Health and Sport Committee endorses the recommendation of the Subordinate Legislation Committee and looks forward to receiving the Scottish Government’s response.**

Section 21 – Power to modify application of Act

232. Section 21 confers power upon the Scottish Ministers to make provision for or in connection with disapplying sections 4(2) or 7(2) of the Bill. Sections 4(2) and 7(2) are key to the Bill, as it is those provisions which require local authorities to give supported persons the opportunity to choose one of the section 3 options for delivery of support.

233. The SLC accepted that the power in section 21(1) to disapply section 4(2) or 7(2) of the Bill is, in principle, appropriate.

234. However, the SLC recommended that the Scottish Government explain whether it considers it necessary to remove the element of choice entirely using section 21(1) if Option 2 is considered not to be appropriate in any given situation. If this is not the case, then it is asked to explain how this may be reconciled with its stated position that section 21 should only be used to remove choice entirely, and not to interfere with the available options.

235. The SLC also recommended that the Scottish Government consider whether it is sufficient to rely on the disapplication of section 4(2) or 7(2) impliedly to disapply the remainder of those sections, given that it is arguable that subsection (4) could sensibly continue to operate despite such a disapplication.

236. The SLC did not accept that the supplementary power in section 21(2)(b) to modify or disapply any other section of the Bill in consequence of a disapplication of section 4(2) or 7(2) – as presently drafted – is appropriate.

237. The SLC called on the Scottish Government to identify the sections of the Bill to which section 21(2)(b) might apply, given that a number of sections are expressed to apply only where a local authority has given a person the opportunity to choose one of the options.

238. Given that it appears to be intended that certain sections of the Bill, such as section 6(2), should not be modified, the SLC invited the Scottish Government to consider whether it is necessary that the power in section 21(2)(b) permit the modification of any other section of the Bill, or if it could feasibly identify the provisions which should be protected from modification using this power.

239. Finally, the SLC considered that the section 21 power ought to be subject to a statutory requirement to consult with interested bodies on any draft regulations. Were it subject to such a requirement, the SLC would be content that the regulations are subject to the affirmative procedure.
240. **The Health and Sport Committee endorses the recommendations of the Subordinate Legislation Committee and looks forward to receiving the Scottish Government’s response to the points raised.**

**Section 24 – Ancillary provision**

241. Section 24(1) allows the Scottish Ministers to make such supplementary, incidental or consequential provision as they consider appropriate for the purposes of, in consequence of, or for giving full effect to, any provision of the Act. Section 24(2) provides that this power may be used to modify any enactment. Section 24(3) provides that where the power is exercised so as to amend any part of the text of an Act, then the affirmative procedure applies. Otherwise, negative procedure applies.

242. The SLC was satisfied in principle with the power in section 24, subject to the recommendation that it is subject to the affirmative procedure when making textual amendments to primary legislation, and otherwise to the negative procedure.

243. The SLC also recommended that the Scottish Government, in light of its stated intention not to use the power in section 24 to modify the Bill itself, consider whether section 24(2) might be revised so as to put the matter beyond doubt in order to make it clear that it may not be used to modify the Bill itself.

244. **The Health and Sport Committee endorses the recommendations of the Subordinate Legislation Committee.**

**Section 25 – Transitional provision etc.**

245. Section 25 confers power on the Scottish Ministers to make such provision as they consider necessary or expedient for transitory, transitional or saving purposes in connection with the coming into force of the Act. Section 25(2) provides that an order made under this section may modify any enactment, and orders under this section are subject to the negative procedure in all cases.

246. The SLC was satisfied in principle with the power in section 25, but recommended that the Scottish Government consider whether section 25(2) might be revised so as to put it beyond doubt that the power in section 25 may not be used to modify the Bill itself.

247. The SLC also recommended that, as is the case with the power under section 24, the power in section 25 should be subject to the affirmative procedure where it is used to make textual amendments to primary legislation, and to the negative procedure otherwise.

248. **The Health and Sport Committee endorses the recommendations of the Subordinate Legislation Committee.**

**Scottish Government**

249. In correspondence following his appearance before the Health and Sport Committee, the Minister indicated that he intended to respond to the range of points made in the Subordinate Legislation Committee’s report and, where
appropriate, to consider their recommendations further at Stage 2. He confirmed that he would be writing to the Convener of the Subordinate Legislation Committee before the Stage 1 debate and would ensure that a copy of that more detailed correspondence was provided to the Health and Sport Committee. 182

250. The Committee welcomes this commitment from the Minister and looks forward to receiving this correspondence prior to the Stage 1 debate.

EQUALITIES

Background
251. The Scottish Government prepared an equality impact assessment (EQIA) for the Bill.

252. The public sector equality duty requires that equality considerations are integrated into all the functions and policies of Scottish Government Directorates and Agencies. 183 The Committee welcomes the fact that the Scottish Government completes an EQIA for every Bill it introduces to the Parliament.

253. The EQIA outlines, in some detail, the relevance of the Bill in the context of age, disability, gender, sexual orientation, gender reassignment, race, and religion and belief.

254. The Committee noted that the EQIA was informed by the consultation process on a draft bill conducted by the Scottish Government and by the deliberations of a Self-directed Support National Reference Group, which contributed to the shaping of the Bill proposals between 2008 and 2010.

255. The Committee also noted, however, that in relation to some protected characteristics (religion and belief, sexual orientation and gender reassignment) the Scottish Government does not currently collect data about recipients of direct payments or others forms of self-directed support. The Committee welcomes the commitment given by the Scottish Government to do so in future and to review and update the EQIA when this evidence is available.

256. More generally, the Committee considers that in order to enhance the ability of the Scottish Parliament to scrutinise the potential equality impacts of primary legislation, in future an EQIA should become a formal accompanying document to every bill.

Conclusion
257. The Committee therefore recommends that the Scottish Government should work with the Scottish Parliament to consider the practical steps required to implement this change.

182 Minister for Public Health. Written submission, 6 June 2012.
OVERALL CONCLUSION

258. The Committee welcomes efforts to encourage an increase in the number of people who are given the opportunity to exercise choice and control over their own care and support. To date, take up of self-directed support in Scotland, principally through the mechanism of direct payments, has been extremely slow.

259. The Committee has recognised in this report that independent living, in which all citizens have the same freedom, choice, dignity and control in their lives, is at the heart of what this Bill is striving to achieve.

260. From the evidence it has received, the Committee is convinced that a legislative approach is now required in order to drive forward the implementation of self-directed support in its various forms across Scotland.

261. The Committee acknowledges that implementation will present significant challenges for service users and service providers alike; individuals and their carers will require information and advice in order to make informed choices about their care and support; local authorities will need to redesign services to become more flexible and responsive to people’s needs and wishes; and independent and voluntary sector providers will need to adjust to a market for social care in which many more individuals purchase their own bespoke care packages. Despite these challenges, the Committee considers that self-directed support is a policy which should be promoted and progressed.

262. In conclusion, therefore, the Committee recommends to the Parliament that the general principles of the Bill be agreed to.
### COMMONLY USED ACRONYMS

Note – All acronyms are fully explained when first mentioned in the text of the Report. This list is provided for ease of reference.

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>ADSW</td>
<td>Association of Directors of Social Work</td>
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<tr>
<td>AWI Act</td>
<td>Adults with Incapacity (Scotland) Act 2000</td>
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<tr>
<td>CCPS</td>
<td>Coalition of Care and Support Providers in Scotland</td>
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<tr>
<td>EQIA</td>
<td>Equality Impact Assessment</td>
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<tr>
<td>ILIS</td>
<td>Independent Living in Scotland</td>
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<td>MWC</td>
<td>Mental Welfare Commission</td>
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<td>OPG</td>
<td>Office of the Public Guardian</td>
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<tr>
<td>PVG</td>
<td>Protecting Vulnerable Groups</td>
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<tr>
<td>SASW</td>
<td>Scottish Association of Social Work</td>
</tr>
<tr>
<td>SCCYP</td>
<td>Scotland’s Commissioner for Children and Young People</td>
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<td>SCLD</td>
<td>Scottish Consortium for Learning Disability</td>
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<td>SDS</td>
<td>Self-directed Support</td>
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<td>SDSS</td>
<td>Self Directed Support Scotland</td>
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<tr>
<td>SIAA</td>
<td>Scottish Independent Advocacy Alliance</td>
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<td>SLC</td>
<td>Subordinate Legislation Committee</td>
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<tr>
<td>SPAEN</td>
<td>Scottish Personal Assistants Employers Network</td>
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<tr>
<td>SSSC</td>
<td>Scottish Social Services Council</td>
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ANNEXE A: EXTRACT FROM MINUTES OF THE HEALTH AND SPORT COMMITTEE

12th Meeting, 2012 (Session 4)

Tuesday 27 March 2012

Social Care (Self-directed Support) (Scotland) Bill (in private): The Committee considered its approach to scrutiny of the Bill at Stage 1 and agreed its programme of oral evidence taking.

15th Meeting, 2012 (Session 4)

Tuesday 8 May 2012

Social Care (Self-directed Support) (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

David Williams, Assistant Director Social Care Services, Glasgow City Council;

John Alexander, Director of Social Work, Dumfries and Galloway Council;

Janet Spence, Programme Manager (Modernisation and Quality Assurance), Highland Health and Social Care Partnership;

Dr Julie Ridley, Project Lead of SDS Test Sites Evaluation Team, Senior Research Fellow, University of Central Lancashire;

Professor David Bell, Professor of Economics, University of Stirling;

Ron Culley, Chief Officer, Health and Social Care, COSLA;

Andy Martin, Manager of Adult and Community Care Services, East Dunbartonshire Council;

Elaine Torrance, Acting Director of Social Work, Scottish Borders Council.

16th Meeting, 2012 (Session 4)

Tuesday 15 May 2012

Social Care (Self-directed Support) (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Duncan Mackay, Head of Social Work Development, North Lanarkshire
Council; Association of Directors of Social Work;
Ruth Stark, Social Worker and Manager, Scottish Association of Social Work;
Ellen Hudson, Associate Director, Royal College of Nursing Scotland;
David Cumming, Director of Operations (Programming, Co-operation & Registration), and Professor Frank Clark, Chair of the Board, Care Inspectorate;
Sandra McDonald, Public Guardian, Office of the Public Guardian;
George Kappler, Deputy Chief Executive, Mental Welfare Commission for Scotland;
Adrian Ward, Convenor of Mental Health and Disability Committee, The Law Society of Scotland.

17th Meeting, 2012 (Session 4)
Tuesday 22 May 2012

Social Care (Self-directed Support) (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Dee Fraser, Programme Manager Providers & Personalisation, Coalition of Care and Support Providers in Scotland;
Ranald Mair, Chief Executive, Scottish Care;
Peter Brawley, Director - Manager, Scottish Personal Assistant Employers Network;
Noni Cobban, Vice-President, UK Home Care Association;
Angela Henderson, National Local Area Co-ordination Development and Policy Manager, Scottish Consortium for Learning Disability;
Pam Duncan, Policy Officer, Independent Living in Scotland project;
Brian Houston, Associate Director Children’s Services, Barnardo’s Scotland;
Florence Burke, Director for Scotland, The Princess Royal Trust for Carers in Scotland (part of Carers Trust);
Callum Chomczuk, Senior Policy and Parliamentary Officer, Age Scotland;
Aidan Collins, Policy Officer, Scottish Association for Mental Health;
Jim Pearson, Deputy Director Policy, Alzheimer Scotland;

18th Meeting, 2012 (Session 4)
Tuesday 29 May 2012

Social Care (Self-directed Support) (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Neil McCarthy, National Development Worker, People First Scotland;
Margaret Cassidy, Direct Payment User;
Omar Haq, Service User;
Michael Matheson, Minister for Public Health, Jean Maclellan, Head of Adult Care and Support Division, and Craig Flunkert, Bill Team Leader, Scottish Government.

20th Meeting, 2012 (Session 4)
Tuesday 19 June 2012

Social Care (Self-directed Support) (Scotland) Bill (in private): The Committee considered a draft Stage 1 report. Various changes were agreed to, and the Committee agreed to consider a revised draft, in private, at its next meeting.

21st Meeting, 2012 (Session 4)
Tuesday 26 June 2012

Social Care (Self-directed Support) (Scotland) Bill (in private): The Committee considered a revised draft Stage 1 report. Various changes were agreed to, and the report was agreed for publication.
ANNEXE B: ORAL EVIDENCE AND ASSOCIATED WRITTEN EVIDENCE

15th Meeting, 2012 (Session 4) Tuesday 8 May 2012

Written Evidence

Glasgow City Council
Dumfries and Galloway Health Board and Council
COSLA
East Dunbartonshire Council
Scottish Borders Council

Oral Evidence

Glasgow City Council
Dumfries and Galloway Council
Highland Health and Social Care Partnership
University of Central Lancashire
University of Stirling
COSLA
East Dunbartonshire Council
Scottish Borders Council

Supplementary Written Evidence

Highland Health and Social Care Partnership
COSLA
Glasgow City Council

16th Meeting, 2012 (Session 4) Tuesday 15 May 2012

Written Evidence

Association of Directors of Social Work
North Lanarkshire Council
Royal College of Nursing Scotland
Care Inspectorate and Healthcare Improvement Scotland
Office of the Public Guardian
Mental Welfare Commission for Scotland
The Law Society of Scotland

Oral Evidence

Association of Directors of Social Work
North Lanarkshire Council
Scottish Association of Social Work
Royal College of Nursing Scotland
Care Inspectorate
17th Meeting, 2012 (Session 4) Tuesday 22 May 2012

Written Evidence

Coalition of Care and Support Providers in Scotland
Scottish Care
Scottish Personal Assistant Employers Network
Scottish Consortium for Learning Disability
Independent Living in Scotland project
Barnardo's Scotland
Carers Trust and the Princess Royal Trust for Carers in Scotland
Age Scotland
Scottish Association for Mental Health

Oral Evidence

Coalition of Care and Support Providers in Scotland
Scottish Care
Scottish Personal Assistant Employers Network
UK Home Care Association
Scottish Consortium for Learning Disability
Independent Living in Scotland project
Barnardo's Scotland
The Princess Royal Trust for Carers in Scotland (part of Carers Trust)
Age Scotland
Scottish Association for Mental Health
Alzheimer Scotland

Supplementary Written Evidence

Scottish Care

18th Meeting, 2012 (Session 4) Tuesday 29 May 2012

Written Evidence

People First Scotland
Oral Evidence
People First Scotland
Margaret Cassidy, Direct Payment User
Omar Haq, Service User
Scottish Government

Supplementary Written Evidence
Margaret Cassidy, Direct Payment User
Scottish Government
1. Are you generally in favour of the Bill and its provisions?

Glasgow City Council (GCC) fully supports the development of this Bill and the principle of empowerment for service users, which underlies it. In addition, it supports the shift from the earlier consultation to make offering choice, as per the four options, the default position for local authorities rather than direct payments.

2. What are your views on the principles proposed?

The principles of involvement and collaboration promote and reinforce best social work practice through the promotion of citizenship, informed choice and give service users greater control over their own lives and the support that they need.

3. What are your views on the four options for self-directed support proposed in the Bill?

GCC is in broad agreement with the options. The rewording and re-ordering of the four options from the earlier consultation draft provide greater clarity.

4. Do you have any comment on the proposal that the self-directed support options should be made available to children and their families, together with the proposal that the degree of control a child may have over the process should vary with age?

GCC supports these proposals. The proposals will bring SDS legislation/guidance into line with the Children (Scotland) Act 1995.

5. Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

GCC would wish to re-iterate its comments made at the earlier consultation that there should be a legislative requirement for local authorities to sign post service users to advocacy services as per mental health legislation.

6. Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?

GCC would wish to add that service users should always be advised of the individual cost of their support, regardless of the chosen method of service arrangement and delivery, to assist them to make informed choice. The provision of this information to service users would contribute more towards the change that the government seeks.

7. Do you have any views on the provisions relating to adult carers?
It is appropriate that when carers are being offered services they receive the same choices as service users as to how they organise and receive it.

8. Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?

It is appropriate that local authorities have the flexibility to make exceptions for the employment of close relatives where there is no other appropriate alternative.

The Scottish Government should publish guidance, to accompany the forthcoming SDS legislation, on good employment practice for individuals organising their own support.

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

The implementation of SDS for carers could entail significant recurring costs for local authorities. For further comments please refer to attached response and refer to GCC previous submission in response to earlier consultation.

10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?

See above

Other matters

11. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

None

Glasgow City Council
24 April 2012
Social Care (Self-directive Support) (Scotland) Bill

Dumfries & Galloway Health Board and Council

1. Are you generally in favour of the Bill and its provisions?

Dumfries and Galloway Health Board and Council are supportive of the Social Care SDS Bill (Scotland 2012) and that support is reflected in the Council’s single Outcome Agreement and its early participation in this agenda as a Scottish personalisation test site. The Bill’s provisions are appropriate and accord with what many professionals, carers and service users have long been seeking. There is a clear need for legislation to underpin the Scottish year SDS strategy and the Government’s aim to “encourage a significant increase in the number of people who actively direct their own support.” The 1996 Direct Payments legislation is insufficient to support the ambition of the agenda to enshrine choice and control in mainstream health and social work cultures and we agree that the current position “fails to place direct payments in their proper context and fails to provide a comprehensive framework of choice.”

2. What are your views on the principles proposed?

The principles of the Bill are fundamental to Council policy and accord with the D&G Community Health and Social Partnership Board and GIRFEC strategy. The experience of D&G as a test site has been that progress towards SDS can give a greater level of choice and control to individuals and so create a much more equal relationship with professionals, giving front line social work staff and managers permission to readily access the principles of their training around empowerment and participation and the promotion of the social welfare, which is the fundamental duty contained in the Social Work (Scotland) Act 1968. It is our strongly held view that the principles of the Bill require cultural as well as policy and legislative change.

3. What are your views on the four options for self-directed support proposed in the Bill?

The four SDS options reflect the Council’s experience to date. Some families/individuals seek the full direct payment route whereas others simply wish to exercise more choice and control within existing support arrangements. Many seek assurance that choices can be reviewed and revised.

Option 2 and 4 bring complex issues of procurement, quality assurance and risk. In section 8 of the Bill it states that “The authority must give the person an explanation of the nature and effect of each of the options for self-directed support.” The most difficult Option to understand from a contractual perspective is “Option 2” which seeks to devolve choice and control to an individual service user or carer but where the authority remains the “Purchaser”. Scotland Excel has done some detailed work on developing a standardised “Individual Service Fund” (ISF) contract for use by Scottish
Councils but as yet there has been insufficient time to test this model comprehensively. Drafting the Excel ISF contract has thrown up a number of complex risks for Councils (sub-contracting to third parties within an ISF). A range of other questions have been raised such as would an ISF only be suitable for Providers registered with the Care Inspectorate or would this be an unreasonable limit on individual choice?

This presents a challenge to Councils- If we do not restrict ISFs to Providers registered with the Care Inspectorate, what safeguards would a Local Authority need to implement before being satisfied that it was appropriate to contract with a Provider on behalf of a member of the public? It is clear when discussing what an Individual Service Fund is that there are different interpretations of its legal application. Whilst this Council would not want to impinge on any individual’s right to direct their own support unless absolutely necessary, that is a different question from Councils being comfortable entering into contractual relationships with personal assistants or service providers we have little or no knowledge about, especially given Council’s responsibilities in respect of Adult Support and Protection. However, as an authority we would welcome the opportunity to fully explore the potential options around this in order to find a solution which supported the shift of choice and control and enabled the authority to offer an appropriate and safe level of support to this option.

4. Do you have any comment on the proposal that the self-directed support options should be made available to children and their families, together with the proposal that the degree of control a child may have over the process should vary with age?

We do believe in principle that the Bill’s four options should be available for children and their families. It allows families an opportunity to be in control of the services that they need to best meet their needs and it offers them flexibility, control and choice that they often reflect is missing in their lives. It provides an opportunity to consider mainstream options for their children and helps to make them feel included within their families and communities. It also allows families to get together and consider how their needs can be met. For those confident and able it also helps to reduce dependency upon statutory services.

From a statutory perspective the Bill supports families to retain the responsibility for their children and does not allow this to be devolved to others. It can help encourage independence and give them a feeling of being in control and managing their lives as opposed to feeling they are at the “mercy” of others for their support needs.

As an authority we are working towards the implementation of a personalised approach across all service areas through the embedding of the key principles fo choice and control in both the assessment and care planning stages to identify outcomes and consider how these can best be achieved. The
principles of SDS sit within the overall framework of an integrated approach to children’s services through the GIRFEC model.

As for the child having full control, this is an aspirational goal but realistically for many of the children who will be eligible to receive this their capacity to communicate their thoughts might be significantly impaired. For all children wherever possible their views should be sought in the services that are being delivered for them whether arranged by parents/carers or provided by statutory services. Skilled communication experts such as Speech and Language Therapists can support professionals and families alike in communication around personal wishes and plans and this is a good example of the role of the wider multi-disciplinary team across agencies in supporting more personalised approaches.

5. Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

To realise the provisions on information and advice within the Bill we would suggest that the importance of independent advocacy is introduced to the Bill. We would suggest that there needs to be explicit reference to Councils (& partners) distributing quality information about independent advocacy services - to assist people to make decisions & have their views heard. This is different from ‘independent advice & support’ - as independent advocacy aims to allow the person to express their own views (even if this is against advice & others don't feel it's in their best interests). The Bill refers to family & friends being involved - but in certain cases, the views of family & carers are diametrically different to the person themselves - thus the importance of professional independent advocacy. A strong independent advocacy sector should also help to protect some people at risk of becoming involved in a potentially negative/ abusive relationship - e.g. in employment of relatives/ friends - where there may be conflicts of interest.

6. Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?

“Local authorities should be empowered to allow the employment of close family members where this is the supported person's and carer's informed choice and where it is appropriate to do so. The Bill therefore contains a power for Ministers to issue regulations in order that they can guide authorities who may need to sanction such arrangements.”

The current regulations limiting the employment of close relatives is clear and acts as a protective measure. The regulation is also rooted in a genuine concern about exposure to financial irregularity. However, it is difficult to reconcile a desire to recognise the huge role that close relatives have in society in terms of their caring role and also deny them access to fair remuneration for their role through a direct payment. D&G Councils experience as a test site was to take a positive view of the option to allow
employment of direct family members and to date this has proved successful. We should be very clear though that by removing the current restriction, however discriminatory we find it, we expose Councils to the possibility of having to fund the previously unfunded and massive contribution of family carers. In some circumstances however it is easy to predict that financial support to Carers through a direct payment would in the long term deliver savings to Councils and society generally. It is also important to maintain a clear balance between what is in effect normal family activity which may need some external support and an expectation that all care would be funded (as this would be unsustainable).

7. Do you have any views on the provisions relating to adult carers?

The Bill has the capacity to support the type of flexibility and creativity into the support of adult carers that many people have been seeking. Subject to the availability of adequate resources then carers assessments of need will, under the proposed legislation, have the potential to lead to more than just statements of need. There is a need for carers assessments to be put on the same footing as self-directed support with a similar process which could include self assessment, identification of outcomes and the development of a personal plan for the carer. The SDS bill has the potential to liberate social work practitioners’ creativity and provide a responsive mechanism to make available relatively small amounts of funds which can have significant impacts in supporting someone to remain in a caring role. Therefore the provisions within the bill are to be welcomed. It is noted though that support to carers remains a “power” and not a “duty”. D&G Council policy will remain that carers will be offered the opportunity for an assessment of their own needs.

8. Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?

From an Adult Support and Protection perspective the regulation of personal assistants has always been an issue. What specifically are the safeguards in place to ensure that vulnerable people are not exposed to further risks of harm? As per para 28 in the Policy Memorandum there needs to be a balance struck between the right to self-determination and choice and the attendant risks that those choices bring;

“Balancing empowering practice with support for people to manage risk will require the input of skilled social care professionals and statutory guidance will elaborate on this question in greater detail”.

Skilled professional judgement during assessment and support planning has always previously been the main mechanism by which these risks are managed and the SDS Bill upholds the discretionary power of Councils in deciding if an individual’s choice of service provider is likely to deliver legitimate outcomes or not. The effective deregulation of the social care workforce however will add significantly to the burden upon Councils in assessing the risks presented by individuals wishing to be personal assistants
without having undergone any of the regulatory checks associated with a Provider registered with the Care Inspectorate.

It is also important to recognise the gaps in the current Protecting Vulnerable Groups Scheme (PVGS), in particular the restrictions on disabled people who employ their own support staff from accessing information through the Disclosure Scotland arrangements. It is strongly suggested that work to close the gaps in the PVGS should be undertaken to complement the introduction of the SDS Bill.

A shift in the balance of power from organisations and professionals to service users/patients and carers will not be without risks and challenges. Maintaining a focus on the outcomes to be achieved through SDS should provide the perspective necessary to mitigate against the most obvious risks. Risk aversion should not be allowed to undermine a shift from a system defined by the services it delivers to the outcomes it secures. This will require a different way of defining and managing risk whilst maintaining the important balance key to which is a greater level of involvement by the individual.

11. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

The interface between Social Work, Social care and Health in respect of Self-directed support is complex and many lessons remain to be learnt by experience. The delegation of functions between NHS bodies and Councils to facilitate individual care packages is an approach likely to deliver better outcomes in many people’s lives and the innovative work underway in Lothian & Fife will be useful indicators of what some of the issues are for the NHS in contributing to SDS support packages. It is D&G Councils opinion that Individual budgets can create a more patient centred and integrated health and social care system. In this sense D&G Council is supportive of COSLA’s position that the scope of the Bill is too narrow; “There is an obvious deficiency in ascribing responsibility for SDS to local authorities alone”. SDS has huge potential to improve health outcomes, prevent individuals becoming dependent on specialist services and has the potential to make the NHS more efficient.

Dumfries & Galloway Health Board and Council
23 April 2012
1. Scottish local authorities have been working with their community planning partners, including the communities they serve, to develop more personalised services that put individual outcomes, choice, and control at the heart of service delivery. COSLA is fully committed to self-directed support (SDS) as an approach to advancing the personalisation agenda and supporting people to live independently in the community. In order to take this forward, COSLA has been working closely with the Scottish Government and launched a joint national strategy for self-directed support in October 2010. This strategy sets out a ten-year vision for delivering social care that is fit for the future.

2. While COSLA Leaders welcome the continued focus on SDS, they are unable to support a legislative agenda at this time. It is our view that the self-directed support strategy needs to be given sufficient time to fully influence practice, before there can be a clear case for taking the next step of introducing legislation.

3. However COSLA remains fully committed to personalisation and the roll out of self-directed support. It is COSLA’s belief that self-directed support has the potential to deliver a step-change in the way support services are provided. It allows for an extension of the state’s ability to support people through providing greater flexibility, and at the same time empowers individuals and carers to help themselves by exercising greater control and entering into a more empowering partnership with the state. Scottish local authorities are determined to make best use of any new legislative powers on behalf of the people of Scotland. To this end, we would offer comment on a number of measures required to ensure any legislation is as effective as possible in supporting the policy intentions of SDS.

4. It is noted that many of our member councils will offer individual responses to the bill which will address the specific consultation questions and refer to matters of technical detail. In the interests of avoiding duplication, COSLA’s response is therefore limited to what we consider to be political or policy issues. The committee should be aware that COSLA has also been asked to submit evidence as part of the Finance Committee’s scrutiny of the bill and accompanying financial memorandum. We would direct members to this for COSLA’s views on financial matters.

5. In commenting on the contents of the bill itself, we note the need to strike the right balance between the importance of the issue and allowing enough flexibility to respond to changing circumstances without the need for further primary legislation. This necessarily results in some matters being dealt with through subsequent regulations and guidance, and we are broadly supportive of where these lines have been drawn. However, there are some matters which, while we agree they should be addressed
through regulation, we feel are of sufficient importance to warrant comment at this stage.

6. For clarity, we have divided our response in to comments on the bill itself, and then points in relation to anticipated regulation and guidance.

THE SELF-DIRECTED SUPPORT BILL

Scope of the bill

7. Firstly, we would ask that the title and scope of the bill be re-considered. The policy intention of self-directed support is to empower individuals; this includes taking an assets approach to improving well-being by drawing upon the natural capacities, support and abilities that individuals have, coupled with ensuring greater control over the resources available to meet identified needs and achieve agreed outcomes. The primacy of the term ‘social care’ in the title of the bill is misleading in terms of the overall policy intention of the bill. It also defines SDS in relation to a set of services, rather than as an action service users are empowered to take in controlling their support. We would therefore recommend that the term ‘social care’ is removed from the title of the bill.

8. If Parliament does decide to pass legislation on SDS, it needs to ensure this provides a statutory underpinning that supports the policy intentions of both SDS and the wider integration of health and social care. Our joint ambition for health and social care is to ensure that services are organised around citizens’ needs, and not institutional boundaries. If we are to realise this ambition, the principles of choice and control need to extend across all health and social care services, and the bill must act as an enabling force in this respect. While the bill does make some provision for NHS duties to deliver SDS options, this relates only to their delivery of social care services when acting on behalf of a local authority, and not to wider NHS services.

9. Extending SDS duties to these wider services, for example in relation to palliative care, or managing long-term conditions, could bring significant benefits for groups of people who currently do not have a right to SDS options. For example, people with long-term conditions could enter into a transparent discussion about the broad resource envelope services are operating within, what outcomes are most important to them, and how that translates into different intervention options. That individual could then exercise greater control in choosing interventions, for example, through choosing to whether to access a pain clinic, receive medication, or even a direct payment to allow them to access their local gym and keep mobile.

10. Despite these advantages, COSLA recognises that there are particular issues in relation to extending the principles of choice and control to NHS services more widely, especially around clinical decisions about the range of interventions that would be appropriate. Lessons learned from the two NHS SDS pilot sites, which we understand are due to report within the
next few weeks, will be helpful in exploring some of these issues in more depth. Clearly there will always be some NHS services where the provision of one or more of the SDS options may not be appropriate, for example in relation to surgery or emergency provision.

11. Another issue is the desire to ensure that health services remain free at the point of delivery; however, exercising greater choice and control over how services are provided, or even receiving a direct payment, is not the same as being charged for services. There are numerous other cultural and system challenges in applying the principles of self-directed support to the NHS; however, these are not insurmountable and do not in and of themselves constitute sufficient reason to limit the scope of the bill.

12. In fact, the balance the bill strikes between making specific provisions, versus leaving matters to be dealt with through regulation, is helpful in addressing these challenges. As the bill stands, it does not immediately introduce new duties – these will not come in to force until Ministers make regulations. Moreover, the bill itself does not set out exclusions, for example in relation to individuals, services, or circumstances where the right to access direct payments (or other SDS options) would not apply. Rather, the bill lays the legislative foundations for SDS by defining it in statute, outlining a range of duties, and establishing Ministers’ powers to bring these in to force at a later date or modify them as required. It is this foundation which COSLA would like to see extended to NHS services.

13. As is the case with the proposed council duties, Ministers would enact these duties at a later date, with exclusions being defined within subsequent regulations. This would allow for control of the scope and pace at which SDS could be selectively introduced to the NHS. What is of vital importance is that the principle is established and the foundation laid.

14. COSLA would welcome the opportunity to be involved in further discussions about how we could work together to build on those foundations, in order to bring a social care culture to parts of the health service. This would support the development of the personalisation agenda across the NHS in general, and through health and social care in particular. If we are to achieve our joint ambitions for integration and personalisation, then boundaries around access to self-directed support need to be governed by considerations such as managing risk and the pursuit of outcomes, and not organisational structures or increasingly arbitrary service boundaries.

General principles

15. While COSLA supports the principles of involvement, collaboration, and informed choice outlined in the bill, we would suggest that the bill also needs to highlight the balance between the rights and responsibilities of citizens. It is important that our approach to the provision of support is grounded on the principle of reciprocity. In other words, the recipient of self-directed support has an obligation to deploy any allocated budget
whether translated into a direct payment or not) in ways that meet mutually identified outcomes agreed with the local authority. The principle of reciprocity would ensure that accountability for the use of public money (including that deployed through SDS options 2, 3 and 4), sits not just with the local authority but with the individual as well. COSLA would like to see this principle expressed within the bill.

16. Just as the bill should outline the rights and responsibilities of the citizen, so too should it detail the powers and responsibilities of the public authority. While for the most part the bill achieves this, it could be more explicit about the means by which demand for services or support should be managed. While the 1968 Social Work (Scotland) Act introduces the notion of a two-step process (assessment of need; and consideration of whether those needs call for the provision of services), this has been subject to a variety of legal interpretations and rulings. The SDS bill could usefully address this point, to more clearly define the concept of ‘eligible’ need, particularly in a climate of diminishing public finance and growing levels of need.

Support to carers

17. COSLA is clear that unpaid care has been, and will continue to be, the bedrock of supporting people with care needs in the community. In July 2010, we launched a joint national strategy for carers with the Scottish Government - Caring Together: The Carers Strategy for Scotland 2010-2015. Caring Together begins to set out a framework for developing a partnership between the state and the family in the delivery of care. The SDS bill as it stands appears to support the relationship between local authorities and carers in defining and managing this partnership, whilst allowing carers greater choice and control in how their support is delivered.

18. As the bill progresses through parliament, questions may arise about how responsibility for care should be distributed across this partnership. COSLA would not support any move to fundamentally alter the balance of this relationship to place more responsibility on the state, for example through replacing the proposed power to support carers with a duty. This would come at huge cost to the public purse with significant impact on other areas of public spending, including that required to meet other statutory duties. The issue of resources aside, introducing a duty to support carers would also shift the balance of responsibility for care between the state and the family, to an extent which raises fundamental political and philosophical questions that are arguably beyond the scope of legislation on self-directed support.

REGULATIONS AND GUIDANCE

19. COSLA is broadly supportive of the ‘presumption towards inclusion’ that underpins the bill’s approach to defining eligible groups. However, this places a requirement upon any supporting regulations and guidance to
define exemptions, and set out local authorities’ discretion to refuse access to one or more of the SDS options. This might be required, for example, in circumstances where one or more of the SDS options would carry unacceptable levels of risk, or would result in the local authority failing in another statutory duty.

20. In considering regulations and guidance, there are further choices to be made between making provision for specific circumstances or groups, versus establishing local authorities’ rights and responsibilities to exercise discretion and apply professional judgement. These matters require detailed consideration and, as such, are beyond the scope of this response.

21. However, it is clear that the bill’s presumption towards inclusion places many important issues under the auspices of regulations and guidance. It is therefore vital that the construction of regulations and guidance are properly resourced, both in terms of expertise and development time. COSLA notes the intention to use powers to make regulation ‘immediately’ (expressed in the delegated powers memorandum which accompanied the bill in to parliament). For the reasons set out above, we would suggest that the regulations and guidance should be developed in partnership with key stakeholders, including experts from health and social care services, and over a timescale which ensures they will be fit for purpose.

22. The matters to be dealt with through regulation are numerous and detailed – we have restricted our comments below to those issues which are most commonly raised by our members. Similarly, the exact form that regulation should take is a matter for consideration by expert groups over a period of time – we have therefore restricted our comments to matters of principle of policy that we feel should underpin future regulations and guidance.

Children and young people

23. While the principles of SDS clearly should be applied to children and young people with support needs, there is a general question about how the principles of choice, compulsion, and guardianship can be compatible. This is brought in to particularly sharp focus in the case of children who are looked after. The bill’s provisions do not appear apply to decisions around a child becoming looked after (or looked after and accommodated), although this could be clarified. However, these children can also receive services provided under section 22 of the Children (Scotland) Act (1995), to which the SDS bill provisions do quite clearly apply. Under these circumstances, or where services are being provided in an attempt to avoid child protection measures in the future, it may on occasion be appropriate to restrict access to one or more of the SDS options - for example, in relation to direct payments to some parents or guardians where there are child protection concerns. While a blanket exemption of certain groups of children would be undesirable, regulations
need to clearly establish local authorities’ discretion to exercise professional judgement under these circumstances.

24. Although we have focused on children and young people here, it is also worth noting that these issues may arise for other groups, such as people experiencing severe mental health problems. Regulations and guidance will need to consider how to balance a presumption to entitlement and avoidance of inappropriate blanket exemptions, with the protection of local authorities’ discretion and professional judgements, across a range of groups and circumstances.

Sharing risk

25. Flowing from the need to have a clearer exposition of the rights and responsibilities within the principles on the face of the bill, is a need for regulations to address responsibility and risk in a number of key areas. The right to use a direct payment to employ staff, such as personal assistants, also carries the responsibility of managing the risks associated with becoming an employer. There are some cases where the extent to which this transfer of risk from the local authority to the individual can take place within the current legislative framework is not clear, for example in relation to disclosure checks on personal assistants. Regulations need to ensure that individuals’ rights in relation to SDS, for example in employ staff without a disclosure check, do not conflict with local authorities duties in other areas, for example in relation to protecting vulnerable groups.

Residential care

26. COSLA does not have a principled objection to the extension of direct payments to residential care but would suggest on balance that there is more to lose than gain from its inclusion. Councils are already governed by Directions on Choice that determine the right of people to select their own care home and therefore the extension of direct payments would not add value in this respect.

27. On the other hand, removing the local authority from the contracting relationship means fee levels are a matter of agreement between the care home and the individual, potentially leaving individuals without the protection of the national care home contract. If individuals were classed as self-funders, they may be charged higher rates (currently councils can procure residential care at a significantly cheaper rate than individual ‘self-funders’). Should a person then accrue arrears and be facing eviction, councils would have a duty to step in until a legal resolution could be found, incurring further cost to the council and causing unnecessary distress to the individual. Furthermore, if an individual budget is provided to the supported person at the National Care Home Contract rate, this may prevent placement in in-house council provision (which tends to be more expensive than the NCHC rate) and hence generate viability issues.
Payment methods

28. Local authorities are governed by charging regulations that mean, where an individual’s income levels are assessed as being with certain parameters, councils will recover a proportion of a person’s income as a contribution towards the cost of services. This applies to both residential care and other council services, although income thresholds can vary between them.

29. Regulations need to ensure that, when making a direct payment, councils are able to make this payment net of any contributions due from an individual. If regulations establish a requirement for payments to be made gross, councils will then have to recover the personal contribution, adding another layer of billing and associated bureaucracy at considerable cost. Such ‘double’ billing and collection systems also result in an element of non-recovery where it has not been possible to recover the personal contribution due and the cost of pursuing the debt exceeds the costs of write-off.

30. Under these circumstances, choice and control are exercised through opting to receive funds rather than particular services, and subsequent decisions on how to invest those funds towards agreed outcomes. COSLA recognises that requiring payments to be made gross would allow people who use council-run social care services to withhold payment if they were not satisfied with the service; however, this does not benefit their choice or control, as they would be subject to the same procedures for dealing with complaints as if they were receiving payments net. They would simply now also be subject to an arrears recovery process.

31. A requirement to make direct payments gross would deliver little or no benefit to people who use social care services, and would come at considerable administrative cost to councils at a time where resources are needed to fund individual service budgets and meet rising demand.

COSLA
20 April 2012
Social Care (Self Directed Support) (Scotland) Bill

East Dunbartonshire Council

Q1 East Dunbartonshire Council is in favour of the Bill. The Bill shows a clear commitment to supporting Service Users and Carers through personalisation and choice of services to meet their assessed needs. The Service Users/Carers will have a greater degree of flexibility on how and when they wish to receive their support and from who support will be provided. The process for receiving support gives Service Users/Carers the opportunity to become more active in its direction. The Bill makes clear the continued role of the Local Authority in the assessment of Service User/Carer needs and reinforces the fact that assessments are carried out in collaboration with the Service User /Carer (dependent on their age and capacity to be involved). The Bill’s Explanatory Notes acknowledges that Local Authorities will need to review their infrastructures/functions i.e. Information Technology, Financial Processes and Systems. This will require additional resources. It is of concern to the Council that additional expenditure may be incurred, if the arrangements in the Bill are given effect. We have concerns that a Resource Allocation System might not be a suitable tool to identify every Service User’s individual budget. There will be complex and unique cases which will not fit in with a Resource Allocation System which is primarily designed to be used for all Service Users. The Bill will require Social Care Providers to review their capacity and implement cultural and organisational changes to provide innovative and diverse support services for people directing their own support. This may prove difficult for some Providers as Local Authorities make the transition from block contracting to individualised purchasing.

Q2 East Dunbartonshire Council supports the principles proposed. In common with other Local Authorities, we already encourage independent freedom of choice for Service Users. The principles of the Bill will support Service Users/ Carers in exercising their wishes over the choice of how their care will be delivered and by whom. It might be helpful to include a principle which relates to the responsibilities of those receiving support e.g. responsibility of Carers to ensure that their choice (i.e. of option re SDS) does in fact meet the assessed need, but also of their responsibility to collaborate with the Local Authority in the ongoing monitoring and review of the service in place in terms of whether it is achieving the intended outcome. Concerns still centre on whether certain SDS options will lead to purchases of inappropriate support i.e. risk to health and safety, which in turn could lead to the Service User’s assessed outcomes not being met. Local Authorities, Service Users, Carers and Providers need to work together to find a balance between risks and benefits involved in the decisions/actions taken when agreeing the Service User’s Support Plan. Clear distinctions have to be made within the Bill and statutory guidance that where there are concerns regarding capacity or vulnerability/safe guarding of adults/children that the Local Authority has the power to instigate and provide support under SDS Option 3 and refuse requests for support under SDS Options 1, 2 and 4. Clarity has to be given within the statutory guidance regarding the Local Authority’s position when the Service User requests that support is purchased by the Local Authority, on their behalf (as per SDS Option 2), from support providers not established within the Local
Authority’s procurement and commissioning framework. The Local Authority has clear, current and consistent financial and procurement procedures that must be followed when purchasing support services. We welcome statutory guidance in relation to the Service User’s rights and responsibilities and the responsible use of public funds by both the Local Authority and Service User/Carer.

Q3 The four options for SDS are clear within the content of the Bill, and provide clarity to support a consistent approach across the Authority regarding allocation of resources/individual budgets regardless of the option/s chosen. Contingency arrangements would require to be agreed in the Service User’s Support Plan to confirm arrangements should the support breakdown or be misused. As SDS becomes embedded, options for support may decrease if services have been decommissioned or reduced to accommodate SDS. Local Authorities will require to review the way that they plan and commission services.

Q4 Because the Bill clarifies that SDS is applicable when the Local Authority has decided to provide services under Section 22 of the Children (Scotland) Act 1995, it recognises that difficulties would arise if SDS were to apply in circumstances where children/young people are involved with the Local Authority on different legal bases (statutory measures). We have concerns where Section 22 has been deemed as an appropriate legal basis for working with a child/young person/family. The principle of minimum intervention has been applied but the Local Authority assessment is that support, direction and supervision by Social Work is required to ensure that the child/young person’s needs are being met. This could have unintended consequences, if the parent/Carer would have access to SDS when they do not meet the needs of the child/young person either because they are unable/unwilling to comply with the support, direction and supervision of Social Work. Unintended consequences could disadvantage the child/young person either because of the negative impact of misuse/misdirection of SDS funds available to the parent or could result in increased use of statutory measures as a result of the constraints on Local Authorities to provide SDS in these instances. Therefore we welcome the future statutory guidance to refer to certain exceptions where the Local Authority will have discretion to deny the person their preferred choice of SDS options and how Local Authorities should balance their duties on protection with their duties on SDS. Local Authorities already involve the child/young person in discussions and decisions regarding the care and support that they receive. While in agreement that the individual child/young person of varying ages will have different degrees of control over the SDS process, the same concerns and discretions would apply as noted previously.

Q5 East Dunbartonshire Council fully agree with the provisions regarding the requirement for information and advice. The introduction of new policies and procedures to implement SDS requires full explanation and to be accessible to Service Users and Carers. In some instances the relationship between the Assessor and Service User can be a complex one and we agree that there is a role for other persons (with an interest in the care of the Service User) and/or support/advocacy services to assist the Service User in making decisions about their SDS options and support. Bringing more people into the process increases the pool of skill and knowledge for the process and Service User’s experience of
SDS. However, it is essential that the role of each party/person involved in the process is made clear and that the Local Authority role in assessing need is not undermined through confused information or advice. While the Bill makes provisions for the Service User, who does not lack capacity but requires support or assistance from another person with regard to making decisions re SDS options and support, there are concerns regarding checks on the suitability of the person providing this assistance. This could lead to inconsistencies across Local Authorities of identifying persons who have an interest in the care of the Service User. It does however provide the Service User with support without going through a time consuming legal process. As mentioned in the Policy Memorandum we agree however, if there are issues with capacity or absence of any indication of an individual’s preferences, then the Local Authority will proceed to make decisions and arrange support (under Section 13ZA of the Social Work (Scotland) Act 1968 or seek an appropriate order under AWI legislation). Clear distinctions have to be made within the Bill and statutory guidance that where there are concerns regarding capacity or concerns regarding vulnerability/safe guarding of adults and children that the Local Authority has the power to instigate and provide support under SDS Option 3 and refuse the request for support under SDS Options 1, 2 and 4. The “provision of information” for all stakeholders is a broad term and requires capacity building work to be undertaken to help Local Authorities to realise potential costs of providing information in all appropriate methods and languages.

Q6 We believe that the method for modernising Direct Payments in the Bill will produce change in relation to its uptake as one of the SDS options. The modernisation of Direct Payments brings this option in line with the choices and flexibility afforded by other SDS options. The issues noted in the previous section regarding suitability of the person providing support in managing their Direct Payment monies is still a concern which could arise for individual Service Users. This could inflict inconsistency on the SDS process for Service Users, not only across Practitioners but across Local Authorities, but it will remove the requirement for time consuming legal processes to establish power of attorney or guardianship when there are no issues about capacity. We would welcome further statutory guidance regarding the suitability of ‘other persons’.

Q7 While East Dunbartonshire Council would agree with the provisions relating to adult Carers, sometimes the Carer and Service User’s best interests are not compatible whereby the Service User is not in agreement to the services that the Carer wishes to deploy/purchase. The importance of advocacy involvement in communication with and supporting Carers/Service Users is highlighted by this issue. The Bill should be amended to make clear the primacy of the purpose of Self Directed Support which is to support the needs/outcomes of the person who needs care, albeit we do this at times through support to that person’s Carer.

Q8 While we understand the flexibility afforded by not placing restrictions on the categories of people that may be employed by the Service User under SDS Option 1 we remain concerned regarding the suitability of such persons and we would welcome statutory guidance recommending robust approaches to ensure that Service Users are aware of their responsibilities as employers. However, we find this approach rather confusing given (i) the duty to ensure appropriate use of
public funds (ii) the duty to ensure services in place meet the assessed need (iii) the duties of Local Authorities in relation to child and adult protection. The approach taken by the Scottish Government risks hindering the ability for the Local Authority to give effect of these duties and potentially could put children and adults at risk. We have concerns that the authorisation for the Service User to employ a close relative will rest with individual Local Authorities. It is envisaged that this will lead to inconsistencies across Authorities when different views on the definition “relevant people” may be taken. Where the Local Authority is clear and has written evidence that it would not be in the interests of individual Service Users to employ a relative i.e. risk, health and safety, vulnerability, safe guarding etc we would not be in a position to grant this request. We acknowledge that the Scottish Government envisages that any increase in Carers Assessments will be in response to the Carers Strategy rather than the implementation of the SDS Bill but we are extremely concerned that by not restricting unpaid Carers being employed by the Service User (except for in exceptional circumstances) that this could set a risky and costly precedent with non-paid Carers requesting payment for their time. The Local Authority does not have the resources to meet what could be a high demand from Service Users and Carers requesting payment for their caring role (that they currently undertake on a non-paid basis). We would suggest that the statutory guidance needs to consider these concerns.

Q9 At this time it is difficult to estimate what the extent of change will be, what resources/support Service Users will wish to purchase and therefore in the longer term it is difficult to estimate, as recognised in the Financial Memorandum, the costs associated with SDS and whether they will, and how long it will take, to balance these costs with financial savings made in other areas. Additional resources required within areas such as Planning and Commissioning, Finance and Information Technology, balanced with those people opting to receive home based support as opposed to traditional services, should in the long term be balanced out by the reduction of some administration processes, reduction in block contracts, reductions in wasted or unwanted services, reduction in building based services etc. Significant changes such as these described require significant work, administratively and managerially, before changes can be implemented and savings accrued to balance out increased expenditure due to SDS and changing demographics. There is no transitional funding to support Local Authorities during what could be a lengthy transitional period during which there may be a need to effectively ‘double-fund’ services. “Cost Neutrality” will not be revolutionary. Local Authorities are, due to financial constraints, limited in the availability of non mandatory training courses, and while we welcome the short term funding to assist with implementation of the SDS strategy, broader resource issues could arise in relation to staff time costs to attend training, in particular in circumstances where back filling of staff is required to ensure that essential duties continued to be carried out during training periods. There are resource concerns regarding the Bill regulation whereby an individual can choose to receive their Direct Payment as gross or net. As recognised in the Financial Memorandum, payments on a gross basis incur administrative costs to Local Authorities and are administratively more time consuming to Service Users. To ensure that the cost impact of SDS is minimised would it be more appropriate to provide Direct Payments as net only, therefore cost impact to the Local Authority is lessened and it is “administratively convenient” to the Service User. Any administrative costs to
the Local Authority has an impact on overall budgets for service delivery and we feel that Service Users would be understanding of the Local Authority’s financial position in opting for the most cost effective route.

We would welcome the opportunity to be consulted on further work in relation to the suggestion of future regulations to remove current restriction on the use of Direct Payments for residential care and the effects on the National Care Home Contract. Our previous concerns would still apply: Any changes in this area would have a corresponding effect on Free Personal and Nursing Care legislation, where the contract is currently between the Care Provider and the Local Authority: Issues and difficulties regarding child care residential accommodation; Free Personal Care legislation would require to be updated; Issues regarding the maintenance of time limits.

Q10 In addition to the comments made above, and as per previous consultation comments, the Bill focuses emphasis on the Service Users’ needs and outcomes. There are issues and concerns regarding contingencies. Complete transformation of services with no fall-back position removes choice. There continues to be a danger that without consistency across Resource Allocation Systems, there could be a postcode lottery. There may also be a disproportionate uplift of SDS in more affluent Local Authority areas and a preponderance of choice and control sitting with articulate and confident service users and carers.

East Dunbartonshire Council
23 April 2012
Social Care (Self-directed Support) (Scotland) Bill

Scottish Borders Council Social Services

Are you generally in favour of the Bill and its provisions?

Response:
Yes, Social Work Services, Scottish Council, is in favour of the Bill and supports the embedding in legislation of the duty to provide a range of choices to individuals as to how they are provided with support.

However, the Bill is more limited in provision than we would prefer. We support the Bill’s inclusion of joint health and social care packages, and provision for delegated social care provision. However, we would also support further consideration of the options for SDS within health care given the potential for increased health and wellbeing through this approach. The key duties within the Bill are social work’s. The SDS approach is likely to be most successful where there is ownership within local authorities as a whole and with key partners to promote community supports and networks.

We are also concerned that there is no longer the provision (as proposed in an earlier consultation on the Bill) for an appropriate person to support and manage a direct payment for an adult who does not have the capacity to do this. Our experience indicates that a direct payment could offer the supported person the best option for support. Appropriate people able to manage the direct payment are often put off by the lengthy and complex process of guardianship – and this does not give the person the immediate, flexible support they may need. We understand the need to consider the protection of the supported person but would prefer the option of being able to agree to an appropriate person or ‘circle of support’ as a suitable option. This would be done in the spirit of the ‘least restrictive’ option for individuals. As the Bill stands with this omission it does not adequately represent people who lack capacity.

2. What are your views on the principles proposed?
Response:
We are in agreement with the three principles.

3. What are your views on the 4 options for SDS?
Response:
The four options provide a spectrum of choice for the individual. However, there is potential for significant variation in how the options of ‘directing your own resources’ and ‘local authority arranged support’ are interpreted by local authorities, and therefore the choice that will be available to individuals. Local authorities may feel cautious about what can be purchased through these routes and enabling legislation and/or guidance would be helpful.

There is a focus in the Bill on direct payments and ‘relevant amount’ confines its application to direct payments rather than including all the options in what would be the person’s individual budget.
4. Do you have any comment on the proposal that SDS should be made available to children and their families together with the proposal that the degree of control a child may have over the process should vary with age.

Response:
We are in agreement with this proposal. Given the national experience of direct payment use for support for children further work is required to provide an impetus to this. However there is very patchy understanding of how this will operate in practice. There needs to be a national dialogue about how it is anticipated this will roll out for children’s services.

It would be helpful if the legislation here set out the anticipated exceptions as currently linked with direct payments.

5. Are you satisfied with provisions relating to information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

Response:
We are in agreement with the provisions and support the steps to try to ensure everyone has the opportunity to make a choice, and that if no choice is made then option 3 would apply.

6. Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?

Response: The Bill, in conjunction with the SDS Strategy and targeted funding, provides a significant driver to assist local authorities and partners to implement the changes required to introduce more flexible support that is determined by people eligible for social care. It should be clear that direct payments are one option of achieving self-directed support.

7. Views on provision to adult carers.

Response:
SBC agrees that SDS could prove a valuable opportunity to support carers in a more flexible way.

8. Do you agree with the approach taken by the Scottish Government not to place restrictions on who could be employed by an individual through the proposals in the Bill

Response:
This is in line with the SDS approach and SBC support risk enablement through a positive risk management approach. We support statutory guidance and propose that it is recognised in the guidance that there is a tension for organisations in protecting and empowering adults who could be at risk.

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

Response:
The additional funding for the change to SDS is welcome as is the recognition that the costs lie not only with the Bill but also in the implications of the SDS strategy. The main costs that are difficult to estimate are the transitional costs associated with funding block contracts and building based services whilst providing a more flexible approach. Although commissioning arrangements are addressing this change it is taking time and the funding may not be sufficient to cover this cost, in addition to the other requirements to progress SDS. The timescale of three years may also not be sufficient to make the transition. The assumption of 1 days training for staff is an underestimate given the level of culture change, plus the training required in new processes and procedures. We would anticipate at least two days per staff member and support through the change.

The memorandum proposes the use of other funding streams eg Change Fund, and we would anticipate that this would be required. There is an increasing gap between assessed need and resources available, requiring local authorities to set criteria of eligibility. It would be useful for this to be reflected in guidance.

We would agree that most of the key areas requiring funding are mentioned within the memorandum. (See additional detail in Finance Committee questionnaire)

10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?

Response: We are satisfied with the assessments aside from the point made above in question 1 regarding people who lack capacity.

11. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

No comment

Scottish Borders Council Social Work
24 April 2012
Scottish Parliament

Health and Sport Committee

Tuesday 8 May 2012

[The Convener opened the meeting at 10:47]

Social Care (Self-directed Support) (Scotland) Bill: Stage 1

The Convener (Duncan McNeil): Good morning, and welcome to the 15th meeting of the Health and Sport Committee in 2012. I remind all present that mobile phones and BlackBerrys should be turned off, as they can interfere with the sound system. No apologies have been received.

Since our last meeting, there has been a change in committee membership. I welcome Nanette Milne to her first meeting as a member of the Health and Sport Committee, although we all know that she has appeared at previous meetings. I am sure that everyone would agree that we take this opportunity to thank Jackson Carlaw for his contribution to the committee over recent months.

Agenda item 1 is an oral evidence session on the Social Care (Self-directed Support) (Scotland) Bill. As people are bound to have noticed, the session is in round-table format, so the witnesses are sitting among committee members rather than at the far end of the table. We hope that that will generate a more open and free-flowing discussion. It would help the process, though, if all participants could indicate to me when they wish to speak.

Richard Lyle (Central Scotland) (SNP): I wish to declare an interest. I am a board member of Phew (Scotland), which is a care provider in Motherwell, in North Lanarkshire.

The Convener: Thank you for putting that on the record.

I welcome David Williams, the assistant director of social care services at Glasgow City Council; John Alexander, the director of social work at Dumfries and Galloway Council; Janet Spence, the programme manager for modernisation and quality assurance at Highland health and social care partnership; Dr Julie Ridley, the project leader of the self-directed support test sites evaluation team and a senior research fellow at the University of Central Lancashire; and Professor David Bell, a professor of economics at the University of Stirling.

I am looking for Bob Doris around the table—he is usually right by my side. We have practitioners here and we are interested in practical experience, so I ask him to gently open the questions on that, after which we will see how it goes.

Bob Doris (Glasgow) (SNP): I thank everyone for coming to our first evidence session on the new bill. I was struck that, after several million pounds and three years spent on facilitating the pilots, only 150 cases of self-directed support were developed as a result. I think that two of the test areas are represented today. I am interested in what the numbers were in those areas and what the barriers were to developing more such arrangements. I am particularly interested in knowing what discussions were held with individuals to decide how best to assess care needs and have some form of co-production for the most appropriate self-directed support. Having that information might be a useful start for the committee.

David Williams (Glasgow City Council): About 30 to 50 of the 150 cases were in Glasgow—as members might imagine, the numbers were very low in the three areas involved. The experience in the east end of Glasgow was probably the result of having a seismic change in how business is done. People were always going to take a bit of time to have confidence in taking up the opportunities that self-directed support provides. One consequence of the pilot’s experience in Glasgow was that the council decided that we needed to look at a significant change in how we do our social work business in relation to community care, to encourage and promote the take-up of self-directed support by individuals.

Operating two systems for assessment and the provision of services is difficult, particularly when one of those systems has operated for almost the full life of the community care legislation, which dates back to the beginning of the 1990s. For instance, if adults with learning disabilities came to the attention of local authorities with needs that were assessed and identified, the traditional response of local authorities, including Glasgow City Council, was to commission a package of support for that individual. People are comfortable with that. The notion of people moving to directing their own support and being given a choice and the opportunity to control the arrangements around them is alien to people, particularly in a risk-averse climate that involves the most vulnerable individuals in the community.

We must ensure that the infrastructure is well established to support individuals who wish to take up self-directed support. That involves care managers and social work professionals taking a different view about how they should go about their business. It involves infrastructure to support the availability to service users of the range of resources and provision that is out there and the development of a different marketplace for the provision of services. There are also infrastructure issues to do with how we assess need and involve
individuals in the assessment of need so that there is genuine co-production. There is then the question how we allocate an individual budget so that it ensures fairness and equity for all individuals, whether or not they choose to go down an SDS route.

John Alexander (Dumfries and Galloway Council): When the evaluation was reported, there were 36 cases in Dumfries and Galloway out of the take-up of 150.

I will say a couple of things to put that into context. I agree with David Williams, in that a large part of the explanation is that we were not being asked to make a minor tweak or adjustment—this was quite a seismic shift in how we do our business. It is inevitable that we appear to make slow progress in the early stages of implementation. Once the early stage of transformational change has been worked through, there is often a much quicker take-up of the new way of working. In March 2011 the number of cases was 36, by September it had risen to 64, and by the end of the year it was 86. The number is still rising, although I do not yet have verified numbers for the end of March this year.

The traditional way of assessing need and delivering social care is essentially founded on the National Health Service and Community Care Act 1990, which began to be implemented on a phased basis from 1991—more than 20 years ago. I have many front-line practitioners who have known no other way of working. I am old enough to remember social work before 1991. Although my memory is probably not as good as it once was, I can remember doing, in that period, much more of the kind of thing that self-directed support was, I can remember doing, in that period, much more of the kind of thing that self-directed support asks us to do. However, my point is that we have to do a bit of unlearning with practitioners before they begin to grasp the opportunities of the new way of working.

Apart from the transformational change, which can mean that progress is slow to begin with, a factor is that the pilot covered only one area in Dumfries and Galloway, even though it was the Dumfries and Galloway pilot. We chose the Wigtown area, which is one of our more rural areas. As you will be aware, the research was trying to find out how SDS worked in urban, remote and rural communities. We were the rural pilot.

We had to invest quite a bit in support, not just for our staff but for the men and women whom we intended to recruit—if that is the right term—to the pilot, because this would be a new experience for them. We also had to do some work with our partner agencies, particularly the providers of social care, because, for all those people, this was an extremely significant shift in how they did business.

Mr Doris asked how we went about talking to the people who might be involved in the pilot. We adopted what we described in a community development model. It was very much about sitting down and engaging with groups of service users, explaining to them in the most straightforward and simple language possible the seismic shift that we were trying to make, and moving at the pace at which they were comfortable to move.

David Williams talked about risk-averse cultures. For many people, the idea of setting off on a different course was quite daunting, and they needed quite a bit of metaphorical hand holding before we could really get the thing moving. The numbers that have come on stream since then show that, once the initial hurdles are got over, the state and rate of progress can be much quicker.

11:00

Janet Spence (Highland Health and Social Care Partnership): I reiterate what my colleagues have said. To put the Highland health and social care partnership experience into context, I say that we had quite a sound record on the old-style direct payments, albeit that the system tended to be quite rigid and did not offer the range of choice and control that people desired. Nevertheless, our staff understood the concept and were quite good, in some places, at promoting the payments. We started from quite a good place.

The SDS pilot project was one of the significant workstreams in a major programme of transformational change—we had 15 different workstreams—in the Highland health and social care partnership. Our blueprint was the new joint community care plan that was published around that time.

We consulted widely, which was important. We heard from the public that what they want is greater access to self-directed support and less bureaucracy. In addition, our workers said that there is a lot of bureaucracy with the parallel system of direct payments that we have at the moment. The pilot gave us an opportunity to grow our self-directed support from that basis.

The numbers involved in the pilot were reasonable. I think that we grew from around 150 cases and more or less attained the aim of 200. Under the equivalency model that we had used up until that point, we would have assessed somebody’s needs, assessed what we would have given them in terms of a traditional service, and then made an equivalent money award. The SDS way of thinking, through the pilot, required a major mindset shift to focus on outcomes. That was the major change. The focus was on identifying
Our focus in the pilot was twofold. The main focus was on a group of young people in transitions, which is when people move from receiving children’s services to accessing adults’ services. There was a lesser focus on hospital discharge. The former was very successful but, unfortunately, for a number of reasons, the focus on hospital discharge from one community hospital was less successful. I think that that was largely due to the major mindset shift that was needed, particularly in the hospital and among health staff. Reflecting on what we achieved during the pilot and comparing that with where we are now, I think that we have come a very long way in a short period.

The Convener: It would be helpful to me if panel members could press their microphone button so that I know who wants to come in.

The discussion has taken us naturally to the question why, given all the practical difficulties, legislation would be beneficial in addressing some of the issues. Although I am going on and on myself and I know that these are difficult questions and that the witnesses have been involved in the matter for a long time, I sound the cautionary note that we need more concise answers so that we can get our questions in.

Bob Doris: I will try to be disciplined and ask some questions that seek short responses before other MSPs come in.

You said that between 30 and 50 people took up self-directed support in Glasgow. I seek a bit of clarity. Does that mean that others were offered alternative forms of care services but chose to go for the traditional council model, in which case the number involved will be greater than that? My understanding is that self-directed support is not necessarily about going for an alternative model but is about being given other options and, if someone wishes to go with the traditional route, that is a valid choice. Is the figure higher than 30 to 50?

David Williams: There will certainly have been people who took a different route and had a different form of service.

Bob Doris: My understanding is that such people should be included in the figures. Otherwise, we are channelling people down one aspect of self-directed support.

David Williams: Yes.

Bob Doris: If someone makes a conscious effort to go for a traditional council service, that, too, is a valid choice. Is it the same for Highland?

Janet Spence: Yes. I think that we were fairly poor at recording the number of people whom we engaged with and recorded only the number of people to whom we awarded packages.

Bob Doris: That is useful to know.

Before I let other MSPs in, I have another brief question. The Dumfries and Galloway pilot finished about 14 months ago, but the upward trend continues year on year. Whatever Dumfries and Galloway Council has done in the Wigtown area, it has put some roots down to continue that work. Do you have the figures, or can you make them available to the committee, for what happened in Glasgow and in Highland? If so, has the trend continued? It would be useful for the committee to know about that.

David Williams: In Glasgow, the council decided in October 2010 to roll out the implementation of personalisation, as we have called it, right across the city to include all adults who have learning disability needs, all adults who have physical disability needs, people with mental health issues and children with disabilities. That programme of roll-out and implementation was to take effect over a two or three-year period from 1 May last year.

In the year since then, we have taken approximately 900 individuals with a learning disability through personalisation, which is the process that Glasgow has developed as a consequence of the pilot and through which individuals will be able to direct their support themselves. Approximately 900 individuals with a learning disability have therefore moved from a traditional care package to an outcome-based support plan. A small number of those individuals—substantially fewer than 100—have chosen to direct their support themselves, for the reasons that I outlined previously.

Out of the four options available, the overwhelming majority of service users have gone for option 2 or option 3, through either an individual support fund or a directly provided service.

The Convener: Does Dr Ridley want to come in, given that we have discussed the pilots?

Dr Julie Ridley (University of Central Lancashire): I would add to what the witnesses from the three local authorities have said. We said in the report that, although the numbers seem small, it is probably a mistake to focus too much on the individual packages, because something of this magnitude—witnesses have talked about seismic change—takes a lot of time and requires a lot of investment in individuals’ skills and in building up the expertise in the local authority to work in this very different way.
It should be borne in mind that, when the evaluation started and the test sites were first set up, the definition of self-directed support in Scotland was very much aligned to direct payments. It is significant that the situation has developed over the duration of the test sites. It is very complex to measure the number of people who receive SDS packages and capture the number of people who are affected by the new systems. The evaluation addressed that to an extent, but there are limitations. People have mentioned the need to set up different infrastructures to look at the way in which the marketplace is operating, and at new assessment and allocation procedures, which takes a lot of time. The Scottish Government has recently commissioned the evaluation team to undertake a follow-up evaluation to capture what has happened in the past year, which will make some more figures available to you. We must be mindful of those limitations.

The Convener: Before I bring in Fiona McLeod, I will give my view. We are making progress. A big cultural change is needed, and some progress has been made in Dumfries and Galloway, where the change is starting to bed in. Part of the committee’s job is to understand why we need legislation. Why do we need legislation to push that on when it is already happening?

John Alexander: Local authorities effectively operate at all times in a framework of statutes. If there is to be a fundamental shift in how local authorities allocate resources, it will be extremely helpful to have a clearly stated statutory base on which to do that.

We can make progress by means short of legislation—for example, by shifting professional behaviours, encouraging a different culture and working with our partners on what might be termed an informal basis to change the way in which we work. That is my argument in favour of legislation.

The Convener: Are there any other views?

David Williams: I do not want to take up too much time, but there is an issue of fairness and equity throughout the country. Our experience in Glasgow is that, by and large, the level of support and service that was provided for someone with an identified learning disability need depended entirely on the point at which they came into the system. Resources must be factored into that process.

We need to ensure ahead of legislation that, regardless of their disability, people with particular identified needs can be involved in a system that is fair and equitable. The way in which we have developed personalisation in Glasgow provides for that. Other local authorities may not choose to take that route, but citizens throughout the country have the right to fair and equitable services.

Fiona McLeod (Strathkelvin and Bearsden) (SNP): I have a couple of specific questions that have arisen from some of the comments from Highland and Glasgow. You may want to give us the answers in writing later, rather than going into detail now.

I would be interested to know more about why hospital discharge was not so successful in the Highland pilot. You may want to write to us about that.

David Williams listed the care groups that had been identified, but those did not include older people. Why is that?

This question is for all the participants. Did you reassess the care needs of folk, or did you base your work with them on their care needs as currently assessed? Did you think about whether an appeals mechanism might be necessary for those moving to self-directed support, given that it is based on people’s perception of their own needs rather than your perception of what they need?

Mr Alexander from Dumfries and Galloway mentioned community development, but have any of you put in place advocacy support for people moving into self-directed support? Finally, what engagement have you had with carers? Have you had only informal engagement or have you looked at how you might support their needs?

11:15

David Williams: I will try to respond to a number of your questions.

We will write to the committee on the older people issue but, in short, we felt that our agenda was big enough with the care groups that I have mentioned. Given that, in total, we have about 1,800 learning disabled adults, 800 individuals with physical disabilities and about the same number with mental health issues in our system, we felt that, with regard to a programme of service reform, we had big enough chunks to deal with before we got to older people. That is not to say that we will not get to older people; the council has not taken any decisions or reached any conclusions in that respect.
We have reassessed every individual with a new outcome-based support plan, which has taken some time. The assessment process contains, right from the outset, a co-produced self-evaluation questionnaire in which the individual has an opportunity to state how they see their needs and what levels of support they require to meet them. An outcome-based support plan that takes account of not only service users' individual views but other responses is then developed. In addition, no professional approach can ignore current or previous assessments that have been made. A combination of those bits of information needs to be taken into account in the development of the outcome-based support plan.

As for your question about appeals, we have built into the process a series of safeguards rather than any mechanism as such and have, for example, developed what we call a risk enablement panel. We have had to put in place a resource allocation system to deal with the amount of money that individuals get to purchase services and if, at the outcome-based support plan stage, there is a shared view that the level of resource for meeting an individual's needs is insufficient, the matter can be taken to the risk enablement panel. Of the nearly 900 people with a learning disability who have been through the process over the past year, about 140 have taken their case to the panel, and the same process will be in place for the other care groups as we continue to roll out this approach.

There is certainly an expectation that advocacy should be available to all those who choose to go to the risk enablement panel. Indeed, over the past year or year and a half, investment has been made in such provision, primarily through funding for adult support and protection.

Finally, on engagement with carers, we routinely meet carers groups in both a professional and a political context. Obviously, we cannot possibly meet with every carer—except, where appropriate, through the individual planning process—but we have established an officers and members learning disability working group that routinely has the issue of personalisation on its agenda. We also have professional meetings with carers groups across the city.

John Alexander: In the interests of time, I will say simply that we had the same approach to assessment as the one that David Williams has described, which means that we carried out a reassessment, taking into account previous information that we had.

On appeals, I think that I am right in saying that no one was refused the opportunity to go down the self-directed support route, so the issue of appeal did not come up. We had a risk-enablement panel of the kind that David Williams described, which was set up to tease out some of the expected outcomes and how best those outcomes might be achieved. There tended to be a consensus about the way forward in that regard. Even though only perhaps 36 people out of around 100 or so were involved in that process, the 70-odd people who were not involved were not aggrieved; they came to a consensus view about the best way forward and, from that point of view, we were following their wishes.

On the issues of advocacy and carers, we had a personalisation programme board, which I chaired. It contained representatives from one of our key citizen advocacy organisations and from the Princess Royal Trust for Carers in Dumfries and Galloway. That enabled us to take strategic decisions about what advocacy support could and should be provided, and the programme board could take that away and deliver it. It also meant that there was proper formal engagement with carers.

The carers' involvement was critical. Although we were not limited only to men and women with learning disabilities, they made up the majority of the people who were being considered as part of the self-directed support pilot, and it was particularly important to engage with and gain the confidence of carers with regard to how that process and the risks around it would be managed. The formal involvement of the Princess Royal Trust in the work that was done around the table and the subsequent groundwork was invaluable.

Janet Spence: Fiona McLeod asked for additional information about the hospital discharge aspect of the project. I would be happy to provide some written information about that.

Like the other local authorities, we undertook reassessments. We had specific arrangements in place for appeals that were quite similar, also.

We did not invest in advocacy as a result of the pilot, but we already had good access for people to advocacy agencies, including carer advocacy. I am aware that advocates were involved in the process.

With regard to carer support, because the pilot's main focus was on transitions and young people, carers were very much involved, and there was a great focus on engagement with carers at all stages of the project.

The Convener: We have heard from the bill team, prior to today's meeting, and from witnesses this morning about some of the issues, such as assessment; reassessment; the time that needs to be invested; skills; training; and the transitional cost. Professor Bell, you represent the voice of hard reality. What do you have to say about the suggestion that the proposal is cost neutral?
Professor David Bell (University of Stirling): The work that we did showed that the recorded costs of SDS were not that different from those of standard packages. That was the same result as had been found in the IBSEN—individual budgets evaluation network—studies in England. The costs are extremely skewed. We did not have a big enough sample in Scotland, but I did similar work in Wales and found that 10 per cent of the people accounted for 40 per cent of the costs and that 40 per cent of the people accounted for 10 per cent of the costs. I do not have the exact figures, but the situation in Scotland is similar.

With SDS, there is not much take-up yet among older people; take-up tends to be from younger people, so the commitment is longer than would be the case with older people. What I would call transaction costs arise on both sides of the market. Local authorities are trying to adjust to the new situation and are almost running two systems in parallel, which is clearly difficult for them. On the other side of the market are the providers, who are trying to deal with a situation in which they do not know exactly what level of demand they will face, because clients are largely free to choose whom to ask to supply services to them.

We are looking at quite a different situation. It looks as though the recorded costs are pretty much the same, but we found it difficult to get good-quality costing information that would allow us to say hard and fast that the figures were comparable across local authorities, or even allow us to compare the SDS against the standard type of package. However, the figures are not wildly out of line. Clearly, some of the costs will be transition costs. There is a learning process that will eventually be embedded in local authority systems. Hopefully, on the other side, providers will adjust to the new situation, too.

Dr Richard Simpson (Mid Scotland and Fife) (Lab): That is very interesting, because it raises the point that other partners—the third sector and independent providers—are involved in all this. Those two groups are critical for the shift that will occur.

Although they are nothing more than murmurings, I have had one or two e-mails on the issue. I got some e-mails on the Glasgow situation—I think that the Church of Scotland was one of the groups involved—which said that there were concerns around the process and what its effect would be. It is clear that there will be a big adjustment for the third sector, as well as for the local authorities.

I wonder whether the evidence from the three research sites, both from the research period and consequently, shows that there are concerns in those areas. If so, how are they being dealt with? How is that element of the partnership being drawn on so that we do not destabilise the independent sector? On the other hand, how do we ensure that we do not place too great a burden on it? The situation works both ways. In other words, how does the market adjust? That is what David Bell was really talking about.

The Convener: I think that Gil Paterson will continue in a similar vein.

Gil Paterson (Clydebank and Milngavie) (SNP): Yes, I have a question for Professor Bell. You said that, in effect, two systems are running at the same time. Is that not a cost in itself? Or do you take an individual who is running in one system and put them into the other so that, in effect, there is no additional cost? If my judgment about that is wrong, have you looked at what the potential is if many people turn to the self-directed support system? Is there a tipping point at which the system that the council provides would fall down because there would not be enough traffic through it and the costs would be relatively high?

Professor Bell: On your last question, there comes a point at which what you suggest would happen. I listened to the earlier discussion about how take-up had been pretty slow in Scotland and, indeed, very disparate and massively different across different local authorities. My feeling is that growth in the market will continue and that, as the baby boomers come into the care situation, they will expect to have more control over the support that they get.

11:30
The question is then, what is the role of local authorities if a large proportion of the clients want self-directed support? Local authorities will become enablers rather than providers as their enabling role increases and their providing role decreases. There are lots of difficulties associated with that. The support may move to personal assistants who are not necessarily trained to the same level as social workers, and the way in which support is provided through the system may change. There could come a tipping point if there were a rapid acceleration in demand; therefore, it would probably be better to try to keep a reasonable amount of control so that the transition takes place over a reasonably long period. However, I take on board Richard Simpson’s point. If take-up is quite low, the providers may not achieve sufficient scale to be able to operate effectively in the market—they may have to operate across several local authorities, which would be especially difficult in rural areas where there are lots of transport costs as well as the cost of the provision of care.

John Alexander: The convener’s question to Professor Bell was about the proposal being cost
neutral, and Professor Bell’s response teased out some of the uncertainties about that. We must continue to keep the issue of costs under review, because local authorities, like other parts of the public sector, are under significant financial pressure at a time of growing need. We need to look at that area closely.

Even supposing that there were no increase—or, indeed, saving—in cost through the implementation of self-directed support on a more widespread basis, it could be argued that there would be a best-value benefit from the introduction of self-directed support in the sense that there would be much more control in the hands of the individual citizen of the outcomes that would be delivered for any given investment of public funding and they would exert more control over how that funding would be deployed. It might still cost £20 to do whatever we are doing, but I expect that £20 that was spent by a citizen would deliver more for that citizen than I, as a social worker, would deliver if I spent £20 on that citizen’s behalf. There would be a best-value benefit.

The Convener: We have heard in evidence a concern that family members could deliver the service and the individual’s ability to complain about or change the service would be limited by the closeness of that relationship. We have also just heard from Professor Bell that there could be a dilution of the profession and that, rather than a fully trained social worker or professional person providing the care, we could have someone providing the care who is cheaper but who is not trained to the same level.

I am trying to tease out the certainty about the outcome. I am sure that there is evidence from down south, where people have maybe done more of this and can be more certain of the outcome of the legislation. Are we just perceiving the care to be better because somebody has eventually made the choice? Someone could be victimised twice over—they chose that care, so why are they complaining? Does no one want to respond to that? No? I will let Gil Paterson back in on outcomes.

Gil Paterson: I will ask Julie Ridley a similar question. Is there any research into how self-directed support is perceived by the users in the pilots? Are we trying to provide choice or better outcomes? I had better not say what my view is. If we are searching for better outcomes and better use of tight budgets, is there any information on that from the three pilot sites?

Dr Ridley: The evidence on outcomes is fairly limited. We examined 10 case studies in each of the three local authority test sites. People’s experiences of assessment and the kinds of packages that they got, as well as how they felt about the support that they were getting, were overwhelmingly positive.

As evaluators, we were limited because some of the packages had only just been set up because of the time that it took to get systems under way and for people to experience the new system and receive SDS packages. However, our findings have resonance with other research from England, in relation to people’s experience on choice, control and flexibility.

I will pick up something that was said about advocacy. To be honest, we found extremely limited evidence of the involvement of independent advocates in helping people to work through what should be in their assessments and what they wanted. That meant that assessments were sometimes tailored around carers’ perceptions. That was quite a gap.

Gil Paterson: Are you saying that the receivers of the benefit felt good about it?

Dr Ridley: Yes, I am. If there is time, I could share with you a couple of case studies.

Gil Paterson: I would be happy if you could provide them in writing.

Dr Ridley: Right.

The Convener: That would be good if it is additional evidence that we do not have.

David Williams: I return to Dr Simpson’s questions on providers. His use of the word “murmurings” for complaints was very diplomatic. It is fair to say that a significant level of anxiety has been expressed over the past year and a half in Glasgow, particularly by providers. I think that that is just because of the scale of the change that we have endeavoured to implement in Glasgow. It is important to acknowledge and recognise that.

I was a director of one of the country’s largest voluntary sector providers up until I came to my current post three years ago, so I understand that side of the world clearly. We have endeavoured to engage with the provider sector regularly and clearly. We do not do that to direct the sector, because that is not the local authority’s responsibility. Providers need to take responsibility for their own destiny in how they adjust to the marketplace. The local authority’s responsibility, which we have tried to fulfil, is to set out the vision of what the world will look like as a result of personalisation and self-directed support within Glasgow and for a number of providers nationally, with or without the bill.

There may be increased demand from individuals not to focus on an inputs-and-outputs contract. Under that type of contract, which is, historically, the type of contract that local authorities had with providers, a number of
needs for a number of individuals have been identified and the local authority has commissioned a provider to give those individuals support to meet those needs, but there has been no focus on outcomes. Providers need to focus their attention on outcomes to retain business. They need to ask themselves, “What do we need to do to ensure the continuity and consistency of business?” It is about delivering results.

On the delivery of outcomes, in Glasgow we have focused on things that came through the talking points initiative, which related to the national agenda to seek the views of adults about the kinds of things that they would want local authorities and statutory services to provide. There were questions such as “Can I be kept safe?”, “Can I be engaged?” and “Can I be involved in communities?” The voluntary sector and independent providers need to address how they deliver their services in a way that will ensure that needs are met and outcomes are delivered. By definition, that will create a business and a marketplace. If those providers can then profile themselves as providers who can deliver outcomes and their profile is in the general perception and the general marketplace, people will go to them.

In Glasgow, we are developing a portal of information to which there will be web-based access. We will have an information-sharing session with providers at the end of this month or the beginning of next month, I think, which I will introduce. The portal or web-based provision will be demonstrated for service users and citizens in Glasgow. People can say, “I’ve got this need. Where can I go to find a provider that can deliver services to meet it?” The portal will have all the information, including costs, in due course.

Dr Simpson: That is exactly the enabling approach—

The Convener: Mr Alexander wants to say something, Richard.

Dr Simpson: I am sorry.

The Convener: The view that we have heard might be a city or Glasgow view, but there are other issues. Portals have been mentioned, but in some communities we would find that there is nothing—the capacity is not there—and that needs to shift. Perhaps Professor Bell can address that issue as well, but Mr Alexander wants to say something first.

John Alexander: I want to return to Dr Simpson’s question about providers. There is no doubt that the seismic shift that we have talked about poses a number of challenges for them. I will simplify matters. Rather than providers facing one commissioner—the local authority—and having to work very closely in partnership with that commissioner, they could face hundreds of commissioners, and perhaps thousands in cities; I refer to the men and women who will have control over their direct payment or individual budget. How on earth can that process be managed? That is a challenge for the providers.

In Dumfries and Galloway, we have the added challenge of rurality. Some of our providers’ unit costs are that bit higher. If we put that into the mix, there are concerns among providers.

We have a series of forums for providers for particular care groups, whom we meet regularly to talk through the strategic challenges that we have to address severally and individually to bring forward self-directed support. Many of our biggest providers are national organisations with local branches that deliver the services, and they are plugged into the debate at the national level. I know that the Coalition of Care and Support Providers in Scotland has done a significant amount of work on what the challenges of self-directed support are for the sector and that it is providing support centrally to a number of organisations to do such work.

However, just in case people think that we are moving from a situation of 100 per cent security for the market to 100 per cent insecurity, I should say that, over time, we have moved away from a situation in which local authorities let block contracts to provide. I am old enough to remember situations in which we had block contracts. Very often, providers were guaranteed the money. The money went to them whether or not they provided a service, or whether or not the service was what we wanted them to provide. Like all the other local authorities, Dumfries and Galloway Council has moved to spot-purchase contracts. We fund organisations only if we have assessed that there is a need and if the service that the organisation is able to provide is the right type of service to support the need and deliver the right outcomes.

Organisations in the market, whether they are in the third sector or the independent sector, are already in an uncertain environment, so the bill does not represent a seismic shift from security to insecurity. Perhaps we are moving a little further into insecurity in that there will not be a single door to knock on to have the conversation. We will need to be more flexible and subtle in how we go about delivering services.
sector and organisations in the independent sector also provide a lot of care. Under the legislation, people might decide that they do not need those organisations and that they will turn to a close friend or relative, who will provide all the care. Have you done any work on the challenges that all the providers—not just the local authorities—are facing?

Professor Bell: Only a little. The issue is exemplified by Mr Alexander’s point about the difference between a block contract and a spot-purchase contract. If a provider has a sum of money assured almost irrespective of what it does, it is in a pretty good situation, but with a spot contract it has to focus on the outcomes. That is a beneficial aspect of the bill. With my Finance Committee hat on, I point out that that committee is looking for measurable outcomes, and a web-based portal about what providers are providing seems to be on the right lines.

Clearly, individual providers are facing many challenges in areas such as training, how they attract people into the workforce, how they retain them, and investment. If a provider is not sure what it will have coming through the till next week, how much should it invest in training, physical capital and so on? There are undoubtedly many challenges and we cannot be certain what the outcomes will be. It is important for local authorities to make the market as transparent as possible by interacting with the providers and somehow ensuring that there are helpful measures of outcomes that potential clients and their carers can see so that they can make reasoned judgments.

Drew Smith (Glasgow) (Lab): I am interested in who supplies services and to what extent the method of procuring them will drive down costs. What has your experience been of the decisions that people have made so far?

The convener gave examples of who people might approach to provide a service, and I can think of others. Someone’s choice might depend on where their advice came from. For example, a person might fill in a questionnaire with the help of their home carer or someone else, who said, “If you tick that option, I’ll come and provide the service for you, but I’ll do it on my own, outside the local authority. I’ll be a private provider for you.” There seem to be a range of possibilities for abuse in that situation. That is an additional concern, on top of the fact that the independent sector or the voluntary sector might provide a service at a lower cost compared with the public sector, in which case there might be an assumption that the level of service will start to decline.

Do you have any thoughts—or experiences based on what has happened in the pilot areas—that could reassure me about those concerns?

David Williams: We should not lose sight of the role of the care manager, which remains central in ensuring adult protection and ensuring that people’s rights and responsibilities are not overrun by the home carer’s ability to say, “I’ll do it myself.” Certainly in Glasgow, the outcome-based support plan has to be signed off by the resource screening group, so it could not be organised through back-handers or wheeling and dealing. As I understand it, the scenario that you described has not been the experience in Glasgow to date.

There have been situations in which people whose package of support came from one provider have moved on to a care plan that involves their receiving provision from a number of providers, including the existing provider, which it is to be hoped will result in the outcomes being delivered. That is not necessarily about care; it is about the existence of the opportunity to gain access to a community. Does it need to be a professional voluntary sector social care provider that we encourage to become involved in communities? I guess that the experience that people have had through the development of their outcome-based support plans is that that is not the case. The local sports centre or a range of other community-based resources can do that. A cost still needs to be attached to the service that is provided, but it does not need to be a professional social care agency that delivers it. Such arrangements are in place.

Glasgow City Council has taken the position, however, that family members or neighbours would be engaged as personal assistants only in exceptional circumstances, for example, when people have palliative care needs. In such circumstances, the engagement of a family member or a neighbour to act as a personal assistant would not be unreasonable, but I presume that it would be time limited. On the whole, that is not a route that we would go down.

Given that there are people who have personal assistants, one of the questions that the committee needs to consider in the context of the development of the bill is the role of the regulatory bodies in relation to personal assistants and professional qualifications. Does the Scottish Social Services Council have a role to play as the regulatory body? I am not sure.

Janet Spence: I have two points to add. First, it is important that we invest in community capacity building. In Highland, we are in the process of finalising strategies on community development and volunteering, which will be important in running alongside the work that we are doing around SDS.

Secondly, in very isolated communities, it has often been the case that we in the statutory sector have really struggled to find resources to support
individuals. The SDS work has helped to identify that there are neighbours, friends and extended family members who may be in a good position, on both a short-term and a longer-term basis, to support someone who, for example, has come out of hospital. There is greater flexibility in that regard and, in recent times, we have seen some very good examples of local communities coming together to support an individual, where hitherto we have been unsuccessful.

The Convener: Do you have a view on the regulation of personal assistants and to what extent they are covered by things such as Scottish Criminal Record Office checks? Should personal assistants be regulated?

Janet Spence: At the moment, there are no plans for personal assistants to be regulated through the Scottish Social Services Council. It is a difficult issue. We are talking about people who provide personal care to vulnerable people, so I think that we need to look at regulation.

Drew Smith: That leads to my next question. Did you carry out an equality impact assessment of the sort of people who were taking advantage of options 1 and 2 and, in particular, direct payments? If so, did you find that certain kinds of people were more likely to make choices than others? For example, were individuals with a single condition more likely to understand their needs than those with multiple conditions or whose situation was more complicated? I am no care expert, but I think that we can all appreciate that it is not necessarily likely that the most vulnerable in these settings will be those most able to make choices and to be informed consumers. What assessment was carried out in the pilot areas in that respect?

Dr Ridley: First, I note that the situation is changing and that such changes should be picked up in the follow-up study. Our evaluation of the data that we collected from the three local authorities on individuals with SDS packages showed that the majority—64 per cent—had learning disabilities and that, overall, more men than women took up the option, although the proportions differed between local authorities. In Dumfries and Galloway, for example, the majority were men; however, the reverse was the case in Glasgow.

The age profile differed quite a lot but, as you will remember, Highland focused on young people in transition, which meant that in that area the profile was made up of young disabled individuals. There were very few older people and the individuals were all white British or Scottish. However, although no one from a black or ethnic minority community was captured at that time, I believe that the situation has since changed. We will find out the extent of that through the follow-up study.

With regard to the options, the vast majority—107 of the 132 people involved—chose to have a direct payment, while 24 chose to have an individual service fund. The funding streams were predominantly funded by social work and client contributions, and we saw no evidence of mixed packages funded by, say, housing, health or other streams.

Does that answer your question?

Drew Smith: Partly. I would like to know more about the issue, and I am sure that a lot more reading will be required as we consider the bill further.

Going back to what Mr Williams said about providing people with a choice, I do not think that a lot of people in this group will be likely to access an online provider portal, which raises the question of who will advise these individuals and where the provision of such advice should sit. I know from my case work on the personalisation process in Glasgow that people are expressing concern about these moves. Given the cuts that they perceive are being made in other services—day care was mentioned earlier—and their fears about changes to the benefits system, there is an issue of lack of trust in the public sector and government in general and in the local authority’s objectives. If, when presented with such a choice, individuals simply assume that it is all to do with giving them less, surely a representative from the local authority cannot take them through the process and say, “You should choose this or that option,” because the individual in question might well not trust their advice. Equally, however, the local authority might be best placed to provide independent and informed advice about what is available, whereas a carers organisation might not have all that information. Is there any general view on how people might be assisted in making such choices?

The Convener: Can we have brief answers, please?

David Williams: Transparency, by definition, will assist the process, because it takes away from care managers the opportunity to direct things. Of course, there is a co-production issue, but as a result of the transparency in the portal the individual can discuss the available options with an advocacy worker, a family member or a provider’s key worker. It is all about transparency and who is involved in co-production.

12:00

Nanette Milne (North East Scotland) (Con): Given the on-going integration of health and social
care, the bill would provide for regulations so that health boards providing social care would take on the full duties of the SDS powers. Is there any information around the table about the extent to which the national health service is currently involved in SDS provision? Does the panel think that the bill will encourage greater involvement, to give a more holistic result for users?

Janet Spence: I am here today representing the new Highland health and social care partnership. Our SDS team transferred from Highland Council into the NHS and has responsibility for adult and children’s SDS work.

In the lead-up to the integration going ahead on 1 April, we seconded three nurses into the SDS team—which was of course in the council at the time—with a view to rolling out training for health staff. There has been a lot of anxiety on the part of health staff, particularly nurses, about SDS, which I think is largely because of lack of knowledge. We were therefore keen to get in there at grass-roots level and start talking to health staff about SDS and what it is and is not.

I mentioned earlier the huge shift needed in mindset and culture. I do not think that it is unfair to say that a lot of health staff, community-based nurses and hospital-based nurses, who are quite protective people who are keen to be seen to be doing things for people, are quite risk averse. It is difficult for them to get to grips with enabling risk. Over the past few months, we have begun a dialogue with health staff. It is just a very different way of thinking for them.

We—the people from the social work side who have transferred in—are on a journey, too. There is still a lot of learning for our staff and a huge challenge on the health side.

Nanette Milne: So the culture must evolve.

Janet Spence: Yes.

David Williams: The agenda in Glasgow has been primarily a social care agenda led by the council. We work with our colleagues in health at an executive level through the joint partnership board, which is made up of elected members and non-executive directors of the health board. That board is well aware of our initiative in relation to the personalisation agenda and the implementation of personalisation in Glasgow.

I guess that we need to see where the legislation on health and social care integration takes us, and what local arrangements are developed as a consequence of that before we can make any commitments or determinations about how this agenda will be impacted on in the new arrangements.

The Convener: Should the bill take into account that relationship or does it focus too much on local authority responsibility?

David Williams: To my mind, self-directed support is primarily a social care function. Janet Spence is correct in recognising that. The implementation of the community care legislation in 1990, which Mr Alexander mentioned, moved us from what was called in the business a medical model of provision to a social care model of provision. It is fundamentally and primarily a social care business, but there will be people who have medical needs, so we must have a continuous dialogue with health boards at a strategic level and at a practice level.

John Alexander: The short answer is that, in Dumfries and Galloway, involvement from health has not, to date, been a significant factor. The process has largely been driven by the local authority and, within that, by social work services. The bill’s Sunday title is the Social Care (Self-directed Support) (Scotland) Bill, but that raises the question whether the way in which the legislation is framed should recognise that a broader contribution can be made to the delivery of the aspirations on self-directed support. Social work will have a key role in leading the process, and we are well placed to do that, but we do not have all the answers, and many others have a big contribution to make, as the 21st century social work review told us six years ago. That means not just other universal providers beyond councils, such as the health service, but other council services and services that councils commission for things other than social care.

For example, there is an increasing understanding of the link between deterioration in the health and wellbeing of older people and isolation. In rural communities such as Dumfries and Galloway, if, through good transport links, people have the capacity to stay in touch with relatives or friends who live several miles away, that can make a significant contribution to their health and wellbeing, and they will have been nowhere near a social worker to get the benefit. We must recognise that, to get personalisation or self-directed support right, we need a broader range of activity. That touches on some of the themes from the Christie commission, which went way beyond what any one particular public service can deliver—it had a much broader approach that we need to take on board.

Bob Doris: A few issues have arisen during the discussion. I will try to be as concise as possible, so I will run my questions together. Concise answers would be good, if that is possible.

Drew Smith made good points about the role of the home carer or person who does the care assessment and review in considering the best
outcomes from self-directed support. He talked about the scenario in which a person says, “If you tick that box, I could do the job for you independently.” Of course, the converse is that the person who is looking for the service might ask, “What happens if I tick that box?”, to which the answer might be, “I won’t come to your house any more, because a third party will provide the care.” Do we need clear guidance on whether we should break the link between those who provide the service and those who discuss and review the options for alternative services? There is perhaps a conflict of interest between those who procure services and those who provide them and who do the review and reassessment. I would like your opinions on that.

A diverse range of services must be available before a person can exercise their rights in relation to self-directed support, otherwise it might be Hobson’s choice. What role should local authorities have in promoting diverse provision in the voluntary and independent sectors? Where is the incentive for local authorities, as core providers, to do that? There will necessarily be a disincentive for you to promote alternative providers.

With the convener’s indulgence, I will ask a third question. Might those who exercise their right to self-directed support box themselves into a corner? Someone might pick a care package with a provider—it could be from a family member, as we have discovered—and then not be happy with it. Will there be a statutory or routine reassessment every year or two years in which you sit down with the person to ask them how they are getting on with their care and to tell them that they have a right to review, monitor and change the package that they have chosen? Should that be built into the system, perhaps through guidance? Do local authorities do that already?

I have thrown a lot at you, but the questions are on key issues and your answers will help us to map how we will scrutinise the bill.

David Williams: We should not lose sight of the influence of the transfer of undertakings legislation in relation to individuals. A provider might change a service but, if the provision was the same, providers would need to discuss the transfer of staff under the legislation. The provider might change, but the service user might be comfortable with the staff who come in to provide services for them and might just want a change of direction in the support that is provided to them. The transfer of undertakings legislation cannot be discounted in relation to people’s changing arrangements.

As for Hobson’s choice about the range of diverse services, the local authority’s role is in enabling and in providing information, as I said. We in Glasgow contribute substantially to the funding of the Social Care Ideas Factory, which is a Glasgow version of the Coalition of Care and Support Providers in Scotland—if those two organisations will permit me to use that analogy.

The Social Care Ideas Factory is an umbrella organisation that brings providers together and looks at how they can facilitate the development of innovation, new ways of working and creative ideas and responses for service users. That organisation has held a significant number of events for providers in the past 18 months, which have been well attended. Those events have also provided service users with opportunities to see what providers are prepared to deliver, so not all the activity has been web based.

As the evidence develops on what service users ask for to meet their needs in different ways, we will need to make that information available, to give providers the opportunity to see what service users ask for and feed back to us and what has been really good for them. The more we do that, the more providers will have information that allows them to think that they too could provide such services or that they could develop something that is slightly different and which might interest people.

The third question was about service users being boxed into a corner. As I said, none of the changes takes away from local authorities the responsibility to continue to review individuals’ circumstances and care plans. We in Glasgow are committed to doing that at least annually and we expect that. Under the old system, we were not as effective at that as we should have been. That was partly because we focused—as I said—on commissioning an inputs-and-outputs type of service, which means less inclination to review how well or otherwise that is going. By definition, if outcomes-based service provision is set up, how far or otherwise we are going towards achieving the outcomes must be reviewed, so a review mechanism must be in place.

We have committed to annual reviews for individuals. If they are experiencing difficulties, if they wish to move their arrangements or if they do not feel that their outcomes are being delivered and are asking how to make their outcomes more likely to be delivered, the review will provide a range of responses.

John Alexander: I will look at the first and third questions together, which were about how to avoid a conflict of interest between a potential provider and a person who provides support or helps with an assessment, and about being boxed in—about whether we should have a formal framework in which reassessment and review take place. Existing good practice takes care of both those concerns. My view is that the issues might not require to be covered by regulation, but they might
be touched on in guidance that reiterates good practice.

The point about Hobson’s choice is important. Sometimes carers will say to me, “Mr Alexander, if this service is not going to keep on being delivered in this way, what is the alternative? We live in a very quiet rural area. What will happen?”

12:15

We have looked at developing a network of microproviders. In other words, we are not replicating a huge infrastructure of voluntary organisations, but working closely with local communities and drawing on their resources.

Many of the smallest communities in Dumfries and Galloway are extremely resilient and resourceful, and they can be supported to deliver little networks of support for people who require such assistance, with oversight and a degree of monitoring from the local authority.

We are working to progress that model with our colleagues who are responsible for economic regeneration in Dumfries and Galloway. We want to ensure that there are other options available to people who are asking, “Well, if it is not this, what is it?”

Gill Paterson: I have a quick question on the 150 people who participated in the pilots. Were there some people who sought self-directed support, but then pulled back and stayed with or reverted to the old system? If you do not have the information available today, it would be good if we could get it at some point, as it would give us a truer picture of what we have been presented with.

The Convener: We have mentioned providers such as local authorities and the third and independent sectors, but the biggest providers of all, as the committee is fully aware, are carers themselves. The bill has implications for the carers’ needs assessment, including cost implications. Carers are getting older. Will there be cost implications as that works through?

David Williams: That has the potential to contribute to the achievement of the cost-neutral process overall, at the very least. I dare say that it also has the potential to increase costs, if, as you say, carers increasingly take on responsibilities or become involved in people’s lives much more so than hitherto, and are then less able to provide care as they get older.

In Glasgow, we recognise the role of carers in the provision of support. The self-evaluation questionnaire, which is the very first stage of the overall assessment process, contains questions that relate to carers.

The review process, which happens annually, will begin to identify and outline much more regularly the position and involvement of carers and whether their needs have changed.

Those processes ought to lead to a much greater level of involvement, if carers request that. We should recognise that not all carers want to be formally involved in the system, but if carers request that involvement, opportunities will be provided for it to happen.

Professor Bell: With regard to carers, the trends are changing. Fewer middle-aged women, who have traditionally been the carers, will be involved, and more parents will be carers. Parents have been having fewer children, and a lot of parents have had no children—not, that is not right; that is impossible. A lot of older people have had no children.

As the gap between male and female life expectancy is narrowing, there will be much more spousal care in the next two or three decades as the baby boomers age. More care will be given in the house by the spouse, and such care will be the focus of this type of legislation.

John Alexander: Given the forward view that Professor Bell has just given, I think that it seems pretty straightforward that local authorities must examine carers’ needs assessment in a more focused and structured way. Although there might be additional transactional costs in the first instance, this move might allow us to make the best use of our increasingly pressured resources over the next 10, 20 or 30 years. As a result, we have to take that more strategic view.

The issue of carers’ needs also links back to the Christie commission’s views on community engagement and earlier intervention. If we can intervene earlier to support carers and perhaps plan with them the management of their relatives’ care and support needs over a longer horizon, we might get a better return on the investment of public resources that we have put in to allow that to happen. However, it would be very short-sighted and unhelpful of us not to take the issue more seriously and, as I said, we need to take a more strategic, focused and structured approach.

The Convener: I know that we have received a lot of written evidence but it always seems that, despite our best efforts, these evidence sessions are constrained by time. I have highlighted the implications for carers, but if any of our witnesses feel that there are other implications that have not been drawn out in this evidence session they may put them on the record now or put them in writing to the committee later.

Professor Bell: Just to put this in context, I think that the last time that the Scottish Government measured direct payments—which,
as we have heard, are not all that far from what we have been discussing this morning—the total cost was about £40 million, which, given that local authorities' net spending on older people's care is £1.2 billion, is less than 3 per cent of the current budget.

**The Convener:** On behalf of the committee, I thank our witnesses for giving up their precious time to give us their evidence.

12:23

*Meeting suspended.*

12:29

*On resuming—*

**The Convener:** I welcome our second panel of witnesses: Ron Culley, chief officer, health and social care, Convention of Scottish Local Authorities; Andy Martin, manager of adult and community care services, East Dunbartonshire Council; and Elaine Torrance, acting director of social work, Scottish Borders Council. I am sorry to have delayed you.

Our first question is from Fiona McLeod, who will be followed by Richard Lyle.

12:30

**Fiona McLeod:** I have to leave shortly—that will in no way be a reflection on the testimony that I hope to hear from the witnesses.

Given that Andy Martin is here from East Dunbartonshire Council, I declare an interest, in that I receive direct payments from the council on behalf of my mother.

My question is for all the panel members. The policy memorandum makes it clear that, for any of the four options, the bill will allow a person to employ a family member as a personal assistant, which is different from the current exceptional circumstances provision. However, local authorities are worried because PAs, be they family members or otherwise, are not regulated or controlled. Given your position on the protection of vulnerable groups, how do you balance those two aspects? Specifically, do local authorities think that requiring—probably through guidance rather than by statute—a PA to be registered with Disclosure Scotland and on the PVG register would go some way towards resolving their worries?

**Andy Martin (East Dunbartonshire Council):** You properly refer to the balance of responsibilities that local authorities have. We support the bill's enabling aspect. The previous arrangements perhaps erred too much on the side of being restrictive and prescriptive. However, the responsibilities still remain. We must ensure that circumstances do not occur in which vulnerable people are exposed in ways that are not consistent with our responsibilities. Regulation in that regard might be a local authority aspiration, but it is beyond my remit to say whether that will come in the fullness of time.

In cases involving vulnerable people, children and adults who lack capacity, we would be strongly in favour of—to the point of insisting on it—people having a level of disclosure that is appropriate and safe.

**Elaine Torrance (Scottish Borders Council):** There has been great debate in our local authority about people employing family members as personal assistants. With direct payments, we recognise that in a rural area such as Scottish Borders there will clearly be times when employing a family member as a carer will be appropriate. However, we have yet to take the view as to whether that could be any family member. There must be further discussion about whether there should be a line in that regard. Clearly, if family members are employed as carers, that would have significant cost implications for our current partnership working with carers. The area needs further debate.

On the regulation of personal assistants, we need to consider how best we can support people who employ their own carers to go through the checks that they need to make to ensure that their carer is a safe person to care for them. We need to think about the best way to take that forward. The people with whom we work are often vulnerable in times of need, so we must ensure that they are able to take on the right person to meet their needs but that the process is not so bureaucratic that it puts people off.

**Ron Culley (Convention of Scottish Local Authorities):** I do not have much more to add to what has been said. We chose not to say an awful lot about that issue in our written evidence. Suffice it to say that many local authorities highlighted it as an issue. We hope to be able to work with our colleagues in the Scottish Government to ensure that all the issues that Fiona McLeod raises—which are real issues—are properly accounted for as the bill moves through Parliament and we move to regulation.

**Richard Lyle:** At the end of our questioning of the previous set of witnesses, Professor Bell gave some good figures. He said that direct payments would cost £40 million but that councils have £1.2 billion to spend.

According to our briefing, Scottish Borders Council comes first in the take-up of direct payments and East Dunbartonshire Council comes ninth, so we have picked our witnesses.
well. What are the witnesses’ views on the bill? Are they supportive of it? Will some councils turn round and say that they need more money, although the evidence indicates that they do not?

Elaine Torrance: Scottish Borders Council has a good track record in relation to the number of people who receive direct payments. That is reflected in the amount that is spent on such support.

One issue is how we ensure that the money that is tied up in traditional services is made available to individuals who receive self-directed support. There is an issue with and—probably in every local authority—there are concerns about transitional costs and how they will be funded. If an individual chooses to have an activity in the community, as is right and proper, and not to take a day centre place, the cost per head can go up substantially until the number of places drops and we can free up that day centre or do something different with it. There are issues about how we fund that.

In Scottish Borders Council, we have tried not to have a capped budget for direct payments, which are mainly for home care, and have tried to enable people who want to receive a direct payment to use the budget flexibly. That is important. Getting to a point that is cost effective for everybody means a bigger transformational change in the way that we manage our budgets.

Staff training is another issue that we have identified. Some money is allowed for that in the budget, but we wonder whether it will be enough as we go through the change.

We are absolutely supportive of the principles in the bill, but we are to go through a fundamental change in a quick period of three years and we will need to do some careful work on costs, given the funding that has been made available up to now.

Ron Culley: COSLA had the difficult job of trying to craft a position on behalf of all its 32 Scottish local government members and, on the general question, came to the view that it was premature to reach for legislation. Our political leadership decided on that position because, in some respects, legislation is an admission of failure. In other words, it is an admission that, collectively, we have not been able to achieve a set of common objectives within the current statutory framework.

In 2010, we developed along with the Scottish Government a strategy on self-directed support. That was a 10-year strategy and we want to implement it over that period, so we feel that it is premature to legislate. Of course, that is not to say that we would never arrive at that point but with such a relatively young agenda, we wanted to take things forward in a more developmental way. That was the rationale behind our overall position of not endorsing the legislative route.

The second question related to cost, which is a really difficult issue. If I understood him correctly, Professor Bell said that £40 million of the £1.2 billion spend on social care was drawn down in direct payments. However, that is separate from the cost of implementing the bill, and I believe that there are genuine difficulties in identifying that. Although the Scottish Government has set aside a generous £23 million for implementation, our survey work with our member councils indicates that that amount is insufficient to cover the bill’s objectives. In fact, our lowest estimate for a more appropriate figure, given the bill’s scale and ambition and the timeframe, is £50 million. That said, we have an on-going political partnership with the Scottish Government and will continue to work within the current realities of public finance.

I guess that, as a response to the question whether we will be asking for more money, that is a slight cop-out. I will say, however, that we think that the money that has been put up so far is insufficient.

Andy Martin: Just to supplement Ron Culley’s comments and to reflect the position in my local authority, I point out that the heartland for the £1.4 million that has been identified is older people’s services. I think that, as far as Elaine Torrance in Scottish Borders Council and myself in East Dunbartonshire are concerned, I am right in saying that we have managed to drive direct payments into such services in a more proactive way than might be the case nationally. Older people’s services provide more of a co-production opportunity, with families coming together to try to maintain increasingly vulnerable older people at home. Certainly, among families and carers in my locality there is a growing recognition that direct payments can allow vulnerable older people to be kept at home and supported in the community. You need only look at the figures: 58 per cent of our direct payments go to older people, and 20 per cent of all our direct payments—a quite significant sum—go to older people with dementia. The £1.4 million is not the totality of the spend; you have to put on top of that the informal care dimension and the co-production value that families can bring. This is an important area where self-directed support can be promoted.

Finally, notwithstanding the demurring either by individual local authorities or by COSLA on behalf of all Scottish local authorities, I think that there is strong commitment to and support for not only the principles of SDS but the practicalities of delivering it across social work in Scotland.

Richard Lyle: Given that you knew that the bill was going to be introduced, have you started to do what I know officials generally do, which is to find
out what it will cost individual authorities? Perhaps at this point I should highlight some statistics that we have been given. At the moment, about 36 people in North Lanarkshire get direct payments. Do you know how many people in the Scottish Borders get them?

Elaine Torrance: Approximately well over 200.

Richard Lyle: I listened to Ron Culley’s non-answer but what costings have your individual local authorities put together? Have you not started that work yet?

12:45

Ron Culley: We have; in fact, it formed the basis of our survey work. In working with our colleagues in St Andrew’s house on the bill’s potential costs, we surveyed local authorities on the issues that they might be thinking about with regard to costs. We would be happy to provide the committee with a copy of that survey.

We focused on a number of issues, including workforce development and the potential increase in care management—case review and so on were discussed with the previous panel—as well as withdrawal from existing arrangements, entering into new arrangements and the dual running costs that come from maintaining existing services until they can be closed or scaled down. Professor Bell highlighted those issues.

In fairness, we would be the first to say that the cost is highly uncertain. That is partly because we are postulating about the consequences of individual choices when aggregated. That makes determining the bill’s cost difficult and is why Professor Bell said that he was not in a position to say absolutely what the bill might cost.

We asked our member councils about the costs that might arise from the areas that I listed. We aggregated that data, which is how we arrived at the figure that was cited. We are extremely keen to highlight the caveats about how challenging the situation will be, because it is contingent on individual choice.

The Convener: As you were right to point out, the costs are uncertain. We have also heard about uncertain evidence of outcomes. Have you done work on the bill’s outcomes for the people whom you serve and who will have the services?

Elaine Torrance: We have done quite a lot of work with individuals to reflect on how they have found the direct payments system. More recently, we have done a pilot study on SDS, which offers more than just direct payments. We have a number of people with an individual service fund who are making arrangements with other providers.

We have just evaluated that study. The people to whom we have spoken have found the process helpful. They feel that they are more in control of the decisions that are reached and have more choice about the services that are provided to them. People have been able to identify the outcomes that they require, such as feeling more independent, feeling safe or engaging more in the community.

It is early days, so a year or two on we will have to go back to highlight the evidence base, because we have only the sense that people feel that something is happening and that they feel better about it. We have work to do on how we evaluate outcomes more systematically. However, in our discussions and the work that we have done with individuals, their perception has been that the process has been positive and that they have got a lot of positive outcomes from it. When people spend their individual budgets, they feel that they are much more in control of how their care is organised and have more say over what happens through the process.

The Convener: Mr Culley, you surveyed councils on the cost impact. Before you supported the principles of the bill, did you seek information on whether choice was a good idea and on whether outcomes would improve?

Ron Culley: We did not come at the matter from an empirical perspective. We felt that we needed to test the finance issue with our member authorities and to test the working assumptions that were being put in place, but COSLA has for a long time been signed up to the personalisation agenda in health and social care. The outcomes agenda is more a question of principle than practice.

Your question is a good one because, notwithstanding the fact that we would want to start with the principle of giving people choice and control and the opportunity to express that in the way in which they interact with public services, there is, of course, a logical distinction between the principle itself and the outcomes that are achieved. However, we can factor that in over the longer term with the roll-out of self-directed support—over the 10-year period that is imagined in the strategy—to determine whether choice in and of itself delivers certain health and wellbeing outcomes.

There is, of course, another way of looking at the matter. The very act of choosing is, in some respects, a positive outcome for the individual in giving expression to their personal autonomy and so on.

The question is a good one, but I do not think that anybody is really ready to answer it. That is for the longer term.
The Convener: So we are again getting to the point at which we are uncertain about the costs and the outcomes.

Ron Culley: Yes.

Andy Martin: All of us in local authorities have been on a journey since the introduction of direct payments, which was a fair bit back. Infrastructure building has been on-going through the years. At the start of the journey, there was certainly a strong sense from people who elected to take direct payments that there could sometimes be a burdensome and difficult maze to negotiate and that the responsibility of employing people and all that goes with it was a daunting challenge. To a degree, that is still the case. We have strongly focused on developing a user-led support service, which we commissioned from the Centre for Inclusive Living in Glasgow. That service has grown and metamorphosed to the point at which the procedure and the infrastructure are more robust and flexible and things happen more easily than they did five or six years ago. My intuition is that that will be consolidated over the next period.

Positive choice brings reciprocal responsibility. Working with service users and carers to draw out those issues so that people are fully aware of what will be asked of them in going down the road in question is an important challenge that should not be ducked.

The Convener: I was a member of the Health Committee in 2006 when it considered this sort of stuff. The impact in your area and throughout Scotland has been pointed out not only by Richard Lyle but in papers from the bill team. It is easy to understand why the Scottish Government is at the stage at which it feels that it needs legislation to get the progress that has not occurred on direct payments since then.

Andy Martin: I cannot speak for other areas and I do not know what progress—

The Convener: We have received evidence this morning that the provision is pretty patchy.

Ron Culley: We distinguish between direct payments and self-directed support. Direct payments are one expression of self-directed support. They are an excellent way to manage the process for some people, but less so for others. Therefore, we have always been cautious about connecting the two. In other words, we do not think that the uptake of direct payments is in itself a measure of the success of the roll-out of self-directed support.

Elaine Torrance: I want to come back to outcomes. Perhaps we do not have big empirical research studies around them, but we did a small pilot that offered options for respite care, for example. I will put matters into context for the committee. People who had used residential care were using other forms of holiday support—caravan care and so on—and they were absolutely clear that that was a much better experience for them. I would not like to indicate that the evidence was not good. When you speak to individuals about their personal outcomes, I think that the new approach makes a difference.

The Convener: I was focusing on the outcomes for the person who is receiving the services, not the wider—

Elaine Torrance: Yes, and I am just saying that there are a lot of case studies that show that it makes a big difference to their lives. That is important.

On the roll-out, we should not underestimate the difference in the approach that needs to be taken by care managers and social workers. We are used to an assessment and care management process, in which we conduct an assessment of need and arrange services. Now there is a different process in the middle. It needs to be understood that we are undertaking a big change and that it is not straightforward. As my colleague was saying, we are on a journey and are taking people with us, so we need to get into the next gear in order to move things forward more quickly.

Dr Simpson: COSLA has told us that it does not think that this is the time for legislation, as we are on that journey. The second reply that we got from Scottish Borders Council today was that the evidence that we have got with regard to direct payments—which are what we are monitoring—is not correct and does not reflect the experience on the ground. As a committee, we are slightly hamstrung if we cannot get the evidence that will enable us to examine the situation properly. Why do we not have that evidence? Why are we still sitting here debating the actual evidence of what is going on on the ground?

The papers indicate that COSLA and East Dunbartonshire Council have serious concerns about the responsibility side of the equation, in terms of ensuring that self-directed care does not lead to users and carers using the money inappropriately. We heard earlier that there is not much evidence of that happening, so I am not sure why it is such a major concern. Section 14 of the bill talks about recouping the payments if they are misused, but allowing that that might happen is slightly different from the situation about which concerns have been expressed. We must accept that the overwhelming majority of individuals have a pretty clear idea of what is important to them and that that must be paramount, if they advise people of it. Could we hear a little bit more about the issue of responsibility?
The first question concerns statistics: if we do not have them, how do we get them? The second question concerns responsibility.

Ron Culley: During the evolution of the debate around self-directed support and direct payments over the past five years, there has been consistent measurement of direct payment uptake across Scotland. However, while that was being done, the broader concept of self-directed support was being developed in the professional social work community and the policy community. That involves a much more nuanced set of ideas and concepts than direct payments. As the committee knows, self-directed support gives expression to the principles of choice and control in a much less focused way than direct payments do. The evolution of the debate around self-directed support has left unanswered some questions about the outcomes that are achieved in that context, which go beyond direct payments.

We have some limited information on direct payments and can make some judgments on that basis, but we do not have enough information to enable us to properly assess the range of options that are available under the self-directed support philosophy. The point that I was trying to make was that we cannot judge the whole of that philosophy based on one type of choice that can be made in that context.

On the second part of your question, for me the issue is less about responsibility and more about reciprocity. That comes back to the issue of the relationship between the individual and the state.

In the move towards an outcomes-based approach, while encouraging choice and control in the relationship between the individual and the state, it must be recognised that there is a corresponding duty on the individual—I do not necessarily mean that in a legalistic or legislative sense—to act towards those outcomes. In other words, it must be recognised that there is a partnership and mutual commitment, even if we cannot express that in the bill. We need to be clear that the bill is about a partnership between the individual and the state in relation to how the individual is supported. It was that more general point that I was trying to express in the COSLA submission.

13:00

Andy Martin: I echo Ron Culley’s points. I hope that our submission did not read as if we were in some sense suggesting that widespread misuse or default is likely. Local authorities will continue to have powerful and critical responsibilities for this model of service, which will have to be delivered and negotiated. There is no unease or misgiving, but there is properly advised caution about how the responsibilities are to be exercised. In the broader sense, the potential loosening up in the system that ought to come about through the bill is proper and laudable. It will foster co-production and allow appropriate risk enablement. However, risk remains and, at the end of the day, local authorities will be held accountable for the management of that risk, which includes financial risk. We were not expressing an irresolvable antipathy to anything that is, or could be, in the bill; we were simply highlighting that the issues need to be thought through.

Nanette Milne: To what extent is the NHS involved with SDS at present? How does the panel see that developing as the integration of health and social care proceeds?

Ron Culley: The consultation on that integration is launched today, so now is an appropriate time to reflect on the question. COSLA discussed the issue in our submission. We start from the position of the individual and argue that if the bill is to confer on individuals a right to access self-directed support under the Social Work (Scotland) Act 1968, it seems to be odd to restrict that solely to social care and not to include healthcare.

We would add caveats in relation to how and where the NHS could provide through SDS. If I were to be knocked down by a bus tomorrow, I would not want someone to ask me about personal outcomes—I would want to be taken to accident and emergency. Clearly, for some areas of health service activity, self-directed support is not appropriate. However, an awful lot in the NHS, particularly where there is a clearer join with social care support mechanisms, could benefit from that type of arrangement. That might, for example, include palliative care or physiotherapy. There is a range of examples that we could explore.

For us, the issue is about how the individual interfaces with the bill. The individual will have a right to ask for self-directed support in respect of social care services, but will not have that right in respect of NHS services. In other words, the social work community will be obliged to respond to individuals’ requests, but the health community will not. That is slightly retrograde at a time when we are trying to ensure that the join between health and social care is smoother and that there are fewer issues separating the two communities. We should be looking more ambitiously at the matter. That is our position.

Nanette Milne: Section 18 will amend the Community Care and Health (Scotland) Act 2002 and will allow ministers to amend regulations that are made under that act that dictate which functions can be delegated from the NHS and local authorities—
**Ron Culley:** Section 18 pertains to a specific set of arrangements that might be put in place in respect of integration. You heard earlier from the Highland partnership; it has decided that it wants, in pursuit of the integration agenda, to use what it refers to as the “lead agency model”, whereby the NHS delivers adult social care on behalf of the council. I understand that the legislative provisions under SDS solely allow that to happen. The crucial difference is that it does not get anywhere close to the type of far-reaching legislative changes that will be introduced in respect of the individual citizen. We are saying that, if the individual citizen is to have a right to access self-directed support and social care, there are other areas of the health service in which that would be just as appropriate.

**Nanette Milne:** Do you think that the bill should be amended to cover that?

**Ron Culley:** Absolutely.

**Elaine Torrance:** I support that position. This is about how we can engage more with our health partners. We have commissioned joint packages of care in certain circumstances, but if we are to be working much more closely with them, we need to think about how we can join those packages together much more effectively. We make the point in our written submission that we would like to see that strengthened.

**Bob Doris:** Some interesting points have been made about the scope of the bill, but I am reminded that the bill is about social care and self-directed support. I take on board Mr Culley’s points and hope that COSLA widens the agenda but stays focused on how to deliver the agenda in partnership.

I have a couple of fairly short questions on the stats. I agree with Mr Culley that it is not as simple as saying that self-directed support is direct payments, although direct payments are one option within self-directed support. Some local authorities may have more confident individuals demanding direct payments, which may explain some of the differences in take-up, but there are still some striking differences.

I believe that there is evidence to suggest that more has to be done. Can COSLA or the local authorities provide additional information so that we can see the wider picture? For instance, we are told that, in East Dunbartonshire, 12 people in every 10,000 receive direct payments. I am keen to know what other forms of self-directed support are provided in East Dunbartonshire and their incidence per 10,000 people. Local authorities do not appear to have given us such data; Glasgow City Council could not give us it.

**Ron Culley:** Such data will have to be developed over time. There are different types of information that we might want to seek in the future including, first, information that is collected by the Scottish Government, of which information on direct payments is an example. There may be a question about whether we want to widen the scope of the information trawl. There will also be information about personal outcomes—that takes us back to an earlier question—which we need to do a better job of collecting and aggregating in order to determine whether we are achieving what we want to achieve under SDS.

The spirit of the question is absolutely right; we need better information on how the policy is moving forward. However, I do not know that there is a lot of rich information that we can draw on just now to provide answers. Elaine Torrance has highlighted that there is information on individual case studies. We have quite a lot of that, which is good, but I do not know that we have got particularly far with aggregating it.

**Elaine Torrance:** We must remember that direct payments were the default position, so we were supporting direct payments. The three pilot sites have had a significant amount of money to roll SDS forward. We have had a very small pilot in our area—50 people have come forward, three or four of whom chose an individual service fund. That is because the concept of direct payments is now well understood and people know what they are taking on. We are developing processes and procedures around individual service funds, so it will take more time for information on those to come through.

**Bob Doris:** Has the bill been a focus and driver for local authorities to start to get those data together?

**Elaine Torrance:** Yes.

**Andy Martin:** Absolutely. I referred to the fact that we are in the process of infrastructure building. Some of the funding that has come through in the past financial year has been used to establish posts that will drive some of the infrastructure building over the next phase. It is important to emphasise that we collect huge amounts of information across all service areas and that only a fraction of it is processed via the Information Services Division up to the level of Parliament or the committee. In terms of single outcome agreements, all local authorities and health boards carry out, below the waterline, significant activity in collecting information.

A focus on outcomes has progressed in parallel with the discussion around SDS. Many local authorities—mine included—have established processes and procedures and have trained staff, and we are now running in that direction. That has started to produce information, which we routinely harvest from reviews of care plans to inform decisions.
Bob Doris: I will ask a final question. In the round-table session, Drew Smith and I mentioned the situation in which the local authority is central in assessing care needs and desirable outcomes with the person who may qualify for self-directed support, but is also a core provider of services. How do you ensure neutrality in that process? Put simply, if an older person who is getting support in their home asks the person who is going through their assessment needs what will happen if they choose a specific option, the local authority person might respond, “I won’t come to your house any more because that service would be provided by another provider.” I am not saying that that happens, but you can see the perceived dangers. Do we need almost to detach parts of the system so that we can ensure neutrality in a process in which the local authority is a commissioner, a provider and an assessor rolled into one?

Elaine Torrance: The assessment role is about supporting the individual to get the right outcomes; it is a negotiating position. The individual budget—a sum for the person to spend however they wish—requires our looking impartially at the range of available options and having a conversation about how best to spend the money to meet the person’s needs effectively.

It is interesting that, as we are trying to price, and make clear the price, of local authority services, we find that they are sometimes more expensive than other services. It is about having a dialogue. If local authorities are offering a high-quality service, people may well opt to continue to buy that service, which is good. Alternatively, a person may prefer to have the service provided in that community rather than in this community, and so would spend their budget on something else. The assessor or care manager must remain open, rather than say, “I like that provider—on you go to that one.”

Reference has been made to advocacy: an individual can have an advocate if they feel that the process is not being carried out properly. If a provider is not achieving a person’s agreed outcomes, that must be reviewed and a solution found. There are checks and balances in the process.

13:15

Andy Martin: I echo Elaine Torrance’s comments. Individualised budgets are critical in all this; after all, if people either notionally or actually know the amount that they have to deploy against their needs, that is an important starting point.

We should also recognise that we have had an assessor-provider split and a mixed marketplace for quite a long time now. SDS is not bringing those challenges with it; they have been on-going.

Ron Culley: I agree with all that—in particular, the point that councils are already wrestling with such issues was well made. Either last week or the week before, your colleagues on the Public Audit Committee were dragging us over the coals on similar themes to do with protection of in-house services. There are challenges that have to be worked through. For example, the bill contains a proposal that will potentially ensure that people who want to go into a care home can access direct payments, but such choice could create challenges for local-authority run care homes, which, as Elaine Torrance has pointed out, tend to be more expensive. Such big challenges will have to be managed and we have been trying to wrestle with them over the last wee while.

Jim Eadie (Edinburgh Southern) (SNP): Although I am very mindful of Mr Culley’s point that self-directed support is not exclusively about direct payments and that such payments are, in fact, only one of the four available options, I want to stick with the subject and ask a couple of specific questions.

First, information that we have received from the Scottish Government suggests that 40 per cent of people who receive direct payments have a physical disability, 26 per cent have a learning disability and 3 per cent have both. As vice-convener of the cross-party group on learning disability, I wonder whether COSLA will seek to work with the Scottish Government on a breakdown of those figures by local authority to give us a more accurate picture of what is happening.

Ron Culley: We are always happy to work with the Scottish Government on whatever issue, so I am happy to take up that suggestion with it.

Jim Eadie: I am not aware that such a breakdown is available; it would certainly be useful.

Secondly, with regard to the payment itself, the bill says:

“‘relevant amount’ means the amount that the local authority considers is a reasonable estimate of the cost of securing the provision of the support to which a direct payment relates”.

Do you expect the statutory guidance that will be issued following the bill’s becoming law to set out the level of payments or should that continue to be at the discretion of local authorities?

Ron Culley: The level of payments will have to remain at the discretion of local authorities, simply because of the judgments that will have to be made on available resources, service options, local marketplaces and costs, local policies, eligibility thresholds and so on. I do not know whether it would be possible to set a national framework for that that would benefit individuals.
As a result, I think that this is an area where we need to delegate power to the local authority and allow its professionals to establish an overall framework. I do not see the advantage of taking such decisions above local authority level.

Jim Eadie: We have examples from across Scotland of inconsistency in charging for care for people with learning disabilities and I can already hear the same argument being replayed with regard to direct payments. Are you concerned about that? What reassurance can you offer people who have such anxieties?

Ron Culley: We have worked hard to engage on charging over the past few years. Two competing ideals lie behind it: first, the importance of local democratic decision making in respect of charges that are levied on the local population; and, secondly, ensuring that provision for the local population is consistent relative to provision for others in Scotland. Management of that tension has proved to be challenging at times.

We have tried to engage on charging through national dialogue with the Scottish Government and voluntary sector partners in order to establish a set of guidelines. We may consider that type of arrangement in respect of the new obligations that will come in under SDS. However, it is a difficult balancing act that should be left to the discretion of local authorities.

Jim Eadie: Thank you.

Andy Martin: To supplement what Ron Culley said, every local authority in Scotland is wrestling with how to construct a resource allocation framework to meet the demands of the bill, which can only be done with quite detailed scrutiny and distillation of current spend. For example, the spend in East Dunbartonshire across older people, people with learning disabilities, adult mental health, children’s services and so on is—for good and proper reasons—profoundly different to the spend in West Dunbartonshire.

It is entirely appropriate for the bill and the associated guidance to set the parameters for an acceptable resource allocation framework, and the experience that has been illustrated in the pilots is extremely helpful. However, at the end of the day, constructing a resource allocation framework is a task that needs to be delivered locally.

The Convener: On capacity, other services need to be available—provided by the third and independent sectors and by carers themselves—so that people can choose to opt out of the current services. COSLA’s submission raises some issues around that with regard to carers, in particular, and assessment.

Ron Culley: On capacity, the role of the local authority will change slightly over time and will move towards stimulation of local markets and facilitation of different types of service provision. We are already seeing that.

On the carers issue, we are slightly nervous about some elements of the bill. We recognise the inherent value of the carer community, as most people do. However, we are concerned—especially about calls for duties to be placed on local authorities to provide more direct support to carers. That is troubling in two respects: first, it could leave us with a bill that has not been properly costed, which would be quite significant, and secondly, there is the philosophical issue about the role that we want carers to play in our society and whether remuneration should come with that. It raises a whole set of issues that require, at the very least, further discussion. We would be strongly against the inclusion of any prescription in respect of the powers that have been given to local authorities on the carers agenda.

The Convener: Is COSLA concerned that local authorities may have to pay for care that carers currently provide free?

Ron Culley: We support the position around the powers that the legislation might introduce, but we would resist powers’ being put forward as duties, because that is where the costs would begin to impact significantly and where the professional judgment of individual social workers would be compromised.

As it stands, there is not an awful lot in the bill that we would object to in respect of the carers agenda, but we are concerned about its evolving into something more prescriptive.

Andy Martin: I echo what Ron Culley said about the distinction between powers and duties. In my earlier answer I indicated that we are comfortable with the idea that there are circumstances in which it is appropriate to support a family member financially to care for a person who needs care. However, a duty on local authorities to consider or to actively support the relationship of parent to child, spouse to spouse, or child to parent would be unsustainable.

It is important to remember that behind the issue is the very challenging task of disaggregating resource from existing services to the future services that all local authorities are developing. That will mean our doing some of what David Williams referred to—transfers of undertakings and distilling what is in jobs into cash that can be disbursed to fund the future shape of services. That is a big, big challenge.

Elaine Torrance: I fundamentally believe that we need to support carers to the best of our ability. I said quite a lot about that at the outset.
In building community capacity, it is important that we work closely with providers and have a good dialogue under way. Providers feel that it is an uncertain world, so they need to be reassured that if they provide flexible services, people will want them.

Like other local authorities, we are working closely with community planning partnerships to develop capacity in small communities. In the Borders, we are working to provide the right support in terms of early intervention, as well as providing care for people. It is a two-way process—which is very much reflected in the Christie commission report—that we are trying to build on locally.

The Convener: I offer witnesses the same opportunity that I have given to other panels: if the bill has any implications that this meeting has not brought out, but that you feel are important to put on the table, please do so before we close.

As there are no further comments, I thank the panel members for their attendance and the evidence that they have provided.

Meeting closed at 13:27.
THE HIGHLAND HEALTH AND SOCIAL CARE PARTNERSHIP AT ITS FIRST EVIDENCE SESSION ON 8 MAY 2012

1. SPECIFIC NUMBERS OF SELF DIRECTED SUPPORT (SDS) PACKAGES INCLUDING DIRECT PAYMENTS

As was suspected, the Highland test site kept incomplete information about the total numbers of individuals who enquired about or who were assessed for assistance and the number of these enquiries that then resulted in the award of an SDS package. We are now exploring ways in which we might be better able to capture the breadth and depth of that information.

For information, I have enclosed figures relating to the numbers of new SDS packages awarded during the test site period (1 April 2009 – 31 March 2011) and from 1 April 2011 – 22 May 2012 at Appendix A. This highlights a move from the award of traditional Direct Payments to the new SDS packages.

In addition, this quote is taken from the evaluator’s report of the test site:

Information supplied by The Test Site shows that in addition to those that did pursue SDS a further 101 cases either sought information about SDS options or were proactively advised of the option as a result of a focus on Young Adults in Transition. With 40 proceeding, that equates to 28% of those to whom SDS was promoted or who considered in the end pursued it. Unfortunately, whilst additional information is available in respect of a small number of cases, we do not have a comprehensive breakdown of why potential service users chose not to pursue SDS.

However, amongst the 101 that did not pursue an SDS approach, seven (7%) were recorded as taking up a Direct Payment instead. Although it is assumed these other service users did not have an SSAQ / outcome based award, it is appropriate to record them as having achieved some degree of personalisation. In which case of a total of 141 cases who were in contact with the SDS team, one third (33%), secured either a Direct Payment through SDS or separately.

44 of those who did not pursue SDS / DP were recorded as school leavers; this compares with 24 who did, made up of:

- 15 young people who were recorded as either receiving an on-going SDS package as part of the 1st or 2nd tranche of school leavers, or
- 7 who received a one off SDS payment but were recorded as ‘supported at school’, or
- 2 who were recorded as school leavers but received a Direct payment, which was not recorded as SDS based
This appears to indicate that where there was active promotion to the school population this led to higher levels of take up than amongst the wider group of enquirers. One third (33%) of school leavers pursued an SDS approach, rising to 35% if the two additional DP’s are included. This compares to 25% of enquiries proceeding to SDS – rising to 32% if the additional five additional (‘non SDS’) DPs are taken into account. However, one stakeholder observed that the reason for the higher take up of SDS amongst school leavers may have been due to a dearth of alternative options.

The reasons for the higher take up of SDS amongst school leavers are not known. There may have been several reasons including:

- Being a priority for the Test Site, school leavers might have received more focussed attention and support than other enquirers
- As many enquiries appear to have come from Social Workers, it is possible that they were only gathering information about possible options, which they had yet to explore with the service user.

Although not strictly comparable, other research in respect of Direct Payments may give some insights as to why clients did not take up SDS. The Test Site’s October 2010 quarterly monitoring form reports the findings of a survey of 292 people offered a Social Work service during May – June 2010, asking if they were offered a Direct Payment and, if they declined why they did so. There was a 35% response rate:

- 62% said they were not aware of the Direct payment option and
- 29% that they were offered a DP but declined.

Our earlier baseline study found that there were doubts as to whether all Social Work staff were adequately informing service users of their right to Direct Payments, if at all. These figures appear to confirm this as a continuing issue.

Of those that reported declining a DP (18):

- 39% felt they could not cope with the added responsibilities of managing a DP
- 11% said they trusted and preferred Highland Council’s services
- 11% said they had had a DP before and had ended this to choose more traditional service provision
- 6% had had a Direct payment turned down

2. ACCELERATED DISCHARGE FROM HOSPITAL

The main focus of the SDS test site activity was on transitions i.e. as young people are moving into adulthood. However, there was a secondary focus on accelerated discharge from hospital and this concerned making available SDS packages of care to elderly patients in one of Highland’s community hospitals, the primary objective being to avoid delayed discharge.

Unfortunately, the hospital-based project was unsuccessful and only one SDS package was awarded. There were a number of reasons for the failure and again,
the evaluator’s report discusses this aspect of the test site, highlighting the following as key issues: lack of leadership and strategic planning, competing priorities in the hospital in relation to change activity; resistance by health staff. Timing was clearly an issue here as was the relatively short space of time available for implementation of this part of the project.

It is recognised that there needs to be a major shift in culture and mind-set within social work and social care so it is not surprising to see the same within the NHS, where staff do tend to more naturally take on a more paternalistic, “doing for people” approach and sometimes struggling with enabling people to take assessed risks. To address this, we have now seconded nurses into our SDS Team and they are working within hospitals and communities to raise awareness of SDS amongst health managers and staff.

3. REASSESSMENT AND APPEALS

There were no new or additional systems and processes for reassessment or appeals put in place for the period of test site. Hence existing routes for reconsideration were accessible. These were basically as follows: where a service user is unhappy about a decision to award a package or the amount of that package, the matter is escalated firstly to the Team Manager and then on to the Area Manager; thereafter where an individual continues to be unhappy, there is recourse to appeal through the Highland Care Charge Review Group, a panel of officers comprising social work, health, finance and legal expertise. During the course of the test site activity, there were no referrals to the HCCRG on matters relating to SDS or DPs.

4. ADVOCACY

In Highland, there is good availability of independent individual, citizen and collective advocacy and at the time of the test site activity, a range of advocacy services were available, having been commissioned jointly by the Highland Council and NHS Highland. Hence there was no need to commission a specific service to support SDS.

Part of the test site activity involved intensive training for advocates, notably advocates providing individual advocacy and carers’ advocacy. We have continued to have good relationships with advocacy service providers and are currently engaged with the Stroke Association in their Advocacy and Self-directed Support Project.

5. SUPPORT FOR CARERS

A service user and carer network was established during the course of the test site and this was viewed positively and was well used. Subsequently, the SDS Team has recognised the value of this approach and is being more proactive in engagement with service users and carers, exploring different ways of achieving this. One way is for ‘Community Connectors’ to play a key role with service users who have a learning disability and their families. The need to build community capacity is very much part of this.
Numbers of Direct Payments and Self Directed Support packages April 2009 – May 2012

<table>
<thead>
<tr>
<th>Year</th>
<th>Quarter</th>
<th>DP Adults</th>
<th>DP Children</th>
<th>SDS Adults</th>
<th>SDS Children</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009/10</td>
<td>1</td>
<td>10</td>
<td>3</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2009/10</td>
<td>2</td>
<td>8</td>
<td>1</td>
<td>0</td>
<td>0</td>
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<tr>
<td>2009/10</td>
<td>3</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2009/10</td>
<td>4</td>
<td>9</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2010/11</td>
<td>1</td>
<td>10</td>
<td>0</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>2010/11</td>
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<td>15</td>
<td>4</td>
<td>3</td>
<td>0</td>
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<tr>
<td>2010/11</td>
<td>3</td>
<td>13</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2010/11</td>
<td>4</td>
<td>11</td>
<td>3</td>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td>2011/12</td>
<td>1</td>
<td>11</td>
<td>0</td>
<td>20</td>
<td>0</td>
</tr>
<tr>
<td>2011/12</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>16</td>
<td>0</td>
</tr>
<tr>
<td>2011/12</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>2011/12</td>
<td>4</td>
<td>0</td>
<td>0</td>
<td>5</td>
<td>4</td>
</tr>
<tr>
<td>2012/13</td>
<td>1*</td>
<td>0</td>
<td>0</td>
<td>4</td>
<td>1</td>
</tr>
<tr>
<td>Totals</td>
<td></td>
<td>90</td>
<td>13</td>
<td>57</td>
<td>10</td>
</tr>
</tbody>
</table>

* NOTE: Partial quarter – period relates to 1 April – 22 May 2012
Social Care (Self-directed Support) (Scotland) Bill

Note from Clerk and Supplementary evidence from COSLA

Following oral evidence on 8 May, COSLA has provided further information regarding its assessment of the potential financial impact of the Bill.

Attached is COSLA’s supplementary evidence including the quantitative survey proforma COSLA used to collate and aggregate the potential costs of the SDS bill, along with its qualitative analysis. COSLA has explained that it has not provided a breakdown of the quantitative analysis because it does not have permission to share this information from its member councils. However, it has informed us that COSLA’s calculations are based on a response from its members, which were aggregated to produce a median figure.

COSLA wished to repeat the caveats expressed to the Committee, namely, that it is very difficult to accurately estimate the costs that will arise from the changes prescribed by the Bill: the timing and extent of shifts in commissioning arrangements, administrative costs, and dual running costs are partly dependent on the choices individuals make under SDS.

COSLA states that those caveats expressed, the £23m identified by the Scottish Government falls far short of even its most conservative estimates. COSLA believes that whilst it is difficult to fully estimate the exact cost for all Councils, from the information provided, even the lowest estimate for each of the cost areas outlined above over three years would total just over £50m nationally. COSLA states that given that councils are at different stages in implementing SDS, it is highly likely that these costs would be higher, and indeed even based on the median of the estimates which were received the total cost to councils, over the next three years would be over £90m. COSLA believes that this is very different to the actual level of funding which has been provided.
Supplementary information from COSLA

Self-Directed Support – Potential Financial Impact

1. Cost Variations

Evidence from England offers little insight as this has tended to centre around direct payment levels, which are not a good measure of SDS uptake (given that people may choose one of the three other SDS options). Furthermore, England has a more developed and diversified social care market, due to policy imperatives around externalisation and the growth of the private sector, which have either not applied to, or not had the same traction in, Scotland. Such externalisation tends to result in more people opting for direct payments – mainly because in-house services are depleted, the market has had time to develop, and commissioning arrangements have had time to develop across this market.

Clearly the more resource that is available to support change, the more quickly progress can be made. However, if insufficient resource is available, we may need to take a more pragmatic approach and focus on the timescales for implementation that are possible within different resource envelopes. Longer implementation timescales would help spread costs associated with assessment, supporting choices and review, but would prolong dual running costs; conversely, shorter implementation timescales may represent a more efficient approach to decommissioning, but would carry greater cost in terms of assessment, supporting choices and review.

Our survey showed that councils are all at different stages, and anticipate varying levels of costs. This is to be expected and is connected to both their assumptions about uptake levels, and their different service infrastructures. The balance between in-house, commissioned, and buildings-based services is a key driver here, with the shift towards spot purchasing and de-commissioning of both in-house and external provision, incurring three main types of costs:

A) Costs related to withdrawing from existing arrangements – e.g. redundancy and/or TUPE costs, early termination penalties for block contracts

B) Costs related to new contracting arrangements – e.g. the admin and finance burden will increase as staff move to dealing with a higher number of smaller payments and contracts, including new spot purchasing and framework agreements

C) Costs related to maintaining existing services until they can be closed or scaled-down (dual running costs) e.g. meeting fixed overheads for services running below capacity, maintenance costs for buildings until alternative uses can be found

As the shape of local services vary, so do councils’ estimates of costs in these three areas.

2. Identifying costs arising from the Bill duties
There is a need to be clear about the costs we see as arising from the specific duties in the Bill itself, versus costs that will arise through implementing the longer-term strategy. The main duties relate to:

i) The duty to offer the four options below, and then ‘give effect’ to an individuals’ choice
   - Direct payment
   - Direction on an available budget
   - Council-arranged services
   - A mixture of these arrangements

ii) A duty to follow guiding principles on conducting social care assessments and providing people with the above four options

iii) A duty to involve natural networks, or ‘circles of support’, in making initial decisions for those who lack capacity and managing support thereafter

iv) A duty to offer carers the self-directed support options, where councils have already decided to support carers (i.e. the Bill does not introduce a duty to provide support to carers)

**Assessment, review and administration costs will rise as a result of the new duties.** In order to offer these options, and then be able to give effect to an individuals’ choice, including involving ‘circles of support’, councils will need to have a number of systems in place. Costs arise from developing new systems and processes, and from deploying them, with many of these processes requiring more staff time. This will give rise to different types of costs that can be seen as directly arising from the Bill:

**Direct payments**
- Additional capacity for the administration of DPs will be required. Although councils should already have systems for making direct payments in place, the Bill will increase the volume of DPs, and therefore admin, finance and audit costs.

**Assessment and review**
- Assessment, resource allocation, and review processes will have to be reviewed to ensure they adhere to the guiding principles the Bill will introduce. In some cases, new systems, guidance, training etc will need to be developed and implemented as a result
- There will be an increase in the volume of SDS assessments as these are offered to all new clients, and other client groups are reviewed. Where a council is also supporting a number of carers, the Bill duty requiring councils to also offer them the SDS options, means that carers will be added to the total number of clients requiring SDS assessments/reviews. There has also been some concern that the Bill will lead to increases to the total client base, over and above that expected to arise from demographic change, due to direct payments encouraging more people to seek a service. Prof David Bell
has dubbed this the ‘woodwork’ effect, which he highlights as having had a particular impact in the Netherlands. Financial provision needs to be made for these increases, or further consideration needs to be given to defining eligibility

- There will be an increase in the time care managers need to spend with clients. There will be ‘spikes’ across key parts of the care management process – at initial assessment (to explain SDS, explore the four options and support the decision-making); when allocating resources (to go through the resource allocation system and deal with any concerns, complaints, or appeals); when purchasing and arranging services from a more diversified market (either on a client’s behalf, or supporting them to do so); when reviewing packages and re-configuring as necessary (this may include repeating some of the stages already outlined)

- Taken together, these increases in volume and time, lead to a requirement for increased capacity (mostly, but not exclusively, at Care Manager level)

3. The cost of care

Providing highly personalised services through spot-purchasing or individual contracts and delivering them in individual settings, can be more expensive than providing more standardised care on the ‘one-to-many’ model of buildings-based services. These increases to the cost of care need to be met through increased funding, or there is a risk the level of care that can be provided will reduce.

The unit costs of externally purchased care are likely to rise, leading to a requirement for increased funding or a reduction in the levels of care provided. Direct payments (and SDS overall) are not considered to be cost-neutral. Professor David Bell has emphasised that implementing SDS will require a move away from block contract and framework contract models, to spot contracts, and that these spot contracts will be more costly – both in terms of the set-up costs, and the service price. Therefore the same Individual Service Budget may not stretch as far as it did before. These increased costs either need to be met through councils making cuts to other services, or additional funding being needs to made available to allow councils to ‘top up’ care budgets to compensate. If neither of these options is possible, social care clients may be forced to accept a reduction in the hours of care their budget can purchase when their level of need has not changed. This is not an issue that can be dealt with through bridging finance. These increased unit costs will be a long-term feature of the contracting arrangements required to ‘give effect’ to individuals’ choices in respect of the four options the Bill introduces.

4. Bridging finance

**Fixed running costs for in-house and buildings-based services will need to be met until services can be down-sized or closed.** As people take up the range of options that the Bill will require councils to offer, there will be a reduced requirement for in-house services. This will lead to obverse economies of scale operating until natural staff turnover, redundancy or TUPE arrangements reduce overheads in line with the reduction in clients. Until this point, the service will be running inefficiently, with the unit cost of care going up. Again, this leads to the same question of who
meets these costs and whether they are passed on to social care clients. Similar issues arise in relation to buildings-based services, however, even once a service has been closed, councils will need to continue to meet maintenance costs until the building can be sold or an alternative use found.
### Self Directed Support - consultation on financial memorandum and potential costs

<table>
<thead>
<tr>
<th>Consultation area</th>
<th>Potential cost impact</th>
<th>Response</th>
<th>Estimated costs</th>
<th>Council Estimate</th>
<th>Estimated savings</th>
</tr>
</thead>
<tbody>
<tr>
<td>8.1 SDS advice / support services - costs associated with building the capacity of support / advice services</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>8.1a What are the likely requirements for costs of increased capacity within council advice and support services (including those provided by care managers)?</td>
<td></td>
<td></td>
<td>Recurring - No estimate.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.1b What is the likely requirement for increased funding from local authorities for independent advice and support services?</td>
<td></td>
<td></td>
<td>Non-recurring - Acknowledges current investment of £3.4m. No estimate of potential increased costs.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.1c What are the likely requirements for developing skills of staff members within existing and/or commissioned advice and support services?</td>
<td></td>
<td></td>
<td>Recurring - No estimate.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.1d What other pressures, including knock-on effects for other services, might arise from increased demand for advice and support?</td>
<td></td>
<td></td>
<td>I/R</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.1e What savings might be realised through more people accessing advice / support and SDS packages?</td>
<td></td>
<td></td>
<td>Recurring - No estimate.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.2 Appropriate person provisions - costs associated with assessing appropriate persons applications</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.2a What additional requirements and costs might the 'appropriate person' option entail?</td>
<td></td>
<td></td>
<td>Recurring - No estimate.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.2b How are these likely to change over time?</td>
<td></td>
<td></td>
<td>Potential savings to GPG (not quantified).</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.3 Services to carers - costs associated with offering self-directed support to carers</td>
<td></td>
<td></td>
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<td></td>
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</tr>
<tr>
<td>8.3a What are the wider implications for local authorities of offering self-directed support to carers - both in terms of i) assessment and ii) support?</td>
<td></td>
<td></td>
<td>Recurring - No estimate.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.3b Do you currently provide direct payments to carers and if so, at what levels? (Please provide numbers of carers and costs)</td>
<td></td>
<td></td>
<td>I/R</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.3c How is demand likely to change over time, with respect to the bill proposals? (Please provide numbers of carers and estimated costs).</td>
<td></td>
<td></td>
<td>I/R</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.3d To what extent do you see this meeting current unmet need?</td>
<td></td>
<td></td>
<td>I/R</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.3e To what extent do you anticipate the power to support carers will allow councils to 'pendent to save'? For example, by enabling carers to provide more care, or provide care for longer, thereby reducing demand for services by the individuals they support?</td>
<td></td>
<td></td>
<td>I/R</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.4 Residential care - costs potentially arising from the use of direct payments for the purchase of long-term residential care</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>8.4a What is the risk of individuals paying for their residential care through direct payments being classified as selffunders?</td>
<td></td>
<td></td>
<td>I/R</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.4b Would this risk create any financial liabilities for local authorities?</td>
<td></td>
<td></td>
<td>No estimate</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.4c How would adjustments to payments (as part of the quality care element of the national care homes contract) be dealt with under direct payments? What financial or administrative pressures might this bring for councils?</td>
<td></td>
<td></td>
<td>No estimate</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.5 Payment methods - costs associated with changes to payment methods</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.5a If payments were to be made gross, what difficulties might arise for councils?</td>
<td></td>
<td></td>
<td>Recurring - No estimate.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.5b Would there be any administrative costs arising from gross payments and if so can these be quantified?</td>
<td></td>
<td></td>
<td>Recurring - No estimate.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.5c What other implications might arise from each payment method, for example, where individuals wish to purchase services from neighbouring authorities?</td>
<td></td>
<td></td>
<td>Recurring - No estimate.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.6 SDS implementation managers based in local authorities - costs associated with employing additional staff for 3 years</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.6a Which of the low and high end assumptions is the most appropriate for additional staff to support transition?</td>
<td></td>
<td></td>
<td>Non-recurring (first 3 years only) - Between £0.5m to £3.8m over 3 years. £3.4m over 3 years, to be made available by the Scottish Government.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.6b Are the costs associated with these posts accurate?</td>
<td></td>
<td></td>
<td>Recurring (first 3 years only) - £40,000/yr costs per post, per annum</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.6c What pressures might arise as SDS manager posts come to an end?</td>
<td></td>
<td></td>
<td>Recurring - No estimate.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.7 Training, information and awareness raising; publicity on the new legislation</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
2.3 Bridging finance – costs associated with winding down of existing contracts

| 2.3a | What other training or development requirements might arise from the SDS? (please exclude any requirements that are likely to meet by the SDS managers described in section 9.1 above, or through SSSC activity described in section 9.2 of the consultation document) | No recurring - No detailed estimate. Assumed costs unlikely to exceed similar bill costs eg £200k for materials and £500k to deliver training. Significant training already planned through SSSC over next 3-5 years. |

| 2.3b | What additional requirements and costs might arise from the winding down of existing contracts? | Non recurring - No estimates. Decisions yet to be taken on whether there is sufficient evidence to support the case for bridging finance. |

| 2.3c | To what extent is the case for bridging finance dependent on the speed or pace of SDS in roll out? For example, is the case stronger if local authorities decide proactively to review all clients or particular groups on the back of the legislation? | Recurring - No estimate |

| 2.3d | What additional administrative costs might arise from increased numbers of direct payments, e.g. in relation to volume, or changes to financial systems? | Non recurring - No estimates. Decisions yet to be taken on whether there is sufficient evidence to support the case for bridging finance. |

19 Other costs and wider implications - please tell us about any other areas where you anticipate additional costs, or other implications for councils, which need to be reflected in the financial memorandum.

10.1 Please tell us about any additional recurring or non-recurring costs or savings for councils.
Personalisation
Your life
Your support
You decide
Welcome to Personalisation

Glasgow City Council is using a new way to help you get the support you need to have a good life.

It is called **Personalisation**

**Personalisation** puts you in charge of your life.
Self directed support will help you get the life you want

With Self directed support you choose

☑️ The kind of support you want
☑️ When you want to use support
☑️ Who will give you support

This will make sure that the support you get is right for you
Self directed support means

You plan

You choose

You decide
How does personalisation work?

You and the people who know you best will talk about your life.

You work out your support and the things you need to help you live your life.

You will fill in the self evaluation questionnaire.
How do I make a plan?

When you know how much money you have to spend you can get help to make a plan.

In the plan you say what kind of support you need and want to live your life.

This is called your Support Plan.
You plan... the support you need to live your life and do the things that keep you safe and well

My Plan

Stay safe

Meet Friends

Learn new skills at college

Use the internet

Stay healthy and get fit

Go horse riding

Go on a short break

Learn to swim
You choose—how to **spend** your support **money**
and pay for the things in your plan
that **keep you safe and well**

- Pay to learn to dance or sing
- Learn how to use the internet
- Pay to get fit and healthy
- Pay for a mobile phone or personal alarm
- Learn about healthy eating
- Pay to go on a short break
- Pay for swimming or horse riding lessons
- Pay for a home cleaner or to get your ironing done
You decide.. who supports you

- Personal assistant
- Personal trainer
- Friend or family

You decide.. when you want support

You decide.. the kind of support you want

- Learning support
- Help at home
- Equipment
What happens next?

Social Work staff will look at your **Support Plan** and you will decide together if it is the **right plan for you**

We will both make sure your plan...

<table>
<thead>
<tr>
<th>Image</th>
<th>Text</th>
</tr>
</thead>
<tbody>
<tr>
<td><img src="image1.png" alt="Image" /></td>
<td><strong>gives you</strong> the right support you need to live your life?</td>
</tr>
<tr>
<td><img src="image2.png" alt="Image" /></td>
<td><strong>helps keep you healthy and safe?</strong></td>
</tr>
<tr>
<td><img src="image3.png" alt="Image" /></td>
<td><strong>helps you do things you want to do?</strong></td>
</tr>
<tr>
<td><img src="image4.png" alt="Image" /></td>
<td><strong>is a good way to spend your money?</strong></td>
</tr>
</tbody>
</table>
How will I pay for this?

You will be given your own money to use for your support.

This money is called your **Individual Budget**

Money can be paid into your **support bank account** but there are other ways you can get help if you need it.
We need to know that your plan is working

Social Work staff will check

- If you are getting the support you need?
- If you are safe and well?
- If your plan is working?
- If you are spending the money on what was agreed in your support plan?
For more information contact your local Learning Disability Team

**Anson House**
582 - 588 London Road
Bridgeton
Glasgow
G40 1DZ

☎ 0141 276 4200

**Anniesland**
1660/70 Great Western Rd
Anniesland
Glasgow
G13 1HH

☎ 0141 276 2420

**Rowan Park**
Pavilion One
Rowan Business Park
5 Ardlaw St, Govan
Glasgow
G51 3RR

☎ 0141 276 8700

**North East**
582 - 588 London Road
Bridgeton
Glasgow
G40 1DZ

**North West**
1660/70 Great Western Rd
Anniesland
Glasgow
G13 1HH

**South**
Pavilion One
Rowan Business Park
5 Ardlaw St, Govan
Glasgow
G51 3RR
Personalisation

Your life

Your support

You decide
Personalisation of Social Care

Purpose of Report:
To seek endorsement for the implementation of personalised social care services in Glasgow.

Recommendations: Committee is asked to endorse:

i. the implementation programme for personalisation of social care to ensure a fairer, more equitable, transparent and effective allocation of available social care resources;
ii. the proposed application of a Learning Disability Resource Allocation System (RAS);
iii. revenue support of £520,000 per annum from the Council between 2011-13 to support implementation;
iv. the Council’s position with respect to changes to ILF; and,
v. that given the experience in England and current and projected future cost pressures and savings requirements, a working assumption of a 20% resource re-direction be applied in Glasgow, to be kept under review based on the particular experience here.
vi. Refer the report to Executive Committee for approval.

Ward No(s): 

Citywide: ☐
Local member(s) advised: Yes ☐ No ☐
consulted: Yes ☐ No ☐
1. **Purpose of report**

1.1 This report seeks endorsement for the implementation of personalised social care services in Glasgow.

2. **Definitions**

2.1 The personalisation of social care services has been defined by the Scottish Government as being about improving outcomes for citizens, by providing choice, control and independence, through safe, sustainable and economically viable responses to support planning. Specifically, Self-Directed Support (SDS) is a term that describes the ways in which individuals and families can have informed choice about the way support is provided to them.

2.2 Service users are allocated an Individual Budget (IB) via a process explained at 2.3 below. The choice then may include taking that IB as a Direct Payment (DP), having a direct payment managed by a third party, or directing the IB to arrange support from the local authority or from a commissioned provider. The choice can also be for a combination of these. This allows people to purchase alternatives to traditional care supports; however, Individual Budgets must always be used to meet the outcomes identified in the person’s support plan.

2.3 There is a range of technical terminology associated with personalisation. However, the most important concepts to be aware of are:

   i) **Self Evaluation Questionnaire (SEQ):** is the process through which a service user is supported by a relevantly qualified social care professional to evaluate their support needs. A draft SEQ is provided as appendix 1.

   ii) **Resource Allocation System (RAS):** is the process through which funds are allocated in accordance with the individual’s support needs. SEQ answers are then converted into an indicative financial value.

   iii) **Re-direction Potential:** is the element of the total budget to be retained for re-direction. For example, to meet current and/or projected future cost pressures; savings; or, re-directed to other service priorities. The experience from England is that re-direction potential can be in the range of 20-30%.

3. **Background**

3.1 Personalisation of social care services remains at an early stage in its development in Scotland, although there is a strongly shared commitment to its future application expressed in a number of places:

   i) Glasgow City Council Executive Committee Report (March 2008)

   ii) Progress report to Policy Development Committee (September 2009)


   iv) Scottish Government draft personalisation strategy (February 2010)

   v) Scottish Government consultation on personalisation bill (expected to be introduced in September 2011)

   vi) COSLA Health and Wellbeing Committee (September 2009)
3.2 The key drivers for the implementation of personalisation in a Glasgow context are:

i) The need to ensure fairness, equity and transparency in the allocation of finite resources in accordance with individuals’ support needs. That is, only differences in need should explain differences within and between care groups, not for example, historical differences in the level of available Supporting People funding.

ii) Evidence from England and elsewhere of IBs being associated with better overall social care outcomes for service users. The UK Government Department of Health commissioned an evaluation of its Individual Budgets pilot in 13 English authorities that found recipients of IBs were significantly more likely to report feeling in control of their daily lives, the support they accessed and how it was delivered. The evaluation also found that IBs have the potential to be more cost effective than standard care and support arrangements.

iii) The desire to empower and enable individuals to take greater control over their own lives and the support they need.

iv) Planned legislation in Scotland that is expected to make self directed support the default position for the provision of social care support in the future. This would require individuals to opt out of this form of support, as opposed to the current position where they proactively have to opt in. The Bill is expected to be introduced to the Scottish Parliament in September 2011.

v) The projected reduction in social care budgets of 12% over the next 3 years and the accompanying increase in demand, in for example, learning disability services. The Council must adopt a financially prudent approach to responding to the challenge of volatile budgets.

vi) Current approaches to managing the allocation of resources are unsustainable in the above context; for example, the ‘new demand’ process within Learning Disability.

3.3 In addition, it is important to be aware of our starting point here, namely the significant number of service users receiving long established, traditional packages of support, often borne of better financial circumstances associated with for example, the closure of Lennox Castle Hospital, the influx of Supporting People resources and Independent Living Fund (ILF).

3.4 The alternative to personalisation would be to adopt a more traditional approach to reducing budgets, either applying proportionate reductions to a range of services or cut some services in their entirety.

3.5 Committee is also asked to note that the Clyde Valley Collaborative formed in response to Sir John Arbuthnott’s report on shared services is currently exploring the scope for developing a collective approach to personalisation, drawing upon the work already being carried out in Glasgow and elsewhere.

3.6 Committee is also asked to note the position in England where local authorities have been set a Government target to get 30% of adult social care recipients on to personal budgets by April 2011.
4. **Glasgow Implementation Plan**

4.1 Glasgow has been pursuing a small scale pilot of personalisation for users of learning disability services in East CHCP. The pilot, supported by the Scottish Government as one of three test sites across Scotland, has seen 57 people participate in the process to date; 15 have their self directed support arrangement in place, with 15 others having in-principle commitments in place. Although still small numbers, the early indications are consistent with the findings from England of the potential for better outcomes for individuals and the more efficient deployment of available resources. Ideally there would be more time to test the model and the evidence relating to outcomes, but the forthcoming challenges preclude this.

4.2 The table at 4.4 below details the planned implementation of personalisation across social care groups, which is incremental to reflect the particular challenges, associated with personalisation faced by the different care groups. For example, adults with learning disabilities tend to be starting from a more advanced point in relation to personalised care packages than older people; or, the daily support requirements for adults with a physical disability tend to be more consistently predictable than those with episodic mental health problems.

4.3 The incremental timetable detailed below takes account of the need to tailor personalisation to individual care groups at this stage, with a medium term aspiration to evolve towards more converged arrangements. However, it should be stressed that financial imperatives underpin the proposal that Glasgow adopt an ambitious timescale for the implementation of personalisation. The proposed ‘go live’ date for roll out in Learning Disability is 18 October 2010.

4.4 The table below provides a summary timetable for concluding the roll out by care group:

<table>
<thead>
<tr>
<th>Care Group</th>
<th>Number of Service Users</th>
<th>Implementation timetable</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Learning Disability</td>
<td>1,800</td>
<td>By end of 2010-11</td>
<td></td>
</tr>
<tr>
<td>Physical Disability</td>
<td>900</td>
<td>By summer 2011</td>
<td></td>
</tr>
</tbody>
</table>
Children with Disabilities | 3,000 | By summer 2011 | Similar to LD and PD in terms of relatively personalised support packages at present. Issues of inequity between children’s and adult support packages make transitions problematic and this care group an early priority.

Mental Health | 1,950 | By end of 2011-12 | Some initial work has been commenced around Mental Health, working with some of the main providers. Further preparatory work needed before roll out can commence.

4.5 Careful consideration would need to be given to the application of personalisation to Older People services and the timescale for that given the wider strategic reform agenda in that area, including re-ablement and shifting the balance of care.

4.6 Many individuals with an autism spectrum disorder (ASD) will be amongst the earliest recipients of self directed support given the priority attached to Learning Disability and Children with Disabilities in the above timetable.

5. Implementation Challenges

5.1 It should be stressed that rolling out what is a whole systems change around personalisation across the City represents a very significant challenge to Social Work Services. Some of the key challenges are summarised here:

i) Development of a robust RAS – the failure to develop a RAS that adequately aligns resources to needs carries both financial and care management risks. A further challenge is the development of a single RAS that can be applied to all care groups, as is the need to ensure the RAS is viable for a satisfactory period of time before being reviewed and possibly re-set. Robust processes must be put in place to ensure that the RAS is consistent, fair and affordable (e.g. via screening group, monitoring processes etc).

ii) Service users – need to build knowledge, understanding and confidence amongst service users that they can assume more control over how they are supported. Part of this will be overcoming a dependency culture that exists in parts of the care sector. A reasonable transition period will apply to allow service reductions to be managed. Members are asked to note the proposal that self directed support costs will not exceed current support costs unless there has been a significant change in the individual’s needs.

iii) Carers – as per service users there is a need to build confidence and understanding on the part of carers and incentivise personalisation as a positive choice. As there will be a re-distribution of resources across service users in line with the equity principle of personalisation, some element of carer resistance can be expected.
iv) Assessment and care management staff – there is a significant learning and development challenge associated with bringing staff (Social Work, NHS, Education etc) up to a level of knowledge and technical competency around aspects of personalisation. This challenge is heightened by the fact that personalisation represents a significant cultural shift. There are associated workforce planning considerations given the shift in emphasis from initial assessment to care management and review. A key consideration is how to retain engagement of health staff in the assessment process following changes to the CHCP structure.

v) Providers – as with other stakeholders, there is a need to build knowledge, confidence and capacity across what is a very broad and diverse sector in the City of circa 200 providers. Engagement to date has been generally positive with provider organisations currently engaged in testing the draft SEQ and RAS.

vi) Staffing and financial resources – there is a significant challenge associated with resourcing this transformational change, both in terms of developing alternative models of service provision and building capacity across the stakeholders detailed in ii)-v) above. English local authorities received £520m of central government support to make this transformation. Glasgow is in the fortunate position of having received £520k per year for two years from the Scottish Government, but it is only a fraction of the £5.2m it would have received had English levels of funding been available and it ends in March 2011. The Council may want to consider at least continuing this level of support on an invest to save basis until at least 2012 to support the implementation timetable detailed above.

vii) Independent Living Fund (ILF) – of relevance to the implementation of SDS is the financial impact from changes to the ILF, previously reported to Committee on 26 May. Were the Council to assume responsibility for meeting the resultant ILF shortfall, current estimates are that these changes create a potential pressure of £1.5 million within Social Work budgets in the City. As noted in the 26 May report, the ILF changes are a UK issue, but there is growing disquiet about the implications within Glasgow, with the Council now in receipt of a number of formal complaints regarding the impact. Committee is invited to reinforce the Council position that it cannot accept what would effectively be a cost shunt from ILF.

viii) Legal capacity issues – there are complex tensions between existing adults with incapacity legislative provisions and the Scottish Government policy on personalisation that the forthcoming Self Directed Support Bill should address.

ix) Audit issues – based on the experience of direct payments safeguards will be needed to ensure probity in the use of public funds. A number of strands of activity are already in train in relation to this, including plans to introduce pre-payment cards that will help ensure individual budgets are used appropriately.

x) Investment in technology – the Council is currently assessing the capital investment required to upgrade Social Work’s careFirst client
information system. The roll out of personalisation and the associated savings is dependent on the upgraded system being in place in reasonably short order, given the increase in transactional activity that will accompany it. Another dependency relates to investment in e-learning capacity to ensure the appropriate learning and development investment in staff.

6. **Service Implications**

6.1 It is anticipated that the implementation of personalisation will impact on a number of strategically important aspects of current service provision:

i) Directly provided services – will need to be competitive in quality and cost terms, otherwise service users may choose to take their support from other providers.

ii) Direct payments – since direct payments are one form of personalisation the intention is to amend the existing direct payments scheme as part of a process of managing this under the wider personalisation umbrella, moving to a single administration system for individual budgets. This system will be developed and reviewed in conjunction with Internal Audit. In this context there are challenges for Cordia to be competitive in the market and ensure that they represent a positive choice for service users with greater choice over who supports them. The initial impact on Cordia can be expected to be relatively small given their limited share of the adult services market, but if significant numbers of older people choose to take an individual budget over time the impact could become more significant.

7. **Financial Implications**

7.1 In developing proposals for a Glasgow Learning Disability RAS we have been conscious of the very stringent savings targets that will apply across the public sector over the coming 3 years and beyond. We are also aware of the other significant cost pressures, including new demand, changes to ILF etc, which on current projections equate to circa £7.7million per annum.

7.2 In this context a judgement must be made regarding the size of the re-direction, which as indicated in 2.3, was in a range of 20-30% in England. The aim in Glasgow is to achieve a re-direction of some 20% over the two years 2011-13, which would meet existing and future budget pressures within Learning Disability. This would also allow for a manageable transition from existing support arrangements for individual service users.

7.3 A similar level of re-direction potential would be applied to the other care groups detailed at 4.4 in due course.

7.4 The net resource would then be allocated across service users in accordance with their RAS score. Some existing service users would lose resources, but in contrast to existing resource allocation processes that tend to discriminate against new people coming into the care system, the principles of fairness, equity and transparency would apply. The RAS system would also contain enough checks and balances to ensure that the Council meets its duty of care to all service users eligible for support.
8. **Recommendations**

8.1 Committee is asked to endorse:

i. the implementation programme for personalisation of social care to ensure a fairer, more equitable, transparent and effective allocation of available social care resources;

ii. the proposed application of a Learning Disability Resource Allocation System (RAS);

iii. revenue support of £520,000 per annum from the Council between 2011-13 to support implementation;

iv. the Council’s position with respect to changes to ILF; and,

v. that given the experience in England and current and projected future cost pressures and savings requirements, a working assumption of a 20% resource re-direction be applied in Glasgow, to be kept under review based on the particular experience here.

vi. Refer the report to Executive Committee for approval.
Self Evaluation Questionnaire (SEQ)

(Version 4.0 – Jan 2010)

Name: careFirst no:
1. Meeting personal needs

This part is about looking after myself – things like washing, getting up out of bed, going to the toilet, dressing, eating and preparing meals. It also includes taking medication and keeping healthy and well.

**TICK THE BOX THAT FITS YOU BEST FROM A TO E**

<table>
<thead>
<tr>
<th>OUTCOME</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. I am able to meet my personal needs and do not require any support in this area.</td>
</tr>
<tr>
<td>B. I am able to meet my personal care needs with occasional (not every day) physical / gestural / verbal support.</td>
</tr>
<tr>
<td>C. I need significant (every day) physical / gestural / verbal support from another to meet my personal care needs.</td>
</tr>
<tr>
<td>D. I need frequent (several times per day) intimate support to meet my personal care needs.</td>
</tr>
<tr>
<td>E. I need constant intimate support to meet my personal care needs.</td>
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<tr>
<td>F.</td>
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<td>G.</td>
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Additional information

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2. Relationships

This part is about friendships and people I know – not just my family.

**TICK THE BOX THAT FITS YOU BEST**

| OUTCOME |
|------------------|------------------|
| A. I have relationships with people who are not paid to be in my life - the right number for me. I don’t need support to keep them. | Outcome met |
| B. I have relationships with people who are not paid to be in my life – the right number for me. I need a bit of support to keep them. | To maintain relationships. |
| C. I do not have enough relationships with people who are not paid to be in my life. I need support to make relationships – and keep them. | To maintain current relationships and develop new friendships. |
| D. I don’t really have any relationships outside my family/paid support. I need support to make relationships – and keep them. | To make new friends and keep them. |

**Additional information**

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### 3. Being part of the local community

This part is about doing things in my community – like using local shops, the library, going to the cinema, clubs, community centre, church or other place of worship, helping neighbours, or being involved in local organisations.

**TICK THE BOX THAT FITS YOU BEST**

<table>
<thead>
<tr>
<th>OUTCOME</th>
<th>ASPECT</th>
<th>SUPPORT</th>
<th>COMMUNITY</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. I do need/wish support in this aspect of my life</td>
<td>Outcome met</td>
<td></td>
<td></td>
</tr>
<tr>
<td>B. I do lots of things in my community. I need occasional <em>(not every day)</em> support to do them and to explore new options.</td>
<td>To keep me part of my local community.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>C. Sometimes I do things in my community. I need regular <em>(averaging 2-4 times per week)</em> support to do more and to explore new options.</td>
<td>To support me develop links in my local community.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>D. I don’t do much in my community. I need frequent and regular <em>(several times per week)</em> support to do more and to explore new options.</td>
<td>To support me use local community facilities and organisations regularly and develop links in my local community.</td>
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**Additional information**

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4. Work and Learning

This part is about the support I require to keep or get a job, learn new things and/or keep busy in line with my personal choices and aspirations.

**TICK THE BOX THAT FITS YOU BEST**

<table>
<thead>
<tr>
<th>OUTCOME</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. I do not need any support in this area.</td>
</tr>
<tr>
<td>B. I have a work role/job and I am enjoying my spare time. This gives meaning and purpose in my life and I need some occasional <em>(not every day)</em> support to keep this.</td>
</tr>
<tr>
<td>C. I need support to take part in work, leisure or learning. I need frequent <em>(several times per week)</em> support to get more opportunities for work, learning or leisure.</td>
</tr>
<tr>
<td>D. I need significant <em>(every day)</em> support to take part in work, leisure and learning and I have few or no chances for work, leisure or learning in my life.</td>
</tr>
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</table>

**Additional information**

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## 5. Making important decisions about life

This part is about who decides important things in my life – things like where I live and who supports me.

**TICK THE BOX THAT FITS YOU BEST**

<table>
<thead>
<tr>
<th>OUTCOME</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. I do not need any support in this area.</td>
</tr>
<tr>
<td>B. I need support to make decisions but I have full control over all day-to-day and life changing decisions.</td>
</tr>
<tr>
<td>C. I need support to make decisions. I have control over most day-to-day decisions but less say in life changing decisions.</td>
</tr>
<tr>
<td>D. I need support to make decisions about my life, but most day-to-day decisions are taken by other on my behalf.</td>
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**Additional information**

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6. My role as a parent or carer

This part is about the support I need to care for someone else e.g. child, parent, partner.

**TICK THE BOX THAT FITS YOU BEST**

<table>
<thead>
<tr>
<th></th>
<th>OUTCOME</th>
</tr>
</thead>
</table>
| A. I am not a parent/care  
Or I am able to fulfil my parenting/caring role without support. | Outcome met |
| B. I need occasional *(not every day)* support with my parenting/caring role. | To fulfil my role with in my family |
| C. I need some regular, significant *(every day)* support with my parenting/caring role | To fulfil my role with in my family |
| D. I need frequent *(several times per day)* support with my parenting/caring role | To fulfil my role with in my family |
| E. I always need constant support with my parenting/caring role. | To fulfil my role with in my family |

**Additional information**


This part is about the support I need to manage day to day tasks involved in running a home e.g. housework, shopping, gardening, routine maintenance, budgeting, and paying bills.

**TICK THE BOX THAT FITS YOU BEST**

<table>
<thead>
<tr>
<th>OUTCOME</th>
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</thead>
<tbody>
<tr>
<td>A. I do not need support in this aspect of my life.</td>
</tr>
<tr>
<td>B. I need occasional <em>(not every day)</em> support to run and maintain my home.</td>
</tr>
<tr>
<td>C. I often <em>(e.g. at least once a week)</em> need support to run and maintain my home</td>
</tr>
<tr>
<td>D. I frequently <em>(several times per week)</em> need support to run and maintain my home</td>
</tr>
<tr>
<td>E. I always need significant <em>(every day)</em> support to run and maintain my home.</td>
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**Additional information**

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8. Staying safe from harm

This part is about keeping safe while doing those things that are important to me. Staying safe is about different things for different people but may include using public transport, being in public places, using a gas cooker, or going down stairs.

**TICK THE BOX THAT FITS YOU BEST**

<table>
<thead>
<tr>
<th>OUTCOME</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. I don’t need support to stay safe. I’m happy and no-one says they’re worried.</td>
</tr>
<tr>
<td>B. I need occasional <em>(not every day)</em> support to stay safe in certain places or times. I’m happy and no-one says they’re extremely worried. To keep safe in identified situations.</td>
</tr>
<tr>
<td>C. I need frequent <em>(several times per week)</em> support to stay safe some of the time. People worry about my safety at some times or in some places. To support me develop ways of keeping myself safe and protect others.</td>
</tr>
<tr>
<td>D. I need constant <em>(all day/every day)</em> support to stay safe all of the time. People worry about my safety. To keep me safe and protect others.</td>
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**Additional information**

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9. Complex needs and risks

This part is about my actions/behaviour – the things I do, how this affects other people and the support I need to manage this. This may include forgetfulness, confusion, lack of understanding and other factors which give rise to actions.
or behaviour that may have a negative impact on the safety of others. This part identifies the support you need to manage and minimise any negative impact.

**TICK THE BOX THAT FITS YOU BEST**

<table>
<thead>
<tr>
<th>OUTCOME</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A.</strong> I do not need support with this aspect of my life.</td>
</tr>
<tr>
<td><strong>B.</strong> I need occasional <em>(not every day)</em> support with this aspect of my life.</td>
</tr>
<tr>
<td><strong>C.</strong> I need frequent <em>(several times per day)</em> support with this aspect of my life to manage the risks identified in my risk assessment and management plan.</td>
</tr>
<tr>
<td><strong>D.</strong> I constantly need support with this aspect of my life to manage the risks identified in my risk assessment and management plan.</td>
</tr>
</tbody>
</table>

**To support me:**
- **A.** maintain my current lifestyle.
- **B.** manage my life and develop ways of coping better.
- **C.** manage my life and develop ways of coping better.
- **D.** manage my life and develop ways of coping better.

**Additional information**
10. Available social support

This part is about the support I have which is unpaid; for example from friends, family or neighbours.

**TICK THE BOX THAT FITS YOU BEST**

<table>
<thead>
<tr>
<th>OUTCOME</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. I am able to get nearly all the support I need from my family and friends.</td>
</tr>
<tr>
<td>B. I am able to get much of the support I need from family and friends and have or need occasional (<em>not every day</em>) paid support.</td>
</tr>
<tr>
<td>C. I am able to get some of the support I need from family and friends and need significant (<em>every day</em>) paid support.</td>
</tr>
<tr>
<td>D. I get little or no support at all from family or friends.</td>
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**Additional information**

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11. **Family carer and informal support**

This part is for an unpaid carer (this is often a family member or close friend). What does supporting me mean for my carer? What is their life like?

I currently do not have anyone who is my unpaid carer.

**To the carer:** This part is for you. Which of these statements Best describes your current circumstances?

**TICK THE BOX THAT FITS YOU BEST**

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>A.</td>
<td>I am able and willing to continue in my current caring role. My caring responsibilities have no negative impact on my daily life.</td>
</tr>
<tr>
<td>B.</td>
<td>I am able and willing to continue in my current caring role. My caring responsibilities have only a small impact on my daily life.</td>
</tr>
<tr>
<td>C.</td>
<td>I have some difficulty and stress in carrying out my day-to-day caring tasks. There is some impact on my lifestyles and playing this role leads to minor stress. I am willing to continue in my role as a carer.</td>
</tr>
<tr>
<td>D.</td>
<td>My caring role has a substantial impact on my lifestyle. Playing this role has led to high levels of stress and some health problems. I am willing to continue in my role as a carer.</td>
</tr>
<tr>
<td>E.</td>
<td>My caring role has a critical impact on my lifestyle – including a significant impact on my health and well-being. I am no longer fit or able or am unwilling to continue in the role as it currently is.</td>
</tr>
</tbody>
</table>

I would like to receive a carer’s assessment.

**Additional information**

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PERSONALISATION OF SOCIAL CARE

Purpose of Report:
Committee is invited to consider the arrangements being put in place to manage the assessment and resource allocation processes within Self Direct Support.

Recommendation:
Committee is asked to:
(a) consider the arrangements being put in place to manage the assessment and resource allocation processes within Self Direct Support.

Ward No(s):
Citywide: [ ]

Local member(s):

Advised: Yes [ ] No [ ] Consulted: Yes [ ] No [ ]
1. **Background:**

1.1 At its meeting of 7 October the Council’s Executive Committee approved a report detailing the proposed implementation of Personalised Social Care Services in Glasgow. The report directed the Executive Director Social Care to provide further detail on the assessment and allocation of resources processes to a future Policy and Development Committee.

1.2 It should be noted that the Policy Development Committee considered a report on the broad implementation of personalisation at its September meeting and it is therefore assumed that Committee members are familiar with the broad elements of the personalisation strategy.

1.3 This report will therefore focus on the two specific elements identified by the Executive Committee, as per above.

2. **Assessment Process**

2.1 The governing principle of Glasgow’s SDS assessment process is that the individual service user should participate in the assessment and identification of their own needs as far as they are able to. They should be fully supported in this process and there must remain a professional Social Work oversight of the final assessment in line with the Council’s statutory duties. The process that is being applied in Glasgow seeks to strike a balance between these statutory responsibilities and associated management of risk, with a desire to streamline the existing assessment process, which can be experienced as complex, unwieldy and bureaucratic, particularly by many service users and their carers. A copy of the Council’s Self Evaluation Questionnaire (SEQ) is attached as appendix 1. This is the key assessment document which has been designed following considerable engagement with other local authorities who have experience of SDS, service users and social care staff. The form has been designed to be as light touch and easily understood as possible, with a view to enabling service users to complete it with the minimal possible support.

2.2 There are plans to make these forms accessible on-line as we progress towards an upgraded Social Work client information system (Carefirst 6), which will improve access to the Social Work assessment process and reduce bureaucracy.

2.3 The key steps in the SDS assessment process are detailed in Appendix 2.

3. **Resource Allocation Process**

3.1 The principles governing the resource allocation process within SDS are to ensure as fair, equitable and transparent allocation of resources according to need as possible, whilst at the same time safeguarding the wellbeing of the
service user, managing risk etc.

3.2 The process is designed to be as objective as possible, but given the sensitivities and complexities of social care provision, there remains an element of professional judgement.

4. Legal Implications – Not applicable.

5. Financial Implications – Not applicable.

6. Personnel Implications – Not applicable.

7. Service Plan Implications – Detailed in report to September Committee.

8. Environmental Implications – Not applicable.

9. Conclusion

9.1 This report provides details of the assessment and resource allocation processes that underpin the implementation of Self Direct Support in Glasgow. These are new and innovative approaches that have already been tested and amended through learning from the pilot project in East CHCP. However, given the scale associated with full implementation across the city and range of care groups, it is prudent for the Council to keep these processes under review whilst they are in the process of becoming fully embedded.

10. Recommendations:

Committee is asked to:

(a) consider the arrangements being put in place to manage the assessment and resource allocation processes within Self Direct Support.
Self Evaluation Questionnaire (SEQ)

(Version 4.0 – Jan 2010)
1. Meeting personal needs

This part is about looking after myself – things like washing, getting up out of bed, going to the toilet, dressing, eating and preparing meals. It also includes taking medication and keeping healthy and well.

**TICK THE BOX THAT FITS YOU BEST FROM A TO E**

<table>
<thead>
<tr>
<th>OUTCOME</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. I am able to meet my personal needs and do not require any support in this area.</td>
</tr>
<tr>
<td>B. I am able to meet my personal care needs with occasional <em>(not every day)</em> physical / gestural / verbal support.</td>
</tr>
<tr>
<td>C. I need significant <em>(every day)</em> physical / gestural / verbal support from another to meet my personal care needs.</td>
</tr>
<tr>
<td>D. I need frequent <em>(several times per day)</em> intimate support to meet my personal care needs.</td>
</tr>
<tr>
<td>E. I need constant intimate support to meet my personal care needs.</td>
</tr>
</tbody>
</table>
**ALSO TICK THE BOXES BELOW THAT FITS YOU**

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>F. I need two people to meet my intimate personal care needs</td>
<td>To have essential personal care needs met and remain free from harm.</td>
</tr>
<tr>
<td>G. I need frequent intimate support overnight.</td>
<td>To have essential personal care needs met and remain free from harm.</td>
</tr>
</tbody>
</table>

**Additional information**

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2. Relationships

This part is about friendships and people I know – not just my family.

TICK THE BOX THAT FITS YOU BEST

<table>
<thead>
<tr>
<th>OUTCOME</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. I have relationships with people who are not paid to be in my life – the right number for me. I don’t need support to keep them.</td>
</tr>
<tr>
<td>B. I have relationships with people who are not paid to be in my life – the right number for me. I need a bit of support to keep them.</td>
</tr>
<tr>
<td>C. I do not have enough relationships with people who are not paid to be in my life. I need support to make relationships – and keep them.</td>
</tr>
<tr>
<td>D. I don’t really have any relationships outside my family/paid support. I need support to make relationships – and keep them.</td>
</tr>
</tbody>
</table>

Additional information

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________
3. Being part of the local community

This part is about doing things in my community – like using local shops, the library, going to the cinema, clubs, community centre, church or other place of worship, helping neighbours, or being involved in local organisations.

**TICK THE BOX THAT FITS YOU BEST**

<table>
<thead>
<tr>
<th>OUTCOME</th>
<th>A. I do need/wish support in this aspect of my life</th>
<th>Outcome met</th>
</tr>
</thead>
<tbody>
<tr>
<td>B. I do lots of things in my community. I need occasional <em>(not every day)</em> support to do them and to explore new options.</td>
<td>To keep me part of my local community.</td>
<td></td>
</tr>
<tr>
<td>C. Sometimes I do things in my community. I need regular <em>(averaging 2-4 times per week)</em> support to do more and to explore new options.</td>
<td>To support me develop links in my local community.</td>
<td></td>
</tr>
<tr>
<td>D. I don’t do much in my community. I need frequent and regular <em>(several times per week)</em> support to do more and to explore new options.</td>
<td>To support me use local community facilities and organisations regularly and develop links in my local community.</td>
<td></td>
</tr>
</tbody>
</table>

**Additional information**

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________________________________________________________________________
4. Work and Learning

This part is about the support I require to keep or get a job, learn new things and/or keep busy in line with my personal choices and aspirations.

**TICK THE BOX THAT FITS YOU BEST**

<table>
<thead>
<tr>
<th>OUTCOME</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A.</strong> I do not need any support in this area.</td>
</tr>
<tr>
<td>Outcome met</td>
</tr>
<tr>
<td><strong>B.</strong> I have a work role/job and I am enjoying my spare time. This</td>
</tr>
<tr>
<td>gives meaning and purpose in my life and I need some occasional (not</td>
</tr>
<tr>
<td>every day) support to keep this.</td>
</tr>
<tr>
<td>To keep work/leisure activities ongoing.</td>
</tr>
<tr>
<td><strong>C.</strong> I need support to take part in work, leisure or learning.</td>
</tr>
<tr>
<td>I need frequent (several times per week) support to get more</td>
</tr>
<tr>
<td>opportunities for work, learning or leisure.</td>
</tr>
<tr>
<td>To take part in work, leisure or learning.</td>
</tr>
<tr>
<td><strong>D.</strong> I need significant (every day) support to take part in work,</td>
</tr>
<tr>
<td>leisure and learning and I have few or no chances for work, leisure</td>
</tr>
<tr>
<td>or learning in my life.</td>
</tr>
<tr>
<td>To take part in work, leisure or learning.</td>
</tr>
</tbody>
</table>

**Additional information**

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____________________________________________________________________

____________________________________________________________________

____________________________________________________________________

____________________________________________________________________
5. Making important decisions about life

This part is about who decides important things in my life – things like where I live and who supports me.

**TICK THE BOX THAT FITS YOU BEST**

| OUTCOME |
| --- | --- |
| A. I do not need any support in this area. | Outcome met |
| B. I need support to make decisions but I have full control over all day-to-day and life changing decisions. | To maintain opportunities to make supported decisions. |
| C. I need support to make decisions. I have control over most day-to-day decisions but less say in life changing decisions. | To have control over life changing decisions. |
| D. I need support to make decisions about my life, but most day-to-day decisions are taken by other on my behalf. | To take more control over day-to-day decisions. |

**Additional information**

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________________________________________________________________________

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________________________________________________________________________
6. My role as a parent or carer

This part is about the support I need to care for someone else e.g. child, parent, partner.

**TICK THE BOX THAT FITS YOU BEST**

<table>
<thead>
<tr>
<th>OUTCOME</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. I am not a parent/care</td>
</tr>
<tr>
<td><strong>Or</strong></td>
</tr>
<tr>
<td>I am able to fulfil my parenting/caring role without support.</td>
</tr>
<tr>
<td>B. I need occasional <em>(not every day)</em> support with my parenting/caring role.</td>
</tr>
<tr>
<td>C. I need some regular, significant <em>(every day)</em> support with my parenting/caring role</td>
</tr>
<tr>
<td>D. I need frequent <em>(several times per day)</em> support with my parenting/caring role</td>
</tr>
<tr>
<td>E. I always need constant support with my parenting/caring role.</td>
</tr>
</tbody>
</table>

**Additional information**


7. Running and maintaining my home

This part is about the support I need to manage day to day tasks involved in running a home e.g. housework, shopping, gardening, routine maintenance, budgeting, and paying bills.

**TICK THE BOX THAT FITS YOU BEST**

<table>
<thead>
<tr>
<th>OUTCOME</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. I do not need support in this aspect of my life.</td>
</tr>
<tr>
<td>B. I need occasional <em>(not every day)</em> support to run and maintain my home.</td>
</tr>
<tr>
<td>C. I often <em>(e.g. at least once a week)</em> need support to run and maintain my home</td>
</tr>
<tr>
<td>D. I frequently <em>(several times per week)</em> need support to run and maintain my home</td>
</tr>
<tr>
<td>E. I always need significant <em>(every day)</em> support to run and maintain my home.</td>
</tr>
</tbody>
</table>

**Additional information**
8. Staying safe from harm

This part is about keeping safe while doing those things that are important to me. Staying safe is about different things for different people but may include using public transport, being in public places, using a gas cooker, or going down stairs.

**TICK THE BOX THAT FITS YOU BEST**

<table>
<thead>
<tr>
<th>OUTCOME</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. I don’t need support to stay safe. I’m happy and no-one says they’re worried.</td>
</tr>
<tr>
<td>B. I need occasional <em>(not every day)</em> support to stay safe in certain places or times. I’m happy and no-one says they’re extremely worried.</td>
</tr>
<tr>
<td>C. I need frequent <em>(several times per week)</em> support to stay safe some of the time. People worry about my safety at some times or in some places.</td>
</tr>
<tr>
<td>D. I need constant <em>(all day/every day)</em> support to stay safe all of the time. People worry about my safety.</td>
</tr>
</tbody>
</table>

**To keep safe in identified situations.**

**To support me develop ways of keeping myself safe and protect others.**

**To keep me safe and protect others.**

**Additional information**

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9. Complex needs and risks
This part is about my actions/behaviour – the things I do, how this affects other people and the support I need to manage this. This may include forgetfulness, confusion, lack of understanding and other factors which give rise to actions or behaviour that may have a negative impact on the safety of others. This part identifies the support you need to manage and minimise any negative impact.

**TICK THE BOX THAT FITS YOU BEST**

<table>
<thead>
<tr>
<th>OUTCOME</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. I do not need support with this aspect of my life.</td>
</tr>
<tr>
<td>B. I need occasional <em>(not every day)</em> support with this aspect of my life.</td>
</tr>
<tr>
<td>C. I need frequent <em>(several times per day)</em> support with this aspect of my life to manage the risks identified in my risk assessment and management plan.</td>
</tr>
<tr>
<td>D. I constantly need support with this aspect of my life to manage the risks identified in my risk assessment and management plan.</td>
</tr>
</tbody>
</table>

**Additional information**

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10. Available social support

This part is about the support I have which is unpaid; for example from friends, family or neighbours.

**TICK THE BOX THAT FITS YOU BEST**

<table>
<thead>
<tr>
<th>OUTCOME</th>
<th>A. I am able to get nearly all the support I need from my family and friends.</th>
<th>To maintain ongoing involvement and family relationships without placing an undue burden on them.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>B. I am able to get much of the support I need from family and friends and have or need occasional (not every day) paid support.</td>
<td>To keep existing support from family and friends without placing an undue burden on them and have occasional support of my choice.</td>
</tr>
<tr>
<td></td>
<td>C. I am able to get some of the support I need from family and friends and need significant (every day) paid support.</td>
<td>To keep existing support and have access to significant support of my choice.</td>
</tr>
<tr>
<td></td>
<td>D. I get little or no support at all from family or friends.</td>
<td>To form and keep relationships with people who are not paid to offer support and also have access to essential paid support.</td>
</tr>
</tbody>
</table>

**Additional information**

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11. Family carer and informal support

This part is for an unpaid carer (this is often a family member or close friend). What does supporting me mean for my carer? What is their life like?

I currently do not have anyone who is my unpaid carer.

To the carer: This part is for you. Which of these statements Best describes your current circumstances?

<table>
<thead>
<tr>
<th>TICK THE BOX THAT FITS YOU BEST</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. I am able and willing to continue in my current caring role. My caring responsibilities have no negative impact on my daily life.</td>
</tr>
<tr>
<td>B. I am able and willing to continue in my current caring role. My caring responsibilities have only a small impact on my daily life.</td>
</tr>
<tr>
<td>C. I have some difficulty and stress in carrying out my day-to-day caring tasks. There is some impact on my lifestyles and playing this role leads to minor stress. I am willing to continue in my role as a carer.</td>
</tr>
<tr>
<td>D. My caring role has a substantial impact on my lifestyle. Playing this role has led to high levels of stress and some health problems. I am willing to continue in my role as a carer.</td>
</tr>
<tr>
<td>E. My caring role has a critical impact on my lifestyle – including a significant impact on my health and well-being. I am no longer fit or able or am unwilling to continue in the role as it currently is.</td>
</tr>
</tbody>
</table>

I would like to receive a carer’s assessment.

Additional information
Personalisation of Social Care

Purpose of Report:
To ask Committee to consider the progress being made in implementing personalisation of social care support in Glasgow.

Recommendation:
Committee is asked to consider the progress being made in implementing the personalisation of social care in Glasgow.

Ward No(s):       Citywide:     
Local member(s): 
Advised:          Yes  No  Consulted:  Yes  No  


1. **Purpose**

1.1 To ask Committee to consider the progress being made in implementing personalisation of social care support in Glasgow.

2. **Background**

2.1 The Council adopted its personalisation policy in 2008 when it agreed to undertake a pilot roll out for adults with a learning disability in the former East CHCP. Based on that experience it took the decision in October 2010 to proceed with full scale implementation of personalisation across the City, beginning with adults with a learning disability, with a sequential roll out thereafter for adults with a physical disability, children with disabilities and adults with mental health difficulties over the course of 2011-12.

2.2 The report to Executive Committee in October 2010 indicated a range of challenges associated with the implementation of personalisation, chief amongst them the extremely difficult financial context which meant provision for a significant re-direction of resource (£13m over two years) to meet savings and new demand pressures. Nevertheless the report garnered support from across the political groups, given its emphasis on fairness, equity and quality of support.

2.3 For further background members are referred to earlier reports to the Policy Development Committee in September and November 2010.

3. **Learning Disability**

3.1 There has been marginal slippage with respect to implementation of personalisation for adults with a learning disability, with the process now anticipated to be largely concluded by 2 May 2011, approximately one month later than originally planned. Given the very ambitious timescales set for implementation and the significant complexity associated with the pace, scale and individual service user focus of the reform process this slippage remains within tolerable levels. It is important to note that it is not expected to have any negative impact on realising the resource re-direction outlined in the October Executive Committee report.

3.2 With respect to key milestones:

- The overwhelming majority of service users have now undergone the self evaluation process and been allocated indicative individual budgets.
- All provider organisations have been informed of the impact of personalisation on their current budgets for learning disability.
- By 2 May the overwhelming majority of service users will have their outcome-based support plans in place, in line with their final individual budgets.
3.3 The pace of this change process presents very significant challenges to all stakeholders, including providers, service users, carers, elected members and Social Work Services staff. It also introduces a number of risks which require to be carefully managed:

- Duty of care – given the vulnerability of the service user group, robust arrangements have been put in place to manage the assessment of need and associated support planning for individuals during a period of significant change for them personally.
- Financial – there are very challenging re-direction targets designed to manage re-distribution of available resource on a ‘fair shares’ basis and to meet savings targets.
- Providers – the change process has placed significant stress on the provider sector, which supports the majority of service users involved (see 3.6).
- Directly provided services – as per services purchased from the provider sector, there may be an impact on the Council’s directly provided services that will need to be managed in the future; for example, were significant numbers of existing service users to exercise their choice to be supported in a different way.
- Reputational – the change process has generated growing attention and its high profile nature brings with it a reputational risk for the Council should there be any significant difficulties. As with all of the above examples, the project change plan includes appropriate actions to manage the risks that exist.

3.4 Although there has been some unhelpful and misleading comment on the change process from some quarters, overall it has been characterised by commendable support from all key partners.

3.5 A number of issues will continue to require attention. Communication and training/capacity building, particularly in relation to service users, carers and social care staff has been a major challenge. Whilst significant progress has been made in this regard we are mindful of the need to communicate more effectively around personalisation. Some of the more innovative activity here includes the development of a DVD targeted at service users and carers (to be shown at Committee), a detailed guide to personalisation specially designed around the needs of service users (see Appendix 1) and facilitating access for carers to professional training for Social Work Services staff. Other key areas of communication and engagement activity include:

- Regular meetings with Carers Planit (carers) and People First (service users).
- Support to a small group of people with positive personal stories of self directed support to enable them to promote the benefits of SDS to other individuals. This is facilitated by Glasgow social care providers’ forum.
- Development of the personalisation pages on the Social Work Services website.
- A lead officer identified to support communication with each of the major stakeholders: council staff, provider agencies, service users and carers.
3.6 There are profound implications for service providers with respect to their overall financial position, workforce planning, shifts to new service models, contractual relationship with the Council and how they will engage with service users in the future. Social Work Services staff have been meeting with providers on an individual and collective basis intensively over the past 18 months to help them prepare for the change, whilst a three month fixed life transition fund will be made available during the early part of 2011-12 to assist those organisations facing budget reductions in excess of 20%.

3.7 Based on the experience of personalisation in England we can also anticipate an impact on the Council’s directly provided learning disability services, with some existing service users expected to take some or all of their current spend to other providers. The October Executive Committee report approved £520,000 annual bridging funding for each of the next 2 years to help manage the impact of personalisation on these services, whilst further work will be undertaken in due course once that impact has been more clearly established.

3.8 A professional risk enablement process has been put in place to ensure Social Work’s duty of care is met where there are any residual concerns regarding individual service users’ outcome based support plans.

4. **Other Care Groups**

4.1 Whilst the principal focus has been on implementation within Learning Disability, work has now begun in relation to the other care groups slated for personalisation, with their combined budget in the region of £30m.

4.2 A resource allocation system is under development for adults with a physical disability where the aim is to conclude implementation by 1 October 2011. Work in relation to children with disabilities and adults with mental health difficulties will be phased in over the remainder of 2011-12. Implementation in each of these care groups will bring their own particular challenges and will require the same intensive resource focus that has characterised the learning disability process.

4.3 Committee will continue to receive progress reports relating to the implementation of personalisation across all care groups.

5. **Personnel Implications**

5.1 Not applicable.

6. **Legal Implications**

6.1 Not applicable.
7. **Service Plan Implications**

7.1 Not applicable.

8. **Financial Implications**

8.1 Personalisation savings across all client groups have been agreed at £2.2m for 2010/11, £6m for 2011/12 and £7m for 2012/13. We have now concluded the meetings with Providers to agree estimated budgets. The estimated budgets indicate a resource redirection of £13m. The resource redirection will enable some of the new demand to be met within Learning Disability services, which has future commitments of approximately £6.8m.

9. **Recommendation**

Committee is asked to consider the progress being made in implementing the personalisation of social care in Glasgow.
Purpose of Report:
To ask Committee to consider the progress being made in implementing personalisation of social care support in Glasgow.

Recommendation:
Committee is asked to consider the progress being made in implementing the personalisation of social care in Glasgow.
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4.3 Committee will continue to receive progress reports relating to the implementation of personalisation across all care groups.

5. **Personnel Implications**

5.1 Not applicable.

6. **Legal Implications**

6.1 Not applicable.
7. Service Plan Implications

7.1 Not applicable.

8. Financial Implications

8.1 Personalisation savings across all client groups have been agreed at £2.2m for 2010/11, £6m for 2011/12 and £7m for 2012/13. We have now concluded the meetings with Providers to agree estimated budgets. The estimated budgets indicate a resource redirection of £13m. The resource redirection will enable some of the new demand to be met within Learning Disability services, which has future commitments of approximately £6.8m.

9. Recommendation

Committee is asked to consider the progress being made in implementing the personalisation of social care in Glasgow.
UPDATE ON PERSONALISATION OF SOCIAL CARE SUPPORT IN GLASGOW

Purpose of Report:
To update Committee on implementation of personalisation of Social Care support in Glasgow.

Recommendations:
Committee is invited to consider this report.

Ward No(s): Citywide: ✓
Local member(s) advised: Yes ☐ No ☐ consulted: Yes ☐ No ☐
1. **Purpose of Report**

   1.1 To update Committee on implementation of personalisation of Social Care support in Glasgow.

2. **Background**

   2.1 Committee considered a report on personalisation at its meeting of 13 April. That report reported the background to the policy, the progress made with respect to implementation for adults with a learning disability; and, looked ahead to the roll out of personalisation for other adult care groups.

   2.2 Committee asked that the Executive Director for Social Care Services provide a further report to this meeting, to include additional information on vulnerable cases.

3. **Current Progress in Learning Disability**

   3.1 The implementation process remains ongoing for adults with a learning disability. The current position for this group is as follows:

   - 700 service users have had their individual budget and outcome based support plan approved. An associated £7.1 million of resources has been re-directed as a consequence.
   - 238 service users have been allocated an additional £4.5 million to meet new demand in line with the fair shares principle of this policy.
   - 160 of the most vulnerable service users have been referred to the risk assessment panel to enable a risk assessment to be undertaken of their proposed support plan. No changes to their existing support plans will be affected until that process is concluded and there is assurance that the level of risk to the individual is safely manageable.
   - The remaining 800 service users are currently having their needs managed through the care management pathway.

4. **Service Users Case Examples**

   4.1 As per instruction to provide real life case examples, the following are submitted for Committee consideration:

   4.2 **Example 1** - Mr X is a 49 year old man with learning disability who has profound and complex social and health care needs. He is from the east end of Glasgow but after a number of attempts to support him in the community had failed due to his challenging behaviours he was admitted to long term hospital care 4 years ago.

   Mr X faced spending the rest of his life in hospital unless
significant additional social care resources could be found to commission support in the community.

Mr X was assessed through the new Self Directed Support processes. He has limited communication and no capacity to make significant decisions about his life. He repeatedly self harms and is extremely aggressive and violent at times. This agitation can also lead to him destroying property. It has often been these behaviours which have resulted in community placement breakdown. These behaviours have put him and others at risk of significant harm.

It was noted that work had been done whilst in hospital on behaviour modification plans.

He has personal care needs, a need for support to sustain relationships, a need for support in the community and support with behaviours that are a risk to him and others.

Following the Self Evaluation Questionnaire completion and council officer assessment he was taken through the Resource Allocation System and a budget of £62,000 was allocated to look at constructing an Outcome Based Support Plan. After further assessment and planning work the professional assessment was that the significant risks posed by Mr X’s behaviours could not be mitigated by a service package constructed within this budget allocation.

The service user’s circumstances were subsequently considered at a Risk Enablement Panel. Following a critical look at the evidence of significant risks of harm an appraisal of options for mitigating risk took place.

The decision of the panel was to agree an Outcome based Support Plan based at a cost of £120,000. This plan allowed for the construction of a 24 hour support plan with significant 2-1 support available to meet needs and manage risk.

This plan is now being implemented.

The necessary £120,000 would not have been available to the Council to meet Mr X’s needs without the resource directed that is part of personalisation.

4.3 **Example 2** - Mr Y is a 51 year old man who has profound and complex physical and learning disabilities. He was in long term hospital care for a number of years until he was discharged into a shared tenancy with 2 other individuals. This service commissioned by the local authority is provided by a leading national voluntary organisation. Mr Y is not able to live
independently.

His care package included a sleep over and 1-1 support during the day. This service cost £85,000 but ensured that Mr Y had 24 hour support and protection.

Following the Self Evaluation Questionnaire completion and council officer assessment he was taken through the Resource Allocation System and an Estimated Budget was allocated of £60k to look at constructing an Outcome Based Support Plan.

After further assessment and planning work an Outcome Based Support Plan was presented that allowed for continued sleepover cover and a combination of shared support and some 1-1 support for Mr Y during the day. The shared support was constructed by pooling the resources of Mr Y and the 2 individuals with whom he shared his tenancy. Thus instead of 3 individuals having 1-1 support during the day the staffing ratio at times became 2 staff to 3 individuals.

The professional assessment by the Council was that these changes posed no significant risks to Mr Y and allowed him to get a reasonable 24 hour support package delivered in his own tenancy.

This assessment was agreed with the provider and will now cost £67,000 for Mr Y.

A 20% redirection of resource was agreed for this individual and 2 others he shared a tenancy with which did not compromise 24 hour care or put anyone at risk.

4.4 Example 3 - Mr Z is a 50 year old man with a mild learning disability and some physical health problems. He has no need for personal care support and does not harm himself. He is not aggressive or violent to others. He is active in the community and maintains family relationships. He needs support to maintain a tenancy as he has had problems doing so in the past. He also needs support to maintain a healthy lifestyle and look after his health.

His needs do not require a constant level of support but he needs regular and frequent prompting to maintain a healthy diet, take his medication and help prepare his food. He is supported on occasion when in the community and needs reminding to manage alcohol. He also is prompted and reminded to pay his bills.

The professional assessment was that Mr Z required regular and frequent support throughout the week.
He previously received 30 hours of support per week at a cost of £30k. Following this reassessment he was allocated an Individual Budget of £16k and now receives 19 hours of support per week from a leading national voluntary sector provider.

5. **Service Implications**

*Financial:* Personalisation by necessity creates the opportunity for learning disabled adults to access a wider and more innovative range of services than through traditional routes of commissioning or allocation of resources. To support this, Social Work Services are currently in the process of developing an online portal available to service users that provides information about the wide range of services available to them and the price (usually hourly or per deum rates).

Social Work day services will require to be part of this process to enable learning disabled adults to make choices about which services they wish to use. The price of the council day services to individuals is no more than a current pro rata value of the delivery of the service.

In the Council day services the current per deum value reflects the level of support individuals require thus, for individuals who need greater levels of support this is £158.44 (1 to 1 support) and £218.44 (2 to 1 support). The baseline value for all service users is £110.44 and this figure is included in those for higher needs.

6. **Legal Implications**

6.1 Not applicable.

7. **Personnel Implications**

7.1 Not applicable.

8. **Service Plan**

8.1 Not applicable

9. **Environmental Implications**

9.1 Not applicable.

10. **Sustainable Procurement and Article 19**

10.1 Not applicable.

11. **Recommendations**

11.1 Committee is invited to consider this report.
UPDATE ON PERSONALISATION OF SOCIAL CARE SUPPORT IN GLASGOW

Purpose of Report:
To update Committee on implementation of personalisation of Social Care support in Glasgow.

Recommendations:
Committee is invited to consider this report.

Ward No(s):  
Citywide: ✓

Local member(s) advised: Yes ☐ No ☐ consulted: Yes ☐ No ☐
1. **Purpose of Report**

1.1 To update Committee on implementation of personalisation of Social Care support in Glasgow.

2. **Background**

2.1 Committee considered a report on personalisation at its meetings of 13 April and 25 May 2011. Those reports provided the background to the policy, the progress made with respect to implementation for adults with a learning disability; and, looked ahead to the roll out of personalisation for other adult care groups.

2.2 Further reports are submitted to inform members of continuing progress as part of the committee’s work plan.

3. **Current Progress in Learning Disability**

3.1 The implementation process remains ongoing for adults with a learning disability. The current position for this group is as follows:

- 700 service users have had their individual budget and outcome based support plan approved. An associated £7.1 million of resources has been re-directed as a consequence.
- 238 service users have been allocated an additional £4.5 million to meet new demand in line with the fair shares principle of this policy.
- 148 of the most vulnerable service users have been referred to risk enablement panels (REPs) to enable a risk assessment to be undertaken of their proposed support plan. No changes to their existing support plans will be affected until that process is concluded and there is assurance that the level of risk to the individual is safely manageable. An intensive programme of these panels is currently ongoing and will conclude in early November.
- The remaining 800 service users will have their needs managed through the care management pathway. This will be concluded during 2012.

4. **Implementation for Adults with a Physical Disability**

4.1 The implementation process for adults with physical disability started being implemented on 12\textsuperscript{th} September 2011.

4.2 All service users received a letter advising them of the policy and that the council would be re-assessing their needs.

4.3 20 social work staff will be carrying out these assessments and have undertaken training to prepare them for this task.

4.4 It is expected that some 800 assessments will be concluded and new Outcome Based Support Plans agreed by the end of January.
Social work staff are in regular dialogue with service users and carer representatives to receive useful representation on the success of the implementation.

5. **Service Implications**

   *Financial:* Not applicable.

6. **Legal Implications**

   6.1 Not applicable.

7. **Personnel Implications**

   7.1 Not applicable.

8. **Service Plan**

   8.1 Not applicable

9. **Environmental Implications**

   9.1 Not applicable.

10. **Sustainable Procurement and Article 19**

   10.1 Not applicable.

11. **Recommendations**

   11.1 Committee is invited to consider this report.
Purpose of Report:
To update Committee on the ongoing implementation of personalisation in Glasgow.

Recommendations:
Committee is asked to note the contents of the report.

Ward No(s):

Citywide: ✓

Local member(s) advised: Yes □ No □
consulted: Yes □ No □
1. **Purpose of Report**

1.1 To update Committee on the ongoing implementation of personalisation in Glasgow.

2. **Background**

2.1 Committee has received regular reports relating to the policy of personalisation and its implementation. Following the most recent of those reports on 9 November the Executive Member for Social Care and Assistant Director of Social Care committed to meet separately with Unison and Learning Disability Alliance Scotland (LDAS) and report back to Committee. This report updates on that meeting and describes progress with implementation. It also assesses the ongoing impact of personalisation in a range of respects and highlights the challenges that we continue to face.

3. **Progress with Implementation**

As per previous reports, four social care groups are in scope for personalisation at present. Progress to date and future implementation timetables are briefly summarised below.

3.1 **Learning Disability**

- Launched in April 2011.
- Provider pathway – 800 Outcome Based Support Plans in place; circa 140 Risk Enablement Panels ongoing or completed; review programme beginning now and will continue through the year.
- Care management pathway – for the remaining circa 650 service users remains scheduled for summer 2012.

3.2 **Physical Disability**

- Launched in October 2011.
- Around 800 service users are involved.
- 240 assessments are underway and 140 estimated budgets have been allocated.
- All support plans due for completion by March 2012.

3.3 **Mental Health**

- Launches March 2012.
- Approximately 810 people with mental health issues will be involved in phase one.
- We are working intensively with our staff to prepare for the rollout.
- We will be communicating the changes taking place to NHS Greater Glasgow and Clyde staff, who are an important stakeholder in Mental Health support.
3.4 **Children with Disabilities**
- Due to be launched in summer 2012.
- Work currently ongoing to scope out the number of children and young people that will be part of this process.

4. **Impact on Stakeholders**

4.1 With respect to service users there has been a mixture of anxiety and positivity in response to personalisation. There is some evidence that there is greater potential for the delivery of imaginative and inclusive packages of support than has been developed to date. This is possibly to be expected at this stage as all stakeholders adjust to the new way of working and begin to understand the opportunities that personalisation provide to do things very differently to before. Appendix 1 provides some case examples.

4.2 Carers remain anxious and this is a group we continue to engage with regularly with a view to providing reassurance, including through the Learning Disability Sub Group of this Committee. There has been some positivity from carers, with the Chair of Voices For Change having praised Glasgow’s approach to Personalisation and noted some of the successes being achieved at a Scrutiny Panel session in December.

4.3 Social Work staff are also having to adjust to significant changes in policy, practice and culture, as well as a pressured period of change. The Council’s investment in training and an upgraded client information system (CareFirst 6), as well as ongoing management support are intended to enable staff to manage these pressures and support the delivery of personalisation.

4.4 Provider organisations are also having to adjust to a new way of working and in a context of very challenging financial circumstances. It is acknowledged that these are challenging times for providers, but the conditions have been created for thoughtful and driven organisations to prosper and we are already seeing evidence of some of those increasing their market share post-personalisation.

5. **Resource Re-Direction**

5.1 As has been consistently reported to Committee the implementation of personalisation in Glasgow was agreed by Executive Committee within a financial framework that sought to realise a 20% re-direction of resources to meet savings imperatives and to fund new service demand.

Savings of £5.1m have been made to date, with all new and changing demand within the current year met from available budget. Savings for 2012/13 are £10.1m out of a total in scope budget of £90.1m that includes Physical Disabilities and Mental Health, and the assumption is that we continue to meet new demand within budget.
6. **Engagement with Unison and LDAS**

6.1 The Executive Member for Social Care and the Assistant Director of Social Care Services met with Ian Hood (Learning Disability Scotland Alliance), Simon McFarlane (Unison) and Ian Leech (Unison) on 1 December.

6.2 Both representative organisations re-stated their broad support for personalisation and welcomed the opportunity to reflect some of their concerns and issues. These included:

- The level of funding reductions to the voluntary sector and service users as a result of the 20% redirection.

- The pace of change involved in Glasgow's implementation is considered to be too quick.

- The impact this has reportedly had on the terms and conditions of voluntary sector staff has been detrimental.

- The continuing quality of support for service users is considered to be at risk. The care packages for service users will be addressed within annual care plan reviews.

- There is anxiety about the impact of personalisation with regard to the future of the Council’s directly provided services.

- The efficacy of the Resource Allocation System and the Self Evaluation Questionnaire (which was over a year in development and testing) used in the allocation of individual budgets.

6.3 A commitment has been given to engage in ongoing dialogue between the parties with regard to Personalisation on an approximately 3 or 4 monthly basis. These ongoing meetings will be hosted by the Executive Member for Social Care.

7. **Ongoing Scrutiny and Engagement**

7.1 Glasgow has committed to ongoing scrutiny of its personalisation policy. An expert panel of external stakeholders has now convened twice to scrutinise both the policy and its implementation. The panel includes representatives of carers organisations, voluntary sector providers and other local authorities, as well as the Chair of the Glasgow Adult Protection Committee. This has been a very positive process that has delivered genuine scrutiny at a number of technical and philosophical levels.

7.2 A wider programme of consultation and engagement with those impacted by personalisation remains ongoing, exemplified an event earlier this month for Mental Health service user and carer organisations and service providers to explain the process and respond to queries and concerns.
8. **Legislation**

8.1 Members may be aware that the Scottish Government plans to introduce the Self Directed Support (Scotland) Bill to the Scottish Parliament on 1 March. Amongst other things the Bill will:

- introduce the language and terminology of self-directed support into statute;
- provide a consistent, clear framework in law;
- impose firm duties on local authorities to provide the various options available to citizens - making it clear that it is the citizen's choice as to how much choice and control they want to have;
- widen eligibility to those who have been excluded up to this point, such as carers and people on compulsory treatment orders, and;
- consolidate, modernise and clarify existing laws on direct payments.

8.2 Glasgow officers have been members of the Bill Steering Group along with a broad range of other interests and anticipate no conflict between the final legislation and what is being done here.

9. **Financial Implications**

9.1 Not applicable.

10. **Legal Implications**

10.1 Not applicable.

11. **Personnel Implications**

11.1 Not applicable.

12. **Service Plan**

12.1 Not applicable.

13. **Environmental Implications**

13.1 Not applicable.
14. Sustainable Procurement and Article 19

14.1 Not applicable.

15. Recommendation

15.1 Committee is asked to note the contents of the report.
Appendix 1

Case examples currently being addressed through implementation of personalisation and Self Directed Support for service users with Physical Disabilities

Case study 1

Mr A was discussed at a Resource Allocation and Screening Group on 9th February 2012. He has had long standing alcohol and mental health problems. Mr A has physical health problems associated with these and other deteriorating health conditions. His living conditions have at times been dire.

He needs support with personal care and housing support. The actual costs of his services were £2,934. Social Work Services set an Agreed Estimated Budget of £5,542 for planning purposes to develop an Outcome Based Support Plan that would meet Mr A's needs.

Mr A decided he did not want to increase his service and he made an informed choice to continue to receive his service from Cordia. Social Work Service signed off his agreed care plan which will meet all of his needs at the same cost of £2,934

Case study 2

Mr B was discussed at a Resource Allocation and Screening Group on 9th February 2012. He is a 45 year old man suffering from Multiple Sclerosis. He lives with his wife. He is not currently in receipt of services.

Mr B who is in a wheelchair requires assistance with meal preparation and with eating. He requires daily assistance with personal care.

Based on his assessed needs Social Work Services have allocated an Estimated Budget of £20,185 in order to develop an Outcome Based Support Plan to meet his social care needs. The expectation is this plan will meet all of his assessed needs.

Case study 3

Ms C was discussed at a Resource Allocation and Screening Group on 3rd February 2012. Mrs C is a 55 year old woman with deteriorating physical disability. She stays with her son who offers very little support. She requires assistance with personal care tasks such as getting up and getting dressed and with meal preparation and eating.

The costs of her current service were £19,259. An Agreed Estimated Budget of £13,999 was set for planning purposes.

An Outcome Based Support Plan involving a reconfigured support package at a cost of £14,044 was agreed at the meeting on 3rd February 2012. Mrs C was happy with...
the proposed support and the fact that she continues to receive her service from CORDIA. All of her assessed needs are being met.
ADSW is generally in support of the proposed Bill and the changes and principles that underpin it. We have consulted our membership and responded to your consultation questions below. We would however like to stress upfront 4 major concerns we have with the Bill in its current form:

1. The term ‘Social Care’ has no place in a Bill that aims to shift power and control from organisations to individuals. We feel that the legislation should become the Self Directed Support (Scotland) Act. We have repeatedly made these comments.

2. It is essential, in the interests of identifying a strong, unambiguous national position on responsibilities, that the more contentious issues of the Bill are not relegated to ‘Guidance’. For example, the need for ‘eligibility criteria’ to be applied (see section 9).

3. The Bill places too much emphasis on Direct Payment from the local authority. Self Direct Support can be achieved through an individual budget which includes health, welfare benefit and other monies. Including these other areas of support in the legislation would be more consistent with the agenda around the integration of health and social care and would better reflect policy priorities around best use of resources.

4. There remain concerns about people who lack (some) capacity being unintentionally excluded from directly accessing SDS, people who arguably are those who need most support to exercise choice and control over their life. An unintended consequence therefore may be to increase reliance on guardianship as the solution which is not in keeping with the principles of the Adults with Incapacity legislation and least restrictive options.

1. Are you generally in favour of the Bill and its provisions?

The objectives of the Bill and its provisions are generally supported.

2. What are your views on the principles proposed?

ADSW would like to see a further principle of ‘reciprocity’ included. This would entrench in the Bill the responsibility of the recipient of self-directed support to use the resources to meet outcomes mutually agreed with the local authority.

3. What are your views on the four options for self-directed support proposed in the Bill?

The Bill, as it is presented, is contradictory at Section 3. 3 (1) recognises that there are 4 options in how SDS is exercised. Section 3 (2) however
defines “relevant amount” only as it pertains to one of those options, namely a Direct Payment. The financial value remains the “relevant amount” in an individual budget even if the person chooses not to take it in the form of a direct payment.

That is a core element of SDS i.e. that people can choose the extent to which they exercise direct control over an (initially indicative) identified budget; and that even if they choose not to manage it directly the knowledge of its value early in the process assists the person to make informed choices on what support may be obtained.

It is essential this is amended otherwise it misinterprets a central tenet of SDS. If people do not have early identification of an indicative budget, before any discussion about the form in which is deployed, it clearly inhibits their engagement in the necessary support planning as key information is omitted.

This needs to be clearly and consistently explained and used in the Bill.

4. Do you have any comment on the proposal that the self-directed support option should be made available to children and families, together with the proposal that the degree of control a child may have over the process should vary with age?

We agree in principle with this, but our member councils have raised a number of issues which highlight the need for further work in this area and clarification. Some examples are below:

a. While there are some exciting opportunities which the provision in the Bill could provide, to attach it to section 22 could cause significant difficulties. Section 22 covers a wide multitude of childcare situations, from straightforward welfare advice and assistance (where we could be very innovative) through to high profile cases where the child is on the child protection register but we do not have sufficient evidence to pursue compulsory measures of care. The reality is that in some of these situations children can come to serious harm.

b. In relation to the age of the child, currently children over 12 are considered to have capacity, and be able to express a view, but local authorities are expected, rightly to take their views into account at every stage. This is a reasonable standard, but there should be some guidance for situations where the child wants a different option from the parent/s.

c. If young people aged 16/17 years lack the capacity to make decisions we hope the current situation, where parents are able to make those decisions until the young person reaches 18 years, would continue.
5. Are you satisfied with the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

Yes. Section 5(4) is helpful and appropriate.

6. Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?

The emphasis should more properly be on the role of Direct Payments as one method of achieving self directed support.

7. Do you have any views on the provisions relating to adult carers?

There is a major debate that requires to take place across Scotland about the role of the state and the role of carers, recognising that most care and support is provided by unpaid carers but also that resources to meet eligible need are both severely constrained and diminishing. There are circumstances where it is appropriate to make payments to carers and others where it is not. At present there are some restrictions on local authorities that are there for good reason. It is essential that this is articulated whether as part of the Bill or the associated statutory guidance and regulations.

8. Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?

When an individual chooses to employ their own support, they should be able to do so without interference unless there are capacity issues/ other particular concerns that require the local authority to exercise a duty of care.

The current restrictions on the employment of close family members are important to preserve with existing discretion appropriate in exceptional circumstances.

ADSW would also like to see the principle of reciprocity included in the legislation and emphasised in this area of the Bill.

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

There is an increasing gap between assessed need and available resources. Local authorities will still require to set thresholds of eligibility. This should be made explicit in the legislation in order to manage expectation.
10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?

Yes.

11. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

Not at this stage.

ADSW
24 April 2012
North Lanarkshire Council welcomes the opportunity to comment on this highly significant Bill and broadly supports its intent.

Whilst there is much merit contained therein representations made previously indicated that including the term ‘social care’ in the Bill’s title implied a dependency on ‘care’ that is the very antithesis of Self-Directed Support (SDS) and its embedded concepts of control and empowerment. It is proposed that the eventual legislation becomes the Self-Directed Support (Scotland) Act.

Whilst it is acknowledged that some attempts have been made to create balance, our view is that the Bill is disproportionately concerned with “modernising” direct payments, rather than recognising that a direct payment is only one way of exercising SDS. Perhaps the greatest omissions are that it is not made explicit that a core characteristic of SDS is an individual budget (whether exercised as a direct payment or not) and that this should not be limited to social work funding. The original concept of SDS did not seek to confine it in this way and recognised that an individual budget could include funding from various sources e.g. the NHS, educational bodies, a person’s own benefits awarded because of needs arising from their disability etc. However it appears to have become corrupted in this legislation to a much narrower interpretation. As a time when parallel legislation is being introduced to Parliament on the integration of health and social care, the omission of any reference to imposing the same duty on the NHS and accessing NHS funding in this way is anomalous and, in policy terms, incoherent.

It is recognised that there will require to be new Regulations and Statutory Guidance that accompany the Bill and it is hoped that, at the very least, there will be an opportunity to consider some of these issues at that stage.

1. Are you generally in favour of the Bill and its provisions?

The objectives of the Bill and its provisions are generally supported. Whilst there are some anxieties about the ability of local authorities to continually absorb new legislative duties and responsibilities at a time of diminishing resources and capacity, overall it is probably helpful to enshrine the term ‘self-directed support’ in statute, though the reference to ‘social care’ in the title of the Bill undermines its aspirations around empowerment, as stated above. Self-Directed support is concerned with fulfilling potential and building on gifts, strengths and capacity not simply focussing on needs that are sometimes interpreted as deficits.

This is not a simple concept to enshrine in statute. Perhaps this is why the Bill focuses primarily on direct payments. Discussions in the Bill Steering Group, and previously in the group charged with developing the national strategy, illustrate the degree of uncertainty and confusion that exists about this area of
activity. It is essential, therefore, to use consistent terminology that is widely understood in both the Bill and accompanying guidance.

It may be debatable as to what should be appear in the Bill and what is better placed in Regulations or Guidance but there is no explicit reference that access to SDS is for people with eligible needs (i.e. local authorities do not have infinite resources to meet all need so have to prioritise what needs are met through the application of eligibility criteria); neither is there any reference to the fact that- in order to allocate an individual budget- a local authority must adopt some form of transparent resource allocation system. Indeed the term ‘individual budget’- a core component of self-directed support- is absent from the Bill.

2. What are your views on the principles proposed?

The stated principles are supported. There is a further principle of reciprocity i.e. the recipient of self-directed support has an obligation to deploy any allocated budget in ways that meet mutually identified outcomes agreed with the local authority that should be included.

3. What are your views on the four options for self-directed support proposed in the Bill?

Page 3 Section 3 (2) defines “relevant amount” inaccurately in that it confines its application to a direct payment but it remains the “relevant amount” in an individual budget even if the person chooses not to take it in the form of a direct payment. That is a core element of SDS i.e. that people can choose the extent to which they exercise direct control over an (initially indicative) identified budget; and that even if they choose not to manage it directly the knowledge of its value early in the process assists the person to make informed choices on what support may be obtained. It is essential this is amended otherwise it misinterprets a central tenet of SDS. If people do not have early identification of an indicative budget, before any discussion about the form in which is deployed, it clearly inhibits their engagement in the necessary support planning as key information is omitted.

4. Do you have any comment on the proposal that the self-directed support option should be made available to children and families, together with the proposal that the degree of control a child may have over the process should vary with age?

We agree in principle but recognise there are likely to be practicalities that require to be addressed.

5. Are you satisfied with the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

Yes. Section 5(4) is helpful and appropriate.
6. Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?

It is not the “modernising of direct payments” that is significant. It is the need to locate the place of direct payments in the much richer context of SDS. All available evidence indicates that the number of people electing to take their individual budget in the form of a direct payment will ensure that there is an increase in the uptake of direct payments across Scotland.

7. Do you have any views on the provisions relating to adult carers?

There is a major debate that requires to take place across Scotland about the role of the state and the role of carers, recognising that most care and support is provided by unpaid carers but also that resources to met eligible need are both severely constrained and diminishing. There are circumstances where it is appropriate to make payments to carers and others where it is not. At present there are some restrictions on local authorities that are there for good reason. It is essential that this is articulated whether as part of the Bill or the associated statutory Guidance and Regulations.

8. Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?

Where a person entitled to an individual budget chooses to take it in the form of a direct payment, they should have an explicit obligation to deploy an allocated budget in ways that meet mutually identified outcomes agreed with the local authority. Where the person wishes to employ their own support, it is consistent with the concept of SDS that they should be able to do so without interference unless there are capacity issues that require the local authority to exercise a duty of care.

The current restrictions on the employment of close family members are important to preserve with existing discretion appropriate in exceptional circumstances. These should not be altered in any new Regulations.

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

Different local authorities and agencies will be in different states of readiness (and therefore required levels of investment) to implement the Bill once it becomes law. It is not an exact science to estimate the costs involved but North Lanarkshire Council recognises that implementation entails whole system change, including the necessary application of a resource allocation system based on a council’s presenting and future needs and available resources. The Council acknowledges the level of funding allocated to councils to oversee the necessary transition but also points out that the Bill is silent on eligibility to access SDS. As there is an increasing gap between assessed need and available resources local authorities will still require to set
thresholds of eligibility and the requirement to do so should be made explicit, at least in the accompanying Guidance to the Act.

That does not mean that local authorities and their partners should not attempt to meet needs that may fall below eligibility criteria thresholds. It does mean that these needs may be met in many different ways that don’t require the allocation of an individual budget.

10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government

Yes (in so far as this question relates to equal opportunities, human rights, island communities and sustainable development).

11. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

Previous consultation on the draft Bill invited comment on a number of potentially contentious issues e.g. whether the law should be changed to allow someone to use a direct payment to purchase long-term residential care; relaxing restrictions on making payments to family payments etc. These are omitted in the Bill, the potential implication being that they may yet be subsumed in provision for Ministers to make far-reaching Regulations on a wide range of matters. It is acknowledged that these will also be subject to consultation but their significance – and impact on local authorities’ ability to fulfil the legitimate aspirations of SDS- should not be underestimated.

North Lanarkshire Council
20 April 2012
Social Care (Self-directed Support) (Scotland) Bill
The Royal College of Nursing Scotland

1. Are you generally in favour of the Bill and its provisions?

The RCN appreciates that self-directed support (SDS) for social care has the potential to be an effective lever, in certain circumstances, to enable people to sustain or regain their independence, which in turn can improve their health and wellbeing. As such, we are supportive of the principles behind the Bill of promoting service user independence and participation in decision-making. However, as we outline in our response, we have some concerns about the impact of the Bill in practice.

The Social Care (Self-directed Support) (Scotland) Bill as currently drafted does not contain a provision that extends the provision of SDS to the NHS. However, section 18 of the Bill does provide for delegation of SDS duties alongside the delegation of social care functions to the NHS (as is currently taking place in Highland). Further, the 2010 *Self-Directed Support: A National Strategy for Scotland* clearly sets out the Scottish Government’s intention for the principles of SDS to be widened from the social care sector into health. It is on the basis of possible delegation of SDS duties to the NHS through the Bill, the Government’s intention to expand SDS into health in the future, and the Government’s plans for closer integration of adult health and social care that the RCN is providing comment on specific provisions of the Bill (set out below). However, we do believe that the consequences of any future duty on the NHS to provide SDS for health services deserve a separate consultation and full scrutiny by the Scottish Parliament.

Section 8 – Provision of information about self-directed support

The legislation provides that local authorities must give the person who is considering SDS the necessary information to make an informed choice. This includes “an explanation of the nature and effect of each of the options for self-directed support”. However, the RCN notes that the policy memorandum (paragraph 26) stresses that individuals and families “must understand the responsibilities that come with the choices available to them, particularly in managing and choosing to take risks”. This appears to the RCN to be a crucial element of the decision-making process and one that would require skilled staff to facilitate. We believe that there should be exploration of whether the intent with regards individuals’ understanding and taking ownership of the risks associated with SDS as laid out in the policy memorandum is reflected in the wording of the Bill.

Section 18 - Delegation

Section 18 provides for delegation of SDS duties and principles where a local authority delegates some or all adult or child social care responsibilities to NHS bodies. The RCN understands that this transfer of duty would only relate
to the meeting of assessed social care needs as set out under the 1968 Act, not to the meeting of health needs.

What constitutes a social care need may become ever more difficult if how we think about ‘care’ within an integrated system changes. Where closer integration progresses, accompanied by the increased pooling of NHS and local authority monies, this could blur the edges around what is being paid for by SDS budgets. With this in mind, the RCN notes caution about the potential for ‘scope creep’ of SDS into paying for health care without proper discussion and debate of what this could mean for the health sector (we discuss this in greater detail under Q11). We appreciate that the SDS pilots in Lothian and Fife have been looking at this very issue but their evaluations are not yet published.

The training needs of NHS staff – to whom SDS social care duties may be delegated – is another important issue to be considered, both in terms of the knowledge required to provide the necessary support to people who choose to direct their own support, and the underpinning knowledge needed of social care assessment. We consider this in more detail in our answer to Q9.

2. What are your views on the principles proposed?

The RCN considers it appropriate to base new legislation on a guiding set of principles. We believe these principles should emphasise the promotion of service user independence and their participation in decision-making. The principles of involvement, assistance, informed choice and collaboration are hard to find fault with. However, it is difficult to provide comment on whether the legislation will facilitate a demonstration of these principles in practice given that so much of the direction of how to achieve them is being left up to the statutory guidance that will accompany the Bill.

Furthermore, in line with our comments on section 8 of the Bill, the RCN questions whether the principles should be strengthened to reflect the responsibility and accountability that individuals’ are expected to embrace if taking full control of directing their own budgets. The work that has gone into developing the Charter of Patient Rights and Responsibilities, introduced as part of the Patient Rights (Scotland) Act 2011, may provide a useful model for such an approach.

3. What are your views on the four options for self-directed support proposed in the Bill?

The main comment from the RCN on the four options relates to what constitutes a “reasonable estimate of the cost of securing provision of the support to which a direct payment relates”, set out in section 3, subsection 2 of the Bill.

The RCN shares concerns that have been raised by other organisations that SDS may be used by financially struggling local authorities as a means of cutting costs. For example, in their evidence to the Health and Sport
Committee on the Scottish Government's Draft Budget 2012-13\textsuperscript{1}, Unison Scotland provided evidence that Glasgow City Council has introduced SDS to people with learning disabilities, with a view to roll out to mental health, in the anticipation that this will achieve a 20\% saving between 2011 and 2013. This has since been reported in the media\textsuperscript{2}. Should SDS be delegated to the NHS through section 18 of the Bill, the same cost cutting concerns would be applicable and could be a source of potential conflict between partners when agreeing shared budgets. Moreover, if SDS budgets are exhausted but social care needs remain, knock-on costs for the NHS - as the organisation responsible for providing universal care - are likely.

Our apprehensions extend also to the implications for the long-term sustainability of core services for those who do not want to self-direct their own support. This concern has been recently highlighted by the Highland Partners in their partnership agreement\textsuperscript{3} in which they stated:

“When an SDS package is being awarded, the resource for this needs to be identified from within existing resources. This means that traditional services may no longer be sustainable in their current shape and scale. This applies to both services that are Council-run and services that are commissionised. In particular, change in level of demand for services may impact on block contract arrangements that are in place.”

The RCN is concerned that if enough individual budgets are removed from a community service through SDS, the service will be lost to the community.

We would therefore welcome further exploration of how local authorities both plan to define monetary resource within SDS and mitigate potential risks to the ongoing sustainability of services for those not choosing SDS options, including knock-on risks to services provided by partners.

6. Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?

The ultimate intention behind SDS, as the RCN understands it, is to generate improved outcomes for people. The RCN questions whether the Bill’s provisions will realise this desired intention. According to the policy memorandum, local authorities will “need to be satisfied that the option chosen can meet the desired outcomes” for an individual. They will have the right to deny people SDS, whether in the first instance or during a review of changed circumstance, “where it is clear that the option itself or the implementation of a particular option will fail to meet assessed needs and desired outcomes”. However, the legislation does not mention outcomes. Indeed, the RCN is unclear from either the legislation or supporting memoranda where measurement of outcomes fits into the ongoing review

\textsuperscript{1} http://www.scottish.parliament.uk/S4_HealthandSportCommittee/Meeting\%20Papers/Papers_2011.11.01.pdf
\textsuperscript{2} http://www.heraldscothand.com/news/health/give-disabled-people-control-not-cuts.16686967
\textsuperscript{3} The Highland Council and Highland Health Board Partnership Agreement, Adult and Children’s Services within the Highland Council area (Lead Agency Model)
process for SDS – when and how will local authorities assess whether the person is meeting their pre-determined outcomes through their SDS package? And will there be limits set on what can be purchased using an SDS budget? Given that SDS packages of care are funded from the public purse, the RCN considers the review and evaluation of the spending of tax payers’ money against an agreed set of outcomes to be an important point which is not, to our eyes, currently provided for clearly enough in the Bill.

8. Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?

As stated in our answer to Q1, the Bill contains nothing specific on risk. As the Committee heard in its inquiry into the regulation of care for older people, SDS can present challenges with regards ensuring proper scrutiny and protection of people who may be considered ‘at risk’. In his evidence Lord Sutherland made the point that vulnerable people receiving SDS may be open to people extracting money from them\(^4\). Issues may arise as personal employers are under no obligation to check the Protection of Vulnerable Groups (PVG) status of anyone employed to undertake work that could be defined as “regulated work” under the terms of the PVG legislation.

Given this context, the RCN considers the Bill could be strengthened around risk and safeguards to support service users’ independence and participation in decision-making to ensure the safety of individual budget holders. For example, the risk could be mitigated by ensuring that local authorities (or an NHS board in terms of delegated function) develop contracts with service users that insist on the production of a PVG Scheme record for anyone engaged by a personal employer to undertake regulated work through a direct payment.

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

The RCN agrees with the emphasis given to the need for investment to support culture change, training and workforce development associated with the provisions of the Bill. The majority of costs associated with workforce development, however, are provided for within 2013/14. The RCN considers this potentially short-sighted given that more and more NHS staff are likely to have the duties within the Bill placed upon them following the integration of health and social care. The timing of the integration legislation will mean investment should be allocated past 2013/14 to accommodate NHS staff training needs. This is particularly important given, as the financial memorandum points out, “For NHS staff…no prior knowledge of self-directed support can be assumed”.

11. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

The RCN is unclear how the current, or a future, Scottish Government will achieve the extension of SDS into directing health monies, in line with the ambitions set out in the SDS strategy. We have previously raised questions about the extension of SDS to health monies in our responses to the SDS strategy and proposals for a draft Bill. Some of the points we have previously raised include:

- How would individuals ensure that they were purchasing health care from professionals that have the right level of skills and competencies, and not be tempted to purchase less expensive but potentially inappropriate healthcare?
- Who would pay for health care if the SDS budget is exhausted - would the NHS pick up crisis/emergency/relapsing costs?
- In what circumstance would clinical care be considered too complex for it to be appropriate for an individual to direct their own budget?
- How would the scope of services that could be accessed by a budget holder be defined i.e. where would the boundaries lie for what could be legitimately purchased that would not endanger the delivery of ‘traditional’ or existing health care services?
- How would conflicts be resolved between patients and healthcare professionals regarding their treatment and care?
- What would be the implications for clinical governance, delegated responsibility and accountability of staff in a system where patients are directly purchasing health care? As set out in the NMC code of conduct, nurses need to be sure that healthcare assistants they delegate tasks to are appropriately skilled and trained to carry out the work. Contractual liabilities regarding delegation and accountability would require significant consideration in a landscape in which SDS was extended to health and individuals were directly purchasing health care
- How would health outcomes be measured to justify a pre-determined health allocation?
- How would the necessary workforce be planned for and modelled if the way in which people spend their SDS budget on health care cannot be accurately anticipated?
- Would SDS in health represent an erosion of the principles of the NHS, namely being free at the point of need? How much would this bring back market provision to the NHS in Scotland?

In essence, we are cautious about extending SDS to pay for health care without proper scrutiny and debate of the issues given that SDS represents a fundamentally altered way in which NHS services could be provided. The RCN believes that any future moves to extend SDS into health care needs to be through primary legislation so that it attracts the necessary level of scrutiny, consultation and debate in Parliament.

The Royal College of Nursing
24 April 2012
Social Care (Self Directed Support) (Scotland) Bill

Care Inspectorate and Healthcare Improvement Scotland

On behalf of the Care Inspectorate and Healthcare Improvement Scotland, we are pleased to respond to the Health and Sport Committee's call for written evidence. In making this joint submission, it is our intention that in future the role of scrutiny bodies with responsibility for care and health services scrutiny will enable an improved focus on the outcomes for individuals seeking support across the spectrum of care and health.

We recognise that there will be consultation on the integration of Health and Social Care Partnerships during 2012, and so this current consultation on self-directed support is seen by our respective organisations as a precursor to broader integration.

The role of external scrutiny bodies will therefore continue to focus on the social care and health pathway experienced by individuals in health and community services.

1. Are you generally in favour of the Bill and its provisions?

The Care Inspectorate and Healthcare Improvement Scotland welcome the Bill. We recognise the importance of greater choice and flexibility to deliver more person-centred care, which in turn requires a continued shift towards the transfer of power and control to individuals who require care and support services.

Local authorities already offer options such as direct payments. This proposed legislation has the potential to allow an increasing number of service users and carers to exercise choice over who delivers the services they depend on to maintain their independence and improve their well-being and quality of life. It also has the potential to increase uptake of direct payments.

The provisions of the Bill formalise in law what should already be happening in local authorities. Social work services staff should discuss the option of direct payments with service users and carers at the needs assessment stage. Social work services staff should also carry out assessment and care management in a manner which affords the service user or carer with choice about their care and support arrangements. When the Care Inspectorate carries out inspections of local authorities' delivery of social work services we scrutinise their strategic and operational approaches to the provision of direct payments and self-directed support. Across Scotland the picture is mixed – some local authorities perform better than others in respect of provision of direct payments and self-directed support – however, it is clear that interest in, and activity on, direct payments and self-directed support has grown and developed considerably over the last two to three years.
2. What are your views on the principles proposed?

The key principles of user and carer involvement and collaboration – supported by an advocate if appropriate – are sound and consistent with the direction of travel in a wide range of Scottish Government policies.

Again, local authorities should currently abide by the general principles set out in section 1 of the Bill, in respect of the needs assessment and service provision for people who require care and support, and also for unpaid carers. It must reflect the person-centred needs as identified in the assessment process.

Collaborative working will need to include providers of services where services are commissioned for individuals or for groups. The values of choice, control, dignity and respect form a strong basis for developing self-directed support.

Scrutiny bodies such as the Care Inspectorate and Healthcare Improvement Scotland include within current inspections, the principles of Duties of User Focus and Co-operation, each contained within the current provision of the Public Services Reform (Scotland) Act 2010.

When considering outcomes, any guidance accompanying the Bill should also reference outcome approaches specifically for children including SHANARRI, and My World, as well as Talking Points. The National Outcome Framework references mainly outcomes for adults.

The Care Inspectorate’s scrutiny work includes assessing how well:

- local authorities develop and deliver their statutory responsibilities for the whole range of services for people of all ages
- care is managed and services are commissioned, set against quality indicators
- providers deliver services and meet the National Care Standards
- local authority social work services deliver positive outcomes for service users and carers

Healthcare Improvement Scotland and the Care Inspectorate will work closely in developing proportionate and risk-based approaches to the scrutiny of services, especially with the commitment to establish greater integration of health and social care.

The model for scrutiny will need to continue to evolve and adapt to new approaches to provision of care, especially outwith traditional hospital and care settings.
3. What are your views on the four options for self-directed support proposed in the Bill?

As they stand, the four options for self-directed support are acceptable. The critical factor for the successful growth and development of self-directed support will be the way in which social work services and health professionals put these options to service users and carers.

If the four options are formally put to service users and carers in a perfunctory/routine manner, this will be potentially meaningless and unhelpful to service users and carers. If on the other hand the four options and their implications are discussed with service users and carers in a genuine, careful and considered manner, this will enable them to make an informed decision about which option(s) to choose. To ensure that the latter becomes standard practice, the measures that local authorities should take include:

- strong leadership and championing of direct payments and self-directed support
- staff training – for both social care and health
- robust policies and procedures
- effective governance, supervision and management of staff and systems for quality assurance
- meaningful involvement of service users and carers at all stages in the planning, delivery and evaluation of self-directed support
- discussion with service users and carers about what happens if care arrangements, that are funded by a direct payment, break down.

4. Do you have any comment on the proposal that the self-directed support options should be made available to children and their families, together with the proposal that the degree of control a child may have over the process should vary with age?

The Care Inspectorate considers it important that direct payments and other self-directed support options are available to children and their families. Children and young people should be fully involved in decisions about their care and support, dependent on their capacity or interest in being involved in the process. The principle of inclusiveness should be integral at all stages of a child’s development. As referred to in response to Q3, an informed decision will be more meaningful if the preferred form of support at the time is discussed in a careful and considered manner. This is also more likely to inform a longer term view about changing support needs at times of transition, such as leaving school, entering further education, or moving into independent living accommodation.

Direct payments have tended to be made exclusively to the families of children with disabilities. Where it is appropriate, local authorities should
consider making direct payments for other children and young people who are children in need, according to section 22 of The Children (S) Act 1995.

Good monitoring arrangements are required to ensure that the direct payments are used for the purposes of improving the outcomes for the person concerned.

5. Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

We know from our inspections of social work and social care services that people who use services and carers, regularly report a lack of information about their options and entitlement. This is not always due to a lack of information, but rather the information is not easily available at the right time. Appropriate information should be readily accessible both in format and frequency.

We have also found that some local authorities have developed innovative approaches to providing information to service users and carers about services and options for service delivery that are available. For example, one local authority has set up a Futures Fair for young people with disabilities and their families. A range of exhibitors at that annual event provide information and advice to the young people and their families about:

- further education and training opportunities
- employment opportunities
- leisure and recreation opportunities
- options for support and care as the young people make the transition to adult services.

Further consideration should be given to the deployment of independent advocates where appropriate, although this should not reduce or compromise the pre-existing professional advocacy role of health and social care staff.

Healthcare Improvement Scotland also recognises the opportunity for improving information and advice and this is referred to more fully at Section 7.

6. Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?

The provisions of section 13 of the Bill, which set out the powers of Scottish Ministers to make provision about direct payments though regulations, are sound and reasonable. There should be consultation with stakeholders in respect of Scottish Ministers exercising these powers in the future.

7. Do you have any views on the provisions relating to adult carers?
Section 2 of the Bill confers a new power on local authorities to provide services to meet the assessed needs of a carer. Local authorities have been providing services to meet the assessed needs of carers, in the absence of the formal legal power to do so. The powers set out in Section 2 of the Bill are permissive rather than mandatory duties. These will have a positive effect if they are put into practice by frontline staff through careful explanation and discussion about the carer’s current commitments.

Section 2 of the Bill standardises the position of a local authority when it provides services to support a carer after a carer assessment.

In addition, the role of health professionals can be critical in identifying when a carer’s own health has deteriorated, rendering him/her unable to continue to provide ongoing care and support. The Quality and Outcomes Framework for the General Practitioner contract includes provision for the identification of carers, and a mechanism for the referral of carers to social work services for assessment.

8. Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?

The Care Inspectorate is broadly in agreement with the approach taken by the Scottish Government not to place restrictions on those who may be employed by individuals though the proposals in the Bill.

One possible consequence of the establishment of the proposed regime is that a significant number of support services currently provided by registered care services may in future be provided by individuals engaged to personally and solely provide the care and support concerned. Such individuals do not fall within the regulatory regime currently operated by the Care Inspectorate, and are not required to be registered with the Scottish Social Services Council (SSSC).

It, therefore, appears that significant amounts of care may come to be provided by individuals who are not subject to formal legal requirements such as qualifications, registration or inspection. While it is understood that this reflects the Scottish Government’s policy approach, it is not immediately apparent how that is to be reconciled with the policy of promoting professionalisation of the social care workforce, as exemplified by the continuing implementation of the requirements for sectors of that workforce to achieve registration with the SSSC.

The Care Inspectorate and Healthcare Improvement Scotland recognise that the management of transitions of care between professionals emphasises the need for clear operating arrangements between health and social care staff. This allows for concerns such as adult support and protection to be appropriately raised and acted upon.

It is important that individuals who opt for direct payments and self-directed support do this in a way which keeps them safe from abuse and exploitation.
The SSSC is in the process of rolling out registration to care at home and support workers employed by agencies required to be registered with the Care Inspectorate. The UK Government is currently exploring the option of a voluntary registration scheme for adult social care workers in England that includes personal assistants.

Individuals who receive direct payments and who wish to employ their own support workers need to act as good and responsible employers. Key factors for achieving this are:

- Good advice and support systems (often by an organisation commissioned to deliver advice and support) for recipients of direct payments and self-directed support.

- Sound monitoring by the local authority, as part of their responsibility for care management, to ensure that direct payment and other self-directed support arrangements are safe and continue to meet the needs of the service user or carer.

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

We should not underestimate how long the shift in how services are delivered takes. Although involvement and greater collaboration are already in progress, it may take longer to shift the range of services available, especially as a shift away from more traditional models of care may be required. The Care Inspectorate’s social work performance inspections have evidenced some good examples of service redesign from day care services but these achievements have been made over a five to ten year time frame. All sectors will need to agree that they can change how they deliver services on a cost neutral basis.

10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?

We are satisfied with the conclusions.

11. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

No.

Care Inspectorate and Healthcare Improvement Scotland
24 April 2012
Social Care (Self-directed Support) (Scotland) Bill

Office of the Public Guardian

1. Are you generally in favour of the Bill and its provisions?
Yes

11. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?
Yes

1. The consultation on self directed support (SDS) included a section, section 10, on how, via the allocation of an “appropriate person” nominated by the local authority, an incapable person may self direct their support.

2. Currently, the appointment of a guardian is required to facilitate self directed support for an incapable person, if the person has not already granted power of attorney. It is accepted that the current guardianship process is overly burdensome merely for the administration of a direct payment but it offers a robust mechanism of protection.

3. The proposed µDSSURSULDWH SHUVRQ¶ SURFHVV UHPRYHG WKH EXUHDXFUDF\ associated with guardianship but it also LQWKH3XEOLF*XDUGLDQ¶VVRSLQLRQ removed all of the safeguards. Consequently, the Public Guardian’s formal response to the consultation expressed serious concerns about the proposals.

4. The Bill as introduced has removed the section relating to incapable adults.

5. Sections 5 and 15 of the Bill as introduced, which are largely in similar terms, refer to assisted decision making for those who, because of mental disorder or difficulties in communicating due to physical disability, would benefit from this.

6. The implication is that such assistance is for those adults who have a level of decision making ability but need support with this. However, the terminology echoes that used in the Adults with Incapacity Act which could create confusion and may lead practitioners to believe they can provide assistance to incapable adults also.

7. Paragraph 32 of the accompanying Policy Memorandum essentially makes the intention clear.
“Where a person has a guardian or attorney with the relevant powers authorities must allow the appointed proxy to decide how they want to arrange support for the supported person. Where the authority assesses that a person lacks capacity in the AWI definition, and where that person does not have a guardian or attorney, the authority should proceed to make decisions and arrange support, utilising its powers, in line with guidance, under section 13ZA of the Social Work (Scotland) Act 1968 or, where required, by seeking an appropriate order under the AWI legislation”.

8. It would be preferable if the policy intention, not to offer supported decision making to those who are incapable of making the necessary decisions [on directing their support and direction of a payment] was explicit on the face of the Bill.

9. This said, the Public Guardian has some concerns with the phrasing of the above policy memorandum excerpt.

10. Reference to use of section 13ZA suggests the local authority could use their powers therein to provide an incapable person with support to receive self-directed support. This which be substituted, rather than supported, decision making.

11. Section 13ZA facilitates welfare matters, where there is no opposition to the matter proposed, eg to move a person from an NHS bed to a care home. Section 13ZA does not allow management of monies even in non-contentious situations. The suggestion that Section 13ZA could be used to support individuals to self direct their care, and thus administer a direct payment, would extend the current use of Section 13ZA.

12. It is appreciated that much of the process detail may be for subordinate legislation but the Bill contains no provisions for reassessment of any assistance provided and specifically for the role of assistance to end should incapacity be diagnosed. The continuation of assistance in such circumstances would circumvent the guardianship process with its associated protections.

13. A person receiving assistance all be they considered capable may nonetheless be highly vulnerable. The Bill does not narrate any safeguards against the risk of those providing assistance exerting undue influence on the vulnerable person.

14. The ethos of self directed support is personal choice. Given that sections 5 and 15 are intended to apply to people who are capable, it seems
contrary to this ethos that the identification of people to provide assistance
is a matter for the local authority rather than the individual themselves.

Office of the Public Guardian
23 April 2012
1. Are you generally in favour of the Bill?

The Commission wholeheartedly supports the objectives of the Bill to extend choice to individuals about the way support is provided to them. Given the history of the under-use of direct payments by people with mental disorder, we support attempts to enhance the access to self-directed care and support, as well as direct payments, to people with mental disorder. We are pleased to see that the Bill removes the current restrictions on direct payments for those on Compulsory Treatment Orders and Compulsion Orders as this was clearly discriminatory. We do have concerns, however, about the potential extension of self-directed support to those who, even with full and appropriate support and assistance, remain incapable of making an informed choice and who have no proxy with relevant powers under the Adults with Incapacity Act.

2. What are your views on the principles proposed?

The Commission fully supports the principles of maximum involvement and participation of individuals in the assessment of their need and the provision of services to meet these needs. We also support the principle that a person should be provided with all reasonable assistance to enable that person to make an informed choice when choosing an option for self-directed support. We do, however, have concerns that this principle may be at odds with how Section 10 assistance may be interpreted and used for substitute decision making rather than merely enhancing the capacity of an individual to make an informed choice.

6(a). What are your views on providing a power to local authorities to facilitate an 'appropriate person' arrangement where Guardianship or Power of Attorney is not in place and where such applications under AWI procedures would be disproportionate?

6(c). Do you think Section 13ZA should be amended in any way in light of this Bill?

We note that in the Scottish Government’s response to last summer’s consultation, it was stated it was their intention to insure that the Bill is clear and unambiguous in both policy and legal effect. We have concerns, however, that there remains ambiguity in respect of the policy as it relates to people who lack capacity to make an informed choice who do not have a proxy under the Adults with Incapacity Act to do so for them.

Section 10 of the Bill seems to suggest that assistance by a local authority, including the appointment of an appropriate person, is for the purpose of helping a service user make a decision about self-directed support. This is in accordance with principle 1(3).
The consultation documents section on ‘People who need help to direct their support’ gives a different and somewhat confusing message. While saying that the Adults with Incapacity Act ‘would remain the sole route where a significant intervention is made into an incapable adult’s affairs’, it goes on to state that the Bill is ‘intended to offer a clear route, underpinned by legislation, empowering local authorities to allow peoples family or friends to direct a person’s support where this is a logical, common sense solution’. The implication is that these will not be “significant” interventions.

The consultation document goes on to suggest that Section 13ZA of the 1968 Act may be used as authority to make decisions regarding self-directed support on behalf of an adult incapable of making decisions where no proxy with relevant powers exists.

The core issue here is whether the adult, with full and proper assistance, can be helped to make an informed choice. Article 12 of the UN Convention on the Rights of Persons with Disability already asserts the right of capacity on an equal basis with all others in all aspects of life and the right to access the support needed to exercise capacity. This is basic good practice but is categorically different from appointing an appropriate person to take over decision making on behalf of another person.

Where a person can be assisted to make an informed choice about self-directed support and direct payments, even though they lack the capacity to manage the subsequent process, they would still have capacity to appoint a Welfare and Continuing Attorney under the Adults with Incapacity Act with the relevant powers to manage the process and any related fund, as incapacity under the Act is decision and action specific.

Our concern is the lack of sufficient safeguards and the creation of additional layers of local authority bureaucracy. It is clearly evident from Mental Welfare Commission research that local authorities are already falling well short of what is required of them by way of supervision of Welfare Guardianship under the Adults with Incapacity Act. It is also the case that local authorities do not routinely monitor the use of 13ZA at present. There, in fact, is no one organisation monitoring the use of 13ZA in Scotland. We feel it would be unwise to extend its use as authority for access to self-directed support, especially direct payments, when it has never been properly monitored to begin with. A recent investigation by the Mental Welfare Commission, *Powers of Attorney and their Safeguards*, clearly demonstrates the dangers of granting powers to individuals where the granter has impaired capacity, has been subject to undue pressure from the person to whom the powers are being granted and where the local authority did not use existing powers to investigate and manage the risk.

The 13ZA amendment to the Social Work Scotland Act was originally conceived to give further clarity to the authority of local authorities to implement care plans an individual was assessed as needing. It was brought about because of adults with incapacity remaining in hospital beds they no
longer required while awaiting the granting of guardianship by the court. Some authorities had received legal advice that they could not move such individuals to a care home without guardianship powers. We are not aware of it ever having been used to justify taking over control of an individual’s finances to help implement a care plan.

We are well aware of concerns that the use of Welfare and Financial Guardianship is unduly bureaucratic and expensive when used solely for the purpose of accessing direct payments for an adult lacking capacity. We have expressed our view that the Act itself needs to be amended to allow for graded forms of Guardianship which could provide mechanisms for substitute decision making for adults lacking capacity which are more proportionate to the circumstances of individual cases.

To achieve the clarity in policy and legislation that the Scottish Government intends, we feel it would be best if, on the face of the Bill, it could be made clear that it is not intended that the Act be used for people lacking capacity to make decisions about self-directed support and direct payments where there is no proxy under the Adults with Incapacity Act with power to make such decisions. We also feel amending the current AWI legislation should be seen as a matter of some priority. It should be possible to amend the Act in such a way as to allow for a more proportionate response for such issues as self-directed support and direct payments while insuring proper safeguards are in place.

Mental Welfare Commission for Scotland

9 May 2012
INTRODUCTION:

The Law Society of Scotland aims to lead and support a successful and respected Scottish legal profession.

Not only do we act in the interests of our solicitor members but we also have a clear responsibility to work in the public interest. That is why we actively engage and seek to assist in the legislative and public policy decision making processes.

To help us do this, we use our various Society committees which are made up of solicitors and non-solicitors and ensure we benefit from knowledge and expertise from both within and outwith the solicitor profession.

The Law Society of Scotland’s Mental Health and Disability Sub-Committee (the Committee) welcomes the opportunity to consider and respond to the Scottish Parliament's call for written evidence on: Social Care (Self-directed Support) (Scotland) Bill.

COMMENTS:

The Committee were previously provided with the opportunity to provide comment of the draft consultation of the bill, and at that time raised two particular concerns.

The first of these was the Committee’s concern that in the Consultation Draft the “default position” would be to opt in to Self-directed Support. That would mean that people unable to make a decision, or who made no decision because they found it too difficult, or were too ill, or for any other reason, would be treated as having opted for Self-directed Support. The Committee are pleased to note that this concern has been addressed and the Bill, as introduced, has reversed that. The default position is to treat the person who does not respond as having not opted in to Self-directed Support.

The Committee’s second concern was with section 10 of the Consultation Draft (now sections 5 and 15 of the Bill as introduced) and relative guidance. The previous section 10 provided for the local authority to appoint an “appropriate person” to assist a service user in making decisions about Self-directed Support, if it appeared to the authority that the service user would benefit from assistance from another person in relation to making such decisions. This appeared to address the situation of people who were capable of making decisions, but needed help, and clearly not those who are unable to make decisions. However, that was contradicted by the accompanying Executive Summary which stated that this provision was intended to apply “where an adult is unable to direct their support and where guardianship or powers of attorney is not in place”. In other words, it
appeared from this comment that this was intended as a procedure to enable a local authority to appoint what would in effect be a guardian with powers to deal with Self-directed Support with absolutely none of the procedures or safeguards necessary under human rights requirements or required by our incapacity legislation.

Section 5 of the Bill as introduced refers to assistance with making decisions, and section 15 refers to assistance with assessments. The provisions are substantially similar and in this response the Committee focus on section 5, though it is helpful to commence with the comments in paragraphs 29-32 of the Policy Memorandum.

These appear to make it clear that sections 5 and 15 are for people capable of making decisions, but who would benefit from assistance. It concludes by stating that where the local authority assesses that a person lacks capacity within the definition of the Incapacity Act and does not have a guardian or attorney, then the authority “should proceed to make decisions and arrange support, utilising its powers, in line with guidance, under section 13ZA of the Social Work (Scotland) Act 1968 or, where required, by seeking an appropriate order under the AWI legislation”.

The Committee believe that the policy intention is not yet adequately achieved by the present section 5. Sections 5 and 15 refer to the relevant adult as the “supported person”. The provisions apply where no-one holds relevant powers under a guardianship or intervention order, or a welfare power of attorney. They apply where it appears to the authority that the supported person would benefit from assistance “from another person” in relation to making decisions about relevant matters, and that the supported person’s difficulties arise from mental disorder or physical communication difficulties. The local authority’s duty is to identify persons having an interest in the care of the supported person and to involve them in assisting the supported person in making decisions.

The dangers with this formulation include the following:-

1. Because the legislation is not explicit that this provision is for people who have capacity to make decisions but would benefit from support, and not for people unable to make valid decisions, there remains a risk that the procedure may in fact be used for people who lack capacity. That would lead to the same human rights violations as were feared under the Consultation Draft. There should be a clear declaration that the provisions only apply where the person has capacity but would benefit from assistance in exercising it.

2. The risk of confusion identified at 1 above is exacerbated by the references to mental disorder or physical difficulties in communicating (the same language as is used in the definition of incapacity in the Incapacity Act) and the reference to guardians, welfare attorneys and intervention orders. Welfare powers under any of these Incapacity Act provisions can only be exercised following a determination of incapacity or (in the case of
welfare powers of attorney) incapacity or reasonable belief as to incapacity. The provisions of sections 5 and 15 should be disapplied because of the findings of incapacity, not because such Incapacity Act appointments have been made or are in operation in consequence of that incapacity. As the language equating to the Incapacity Act definition of incapacity, and the references to appointments under the Incapacity Act, clearly point to situations where capacity could be an issue, sections 5 and 15 should require an assessment of capacity.

3. Even where a person has capacity at the time when persons to provide assistance are first identified and involved, the supported person may thereafter lose capacity. There must be provisions for reassessment and for the role of assistance to end where capacity is lost, otherwise – if the persons providing assistance were to continue to act – there would, again, be human rights violations.

4. There must also be safeguards against the risk that the persons to be involved in providing assistance may exercise undue influence or act harmfully. The recent report of the Mental Welfare Commission on the case of “Mr and Mrs D” graphically describes what happened to two vulnerable persons when an inappropriate attorney was appointed, despite the safeguards in the powers of attorney regime. This is an accurate parallel. It is likely that the great majority of persons providing assistance will be well-motivated and acting helpfully, but inevitably there will be some who are not, and it would seem that there should be (at least) a requirement on the local authority to satisfy themselves that there is no reason to believe that the persons identified to provide assistance are exercising undue influence or their involvement in such a role otherwise is contrary to the best interests of the supported person.

5. The Policy Memorandum commences by stressing the importance of people making their own informed choices and having a greater say in matters concerning them. Given that sections 5 and 15 are intended to apply to people who are capable, it seems inconsistent that the identification of people to be involved in providing assistance should be done by the local authority rather than by the “supported person”. The Committee would suggest that a capable person should be empowered to choose who should provide assistance. It is possible that this inconsistency arises because of an instinctive concern about the immediately preceding issue, not thought through to clarify the two distinct steps of choosing candidates and then assessing their suitability (both of which should follow upon an assessment of capacity).

In addition, the Committee believe that Local Authorities will find it difficult to identify an appropriate person, and raise the question, where is that appointment to be made from unless from relatives or friends of the Adult, which begs the further question why the Local Authority needs to identify the person if the Adult is deemed capable of doing so.

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1 Mental Welfare Commission: Powers of attorney and their safeguards January 2012
This may lead to confusion about the Local Authority’s role. Is the Local Authority expected to supervise the appropriate person? Under Adult Support and Protection laws Local Authorities already have duties to investigate any potential financial abuse so this would be done even if the Local Authority does not identify such a person.

6. Finally, an inconsistency in drafting: section 5(1)(b) refers to “another person” (in the singular) whereas section 5(4) refers to “persons” (in the plural). All references should be in the plural, and indeed the identification of more than one person should be encouraged as tending to reduce the risk of undue influence or other inappropriate conduct.

**Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”)**

The Bill does not address the interrelation between self-directed support and community based compulsory treatment or compulsion orders made under the 2003 Act. The measures which may be authorised in an order are set out in section 66(1)(a) to (h) (compulsory treatment orders) and section 133(8)(a) to (h) (compulsion orders) of the 2003 Act. These include *inter alia* the imposition of a requirement on the patient to attend specified places at specified intervals with a view to receiving community care services, relevant services or any treatment, care or service; and the imposition on the patient to allow any person responsible for providing community care services etc. to visit the patient where the patient resides. It is conceivable that a patient under an order could have a preference for self directed support which could fit or conflict with the terms of the measure authorised. These scenarios should be addressed within the Bill.

The Law Society of Scotland

27 April 2012
Social Care (Self-directed Support) (Scotland) Bill: Stage 1

10:02

The Convener: Agenda item 3 is witness expenses in relation to the Social Care (Self-directed Support) (Scotland) Bill. Do members agree to delegate to me, as convener, the responsibility for arranging for the Scottish Parliamentary Corporate Body to pay, under rule 12.4.3, any expenses of witnesses who attend to give evidence on the bill?

Members indicated agreement.

The Convener: We come to agenda item 4. As members know, we went on a fact-finding visit to Glasgow yesterday to hear from carers and service users. It would be useful to put on the record some of the themes that arose and our impressions of those meetings with people at the council and from the community. It is important that those are reflected at this stage so that there is parity between those we spoke to yesterday and witnesses who come along to the committee. Do any members wish to give their reflections on the visit?

Gil Paterson (Clydebank and Milngavie) (SNP): It is always good to get out. It was a worthwhile day during which we concentrated on the issue with people from across the sector, including those who are involved in delivering care and those who receive it. It was a good day. The hospitality and the way that we were treated were also good. We should do more such visits, because the committee and our work benefit from them. I am sure that the visit will be reflected in our report.

Nanette Milne (North East Scotland) (Con): I absolutely agree with that. It was an excellent day. It was good to be face to face with users, carers and various other people who will be directly affected by the proposed legislation. Clearly, there is unanimous support for the principle of the proposals, although many of the details will have to be gone through as the bill proceeds through Parliament. I look forward to getting the report from the people who took notes yesterday.

Bob Doris (Glasgow) (SNP): It might be helpful to reflect on some of the themes that we heard. I will not give my opinion, as we are still testing a lot of the evidence.

It was interesting to hear from social workers and social work management at Glasgow City Council about what is known as the equalisation agenda—how we ensure that the resources that go to the cared-for are shared equitably across all cared-for groups. There was an acknowledgement that, historically, that may not have been the case. There are challenges in that, and it is something that we will have to return to.

The carers we met raised the issue of whether carers assessments happen and whether they are reviewed. We will need to return to that, as well.

Another issue is the need to get a balanced mix of alternative providers in the voluntary sector and the wider third sector as well as self-directed support and council provision, to give choice to those who are cared for.

General awareness of self-directed support is also an issue. Some of the people whom we met did not realise that it existed and had to find out more about it.

That is a cluster of themes that came through in the evidence. I agree with Nanette Milne that pretty much everyone to whom we spoke believed that self-directed support, if done well, can transform people’s quality of life.

That is a nice point on which to end my reflections on the visit. I thank everyone who gave us that informal evidence.

Richard Lyle (Central Scotland) (SNP): I was very impressed with the set-up that we saw in Glasgow city chambers yesterday. I was impressed with the officials who were allowed to come along and give us their views on SDS. We also had an excellent meeting with the carers in the afternoon and got a good insight into what they require from the bill. One of the main themes that I will carry on is the suggestion that, from a social work point of view, there should be more training for carers to ensure that they know their full rights, in order that the bill can be implemented correctly and that it will benefit the people who require it.

Drew Smith (Glasgow) (Lab): I agree with much of what has been said and do not want to add anything in particular, although I will slightly elaborate Richard Lyle’s point. A clear challenge is presented to professionals who have been used to working in a particular way. We might want to follow that up with representatives from social work departments. It was made clear to us by the service users, the carers and the social workers themselves that the bill will require a different way of working, which will present short-term challenges. The aspiration is that the policy should be cost neutral in the long term. However, in the short term, there will be a big impact on how the current service can be continued. Professionals will need to think about reorientating their caseloads and how they can provide information to people and support them through the choices that they will be able to make as a result of the change.
The Convener: Thanks very much for that. It was a long day and involved some hard work, but the clear message came across that there is widespread support for the principles of the bill. If I heard “The devil’s in the detail” once yesterday, I heard it half a dozen times. Our job will be to explore some of that.

The committee will wish me to put on record our thanks to Glasgow City Council for all its help with the morning sessions. The panels with which we engaged in the afternoon would not have happened without the help of the independent living in Scotland project and the Princess Royal Trust for Carers, which we thank for all their help.

For item 5, we welcome our first panel of witnesses: Duncan Mackay, head of social work development at North Lanarkshire Council, who represents the Association of Directors of Social Work; Ruth Stark, social worker and manager at the Scottish Association of Social Work; and Ellen Hudson, associate director at the Royal College of Nursing Scotland. Richard Lyle will ask the first question.

Richard Lyle: Good morning. I declare that I know Duncan Mackay very well, as I previously served with him in North Lanarkshire Council. I am interested in his comments, as I note that North Lanarkshire Council has just over 30 people on SDS, whereas we heard in evidence last week that Scottish Borders Council has more than 200.

I said that one theme that emerged yesterday was training, and another theme was whether the bill is cost neutral. What are the panel’s views on whether the bill is cost neutral? What do they suggest needs to be done to ensure that social workers and carers are trained better? The point was made yesterday that, when someone goes to social workers for SDS, they have to pick what they need from a computer, and that sometimes that does not suit the person involved. What do we need to do to train all your staff and carers to ensure that people get the correct care packages?

Duncan Mackay (North Lanarkshire Council; Association of Directors of Social Work): I will kick off, but I am sure that Ruth Stark will want to give her perspective. First, I will pick up on your comment about the numbers of people who are on self-directed support. The current statistics measure the numbers of people who have direct payments, which are only one way of drawing down self-directed support.

Something like 80 people in North Lanarkshire have direct payments, which is low in comparison with the rest of Scotland. However, more than 600 people in North Lanarkshire have wholly individualised budgets. The process of inviting people to exercise choice and control over those budgets—the extent to which they choose to do so—is fundamental to self-directed support—is ongoing.

We have 150 people who have in the past year moved on to an individual budget. One third of them have taken that in the form of a direct payment, but others have decided that that option is not for them and have asked the local authority to arrange or provide services on their behalf. That is the key difference between direct payments and self-directed support. Direct payments are one way of having self-directed support, but they will not suit everyone.

You are entirely correct to highlight the challenges that implementing self-directed support and the bill will create for local authorities and partner agencies. It is a whole-system change and not simply direct payments plus. It will require all the financial systems to be changed, because money will be distilled to each individual, regardless of whether they choose to have a direct payment. Individuals will have to be aware of the individual budget that is indicatively allocated to meet their needs in order to make a properly informed choice about whether to exercise total control over it.

The approach will require to be embedded in assessment and care management processes. In my authority, that will involve six days of additional training, reflection and follow-up, because of the scale of thinking and working differently. Self-directed support changes in a positive way the balance of the relationship between the worker, the supported person as a citizen and their representatives, and any provider that might be involved or which a person might wish to involve.

Self-directed support requires local authorities to adopt a resource allocation system. Bob Doris spoke about equalisation. It is essential that local authorities develop equitable and transparent systems for allocating resources. If they do not, there will be confusion and legitimate challenges—for example, why person A gets a budget of X pounds but person B, with apparently similar needs, gets a budget of Y pounds.

A resource allocation system will also be important to the local authority because it will need to manage within existing budgets, which are reducing. The system must therefore reflect the total available resources for current and projected need and it must balance the financial value of that need so that it can remain within budget at a time of increasing need and reducing resources.

10:15

The Convener: Does anyone else want to respond?
Ruth Stark (Scottish Association of Social Work): Yes, if I may. Richard Lyle asked about the training of social work staff. One of the complications relates to understanding the role of social work staff in the process of self-directed support. The Scottish Government published the practice governance framework, which set out social workers’ rules and tasks. One of the issues for the social worker—taking that particular post out of all the others in the range of social work services—is that they have a responsibility to carry out the duty of protecting from harm vulnerable people in our communities. The relationship between a social worker and a person using the services is quite complex. On the one hand, the social worker is trying to meet need, which is what everybody wants out of self-directed support, but on the other hand the social worker has a responsibility to protect people.

The evidence that was given to the committee by HUG—the Highland users group—was particularly poignant on the support relationship between the social worker and the service user. There are complications within that relationship that are not addressed in the bill and which cause our profession concern: it is about how we meet all that are not addressed in the bill and which cause complications within that relationship. How will the bill and the practice governance framework, which set out the duty of protecting from harm vulnerable people.

In protecting vulnerable people, we have considerable powers in relation to assessments and professional opinions that we take to courts and tribunals, for example on people’s ability to live in the community, whether they should be detained in a mental health hospital or whether they should be in public care. There is a real issue around that tension. How will the bill and the functions that it asks professional people to undertake address the laudable aspiration, to which every social worker would subscribe, that people should have more control over what goes on in their lives, given that the social worker has other duties and tasks that they must somehow weave into the process?

I do not know whether the committee has a sense of that, but it is a very complex task for us. The bill reads as quite simple and straightforward, but putting its provisions into practice will require more than one day’s training because we will have to work out how we weave in our complex set of duties and responsibilities to meet need and protect people.

The Convener: We heard from social workers yesterday—and, indeed, read in some of the submissions—that the bill is an opportunity to get back to good, old-fashioned social work.

Ruth Stark: We really want to embrace the bill and work with it. However, you used the phrase “The devil is in the detail”, and we do not see enough detail in it to help us with some of the tasks that other legislation places on us to protect people. That is part of the problem with which we struggle in relation to the bill.

Richard Lyle: I dealt with social work for 36 years. In those 36 years, I had to visit the social work department only about seven times. I appreciate the work that social workers do. However, yesterday, carers made the point to us that they want to be able to sit down with a social worker, go through everything that they require, feel that the social worker understands what is required and know themselves what is required. That comes down to training.

I agree with what you say to a point. There is a training budget and local authorities send staff on training at various times. Will you have sufficient time to ensure that social workers are trained to meet the needs of carers and the clients whom they serve?

Ruth Stark: I hesitate to say. Not enough training has been built in. It will be much more costly than has been indicated in the papers that I have seen so far.

Duncan Mackay: The Association of Directors of Social Work struggled—as did most councils and, perhaps, partner agencies—to provide information to inform the financial memorandum because saying how much will be required to implement the bill is, to some extent, informed guesswork. It depends heavily on the situation in any given local authority.

If an authority has already decommissioned group services, created individual budgets around the packages of support that people receive—even if, at that point, they do not necessarily have control over those budgets—and embedded the concept of self-directed support in its own assessment and care management procedures, it is more likely to be well placed to make the transition to fulfilling the new duties under the bill. The 32 local authorities are in a variety of different positions so, if none of those things applies, the task will be substantially greater and the level of investment that will be needed to make the transition will likely be greater.

It is fairly straightforward to cost the implications of some bills but, on this occasion, it was probably more difficult. That has been reflected in the responses that the committee has seen.

Ellen Hudson (Royal College of Nursing Scotland): I will respond to Richard Lyle’s original question.

The bill gives people more choice and control over how social care needs are met. One of the elements about which the Royal College of Nursing has concerns is the impact of the
delegation provisions in section 18. National health service bodies will be required to fulfil the duties in the bill if they have delegated authority—as happens in NHS Highland at the moment, through the integration agenda.

If that happens, we could face scope creep because, in care within an integrated system, how can we determine what is a health need and what is a social care need? If we pool our NHS and local authority moneys within an integration agenda, the edges are bound to blur and we could incrementally end up using self-directed support moneys to pay for health services. We consider that to be scope creep. There is not enough detail on that, which is why we call for further consultation and detailed discussions on the matter.

I will respond to Richard Lyle’s question on training as well. If, in their delegated roles, staff in the NHS have to assess people for self-directed support, they absolutely need training. They need to have knowledge of social care assessment and to be able to support those individuals to make an informed decision about the choices that they need to make around the four options that are available to them.

We are concerned that the budget for training goes on only to 2013-14. As the integration agenda of local authorities and the NHS moves forward, the need for training will increase. We need to ensure that the workforce that will be supporting people who are facing those options has the knowledge and skills to fast-track the process and ensure that those people get the packages that they deserve.

Nanette Milne: The principle of the bill is to improve the outcomes for service users. Do you think that bringing health and social care together will deliver a more holistic care service for people?

Ellen Hudson: We have developed a principles paper on the integration agenda. One of the key points that we raised in it was that the success of any integration must be measured by how well the agencies work together towards the core, common aim of what they are trying to establish. They are trying to avoid duplication of effort, ensure that we work smarter and enable people to access services far more quickly. It is important to involve people. There is a duty to involve, inform and collaborate. The necessary infrastructure has to be there in order to deliver that. At the moment, the bill does not have the necessary level of detail to enable us to take an informed position on that issue.

We fundamentally support the founding principles of the bill. It has to be about promoting service users to be independent and to participate more fully.

On the impact of outcomes, it is not clear from the bill what the outcomes will look like. How will they be measured? How will the success of an SDS package be determined? The bill contains no details around the frequency of review. The local authority and the individual who is receiving an SDS option can call for a review at any point. However, if something changes in that package, what is the structure whereby the service user can get a rapid review of the package to ensure that it is still the right one for them? People’s health needs can change quickly and they need to have responsive services.

Duncan Mackay: The committee is exploring an interesting area here. On the finance implications, there is already a gap between assessed need and available resources. Because of the projected local government and NHS settlements and so on, that gap will grow over the next few years, regardless of whether self-directed support is in place.

The bill is short on detail, as others have said. We recognise that there will be statutory guidance and regulations that will, presumably, address some of the detail that is required. There is a nervousness on the part of the ADSW and others that things could be more far-reaching than the bill intends them to be.

The bill is silent on eligibility. It is not possible for a local authority to meet everyone’s needs. Whether there is a self-directed support system or a more traditional system in place, the local authority has to make judgments, within available resources, about what needs are prioritised. The bill is silent on duties for the NHS other than, as Ellen Hudson said, in relation to delegated authority, such as is being facilitated in NHS Highland. Our view is that that approach is quite incoherent in policy terms given that parallel legislation is being introduced and there is consultation on arrangements that seek to dissolve the identity of health and social work budgets.

10:30

Although this is not a direct parallel, there is quite a body of experience in England, where more than half of the primary care trusts offer individual budgets. An evaluation report will be produced in October 2012, and some of the initial findings are very encouraging.

My direct experience is that things are more likely to work the other way round—the social work funding is likely to meet a health need. Let me give an example.

We have an extraordinary young man in North Lanarkshire, who had a tragic accident that left him paralysed. He has two young pre-school
children, and he moved, through the process of planning to meet his needs, to an adapted house. He then chose to take his support in the form of an individual budget and identified a provider to meet his needs. Due to the extent of his injuries and condition, he has health needs. He requires an enema in the morning to facilitate a bowel evacuation, which takes two hours to work. The earliest that the nursing staff could arrive to do that was 8 o’clock in the morning. Consequently, although his children had already been up for several hours, he could not get up and dress until he had had the bowel evacuation, which, on average, was around 10 o’clock in the morning.

Our local NHS colleagues worked very hard to work out a solution whereby the treatment might have been administered much earlier to allow him to get up at the same time as his children. In the end, the agreed solution was that he would use the individual budget allocated through the local authority to buy the service from an agency, and NHS staff provided training to ensure that that happened.

For me, that is a good illustration of a situation of someone who has health and social care needs in relation to whom both agencies need to collaborate. If the bill continues as it stands and does not permit the use of NHS resources to meet needs, that will impair, not facilitate, integration.

Ellen Hudson asked how we will know whether a self-directed support package is successful. In my experience, the answer is that it is necessary, at the point of assessment, to identify the intended mutually agreed outcomes that any resource, whether in the form of a direct payment or a direct service, needs to achieve. If that is not done, what is there to review in three or six months’ time? The extent to which the outcomes for an individual have been realised—all of us will have different needs and different outcomes—must be reviewed, otherwise the wrong thing tends to be counted, such as the number of hours that a person needs. The question should actually be whether the resource or the service provided has met the identified intended outcomes, and whether it should continue or needs to be adjusted.

Nanette Milne: The example of the young man is interesting. We heard several examples from service users whom we met yesterday who are in absolutely no doubt that the outcome for them has been that their lives are much better. That has to be the aim of the legislation, if it is to work. SDS is a tool to give people the better life that they seek.

Yesterday, we also picked up that there must be a considerable cultural change in going along the lines that are proposed, which will not be easy. Is there professional resistance to the change? I have heard that there are difficulties between health and social work professionals. Would you say that that is a fact?

Ruth Stark: The proposed change fits with our codes of ethics and with the principles by which we want to work. I do not detect resistance to it, but I detect that people are concerned about how we do it, which is what is causing debate in the profession. How will we achieve the aim? There is no problem at all with the principle.

Ellen Hudson: I agree with Ruth Stark that the concerns are about how we do it. Some individuals who have given evidence to the committee have claimed that some professionals, especially nurses, are risk averse in their approach to the concept. I will paint the picture: risk assessment is the norm for many community nurses day in, day out because they work in a non-clinical environment, in responding to health needs. They try to create a safe environment for patients in their homes, and they try to apply all the necessary care, attention and technological advances and inputs. They do that virtually—not in a hospital setting, but in the patient’s home. Day in and day out, community nurses have to make hard judgment calls that involve risk assessing patients and considering the responsibilities for care and bringing in the appropriate people. Those nurses cannot do their job without collaborating with their general practitioner and other primary care colleagues, social work colleagues and wider healthcare teams.

The Convener: In written evidence, the RCN and social workers have highlighted the importance of the integration of social care. I think that you agree on that point. The ADSW submission states:

“these other areas of support in the legislation would be more consistent with the agenda around the integration of health and social care and would better reflect policy priorities around best use of resources.”

I believe that there is agreement among the professional organisations on the general principle. If that is not the case, please comment.

Duncan Mackay: I think that there is agreement. The point is that the bill does not reflect that; it imposes duties only on local authorities and not on the NHS, and it refers only to local authority budgets. I take pride in the fact that the concept of self-directed support was initially developed in North Lanarkshire. However, the bill dilutes the concept. It was never intended that there would be only a local authority budget; indeed, it was never intended that there would be only local authority and health budgets, but that it would be possible to draw on education moneys where appropriate, or on the benefits that people are awarded, for example, for needs that are associated directly with their disability. The concept has been reduced from the original
aspiration. It would be a great shame if that were to remain the case throughout scrutiny of the bill.

**Ellen Hudson:** We are concerned that as the integration agenda proceeds, more and more individuals could seek SDS and direct payments, but there will be a finite budget for that. If many people go for that option, what will be left for those who do not apply for those packages and who are reliant on core services? The funding could have run out.

**The Convener:** Does that get back to the written evidence from the Association of Directors of Social Work, which suggests that “Social Care’ has no place in a Bill that aims to shift power and control from organisations to individuals”?

Is that part of the narrowing of the agenda that you are arguing about?

**Duncan Mackay:** The term “social care” almost implies that people are always dependent and passive recipients of care, whereas in fact the principle of self-directed support is that it builds on people’s gifts, strengths, capacity and knowledge, and on networks in their communities. Of course, people sometimes have significant needs that have to be met, often through high levels of allocated resources.

However, historically, the pattern of services has tended to be that we did things to people. The self-directed support journey is characterised by doing things with the person in the hope that, wherever possible, he or she will do things themselves. Parallel developments in areas such as re-ablement and home support have demonstrated spectacularly how that is possible.

Ellen Hudson is right to say that there is a finite pot of resources available to meet a greater level of need, which is why it is necessary to have criteria for determining who can access individual budgets. That does not mean that the local authority and its partners do not have an obligation to signpost the ways—preventive or involving early identification—in which other needs can be met.

In my view and that of ADSW, the answer to Ellen Hudson’s question is that we need a resource allocation system. The bill makes no reference to the fact that we need such a system, but if we do not have one, we cannot manage within a budget. The budget is difficult to gauge, because we have to predict the unanticipated need that will come through the door and that is likely to be met.

It is true that in any system there will be a gap between assessed need and available resources. Partnerships are working within that context and will continue to do so; the bill just places a different framework on them.

**Ruth Stark:** I thoroughly endorse what has been said about removing “Social Care” from the bill’s title. Self-directed support is much more about people being in charge of their own lives, and the social care aspect masks the involvement of education and health budgets in helping to support people in their journeys through life.

**Ellen Hudson:** The bill’s wording does not stress the responsibility that comes with the choices that people must make around self-directed support. That goes back to the point that Duncan Mackay and Ruth Stark made about the bill empowering people to take control of their own packages.

We have heard words such as “co-production” and “reciprocity”, but self-directed support is about involvement. People must make informed decisions and be responsible for the care that they receive—there is an obligation on them, too, in that regard.

**The Convener:** Fiona McLeod has indicated that her questions have been responded to, but she will have an opportunity to come back in, if she wishes to do so.

**Bob Doris:** One or two things do not quite stack up for me. Perhaps that is due to my lack of understanding, but I will ask about them. First, I should say that I have taken on board the point—which was well made—about training needs in social work and the NHS where there is an interface and there is integration. I am sure that we will return to that.

On whether there is cultural resistance, when we asked how outcomes were measured Mr Mackay said—it might just have been a slip of the tongue—that we need to know whether we are counting the right thing or the wrong thing. I suspect that the committee’s understanding is that the outcomes are not about counting things, but about the quality of the care experience for the individual, so I will put the question back to Mr Mackay. Will the bill make what we are counting less clear? Is that part of its principles?

**Duncan Mackay:** That is a very fair point. The danger is that, when the bill has been enacted and there is a natural desire to know how effective it has been, it will be easier to count sums of money, numbers of people or hours of support, so those things will get counted, whereas it should be, as you quite rightly say, about outcomes for people. The challenge in measuring outcomes is that everyone’s outcomes and the ways in which people’s needs are met are unique to them. In our own lives we sometimes choose to meet our needs with a formal service, but very often we will use not a formal service but our own networks, knowledge and so on.
Outcomes measurement is still relatively unsophisticated. There has been a lot of policy work to develop it but we often still get stuck on issues such as whether a person is healthy and safe. Obviously, that is important, but you could be healthy and safe and be a person with a learning disability, living in a long-stay hospital all your life. Being healthy and safe does not get to the nub of what is really important for that person’s life. That is a challenge and people can usually tell us that. However, we are not always very good at capturing that and directly relating what we do to assisting people to achieve those outcomes in their lives.

10:45

**Bob Doris:** That is helpful. I hope that you do not think that I am concentrating my questions on everything that you said, Mr Mackay, but I would appreciate a response to a second comment.

You spoke about the scope of the bill, and I think Ms Stark mentioned that the initial vision of self-directed support drew not just on social work but on education and health. You said that you hoped that we could expand on that in our scrutiny of the bill. As someone who has to scrutinise legislation it struck me that we have to be able to implement that legislation. Given the existing challenges of the scope of the bill, would it be realistic to extend its scope at this stage?

We heard in great detail yesterday about the back-office challenges of auditing and tracking the process just within social work. I wonder whether our ambition should be to get this right and move to the next stage. Are you saying that we should add things to the bill? From my perspective, that would be too much of a challenge. The bill as it stands is a challenge that we could deliver on, but to expand it further would be unrealistic.

**Ellen Hudson:** That was entirely our point as well. The bill is set up to look at social care and social care needs. The scope creep that we mentioned in relation to the delegation provisions in section 18 could start to track out towards health. The RCN thinks that it is important to get the bill right first, then later to have further consultation on possible impacts on other organisations and agencies.

**Bob Doris:** My final question will be on scope creep. However, Mr Mackay may want to respond to my previous comment.

**Duncan Mackay:** From the perspective of ADSW, there is no reason why the bill should not incorporate access to health budgets. In the context of the parallel legislation, I do not see how it can operate without doing so because of the aspiration to lose the original identity of the budget, whether it is a social work or health budget.

It is not a mad social experiment to use health budgets to meet individual need; the practice has been established elsewhere for some time, although it needs to be joined together. Overall, there is a strong body of evidence that outcomes improve for people if they not only have greater control over the support that they require but have the choice to exercise control over the resources that are allocated to providing their support.

I understand why the view of Scottish Government officials, through the bill steering group—of which I am a member—has been that it is perhaps not achievable or desirable at this stage to increase the scope of the bill to include budgets, but in the context of integration it seems to me that it is impossible to avoid that.

**Ruth Stark:** On the ground, the practitioners who are struggling to get their heads round the integrated health and social care agenda and the bill would like to see some joining together of the vision of where we are going. We therefore urge the committee to think about extending the scope of the bill beyond the social care budget.

**Bob Doris:** That is interesting.

Ms Hudson spoke about the challenges of ensuring that budgets are used appropriately. I am sure that your point was that health budgets should not be used for social care needs. You are worried about scope creep. How will things be different after the bill is passed? After all, even if the bill had not been introduced, an NHS or social work lead would, under the current joint working and pooled resources approach, still be able to decide the most appropriate package for the individual being cared for. Given that with self-directed support the only difference is greater choice for the cared-for person, I am not sure where scope creep comes in. What is so different with the bill’s aim of extending individual choice?

**Ellen Hudson:** If, as in the Highlands, the local authority were to delegate to the health board responsibility for providing social care for older people and adults, the board would, under the legislation, have to assume all the duties. In that respect, the NHS is akin to the local authority in assessing needs and so on.

However, the bill is specifically about social care needs; it is not about developing self-directed packages to support health needs. As we have said, the bill simply does not contain enough detail, and there needs to be further consultation of a wider range of agencies and organisations to find out what its practical impacts might be. We work with local authorities day in and day out in defining care packages; the difference is that, at the moment, the NHS is already providing
individuals with core health services without having to be caught up in the packages that will be provided under the bill options. At this stage, we simply do not have enough information to be assured that the bill addresses such matters, which is why we are calling for further discussion and debate with people who are involved in healthcare.

**Bob Doris:** I thank committee members for their patience. I seek a little more clarity about what will change with the introduction of self-directed support. If, without the bill, an NHS-based lead individual can, under current good practice and collaborative working, already be delegated to access pooled budgets or whatever, I simply do not understand what will be so different about giving individuals on the ground more choice. At the moment, the lead person, who might be in the NHS, can turn round and say, “All you can have from the local authority is A, B or C”; however, with the bill, they could say, “You can have A, B or C but do you think option D”—in other words, self-directed support—“would be more appropriate?” Where does the scope creep come in? The only change I see with the bill is that it will give more freedom to the individual on the ground. I am not trying to create disagreement. I just genuinely do not see where you are coming from.

**Ellen Hudson:** The bill will give more freedom but does not indicate where the budget for supporting the SDS package will come from. With such packages, the health board will be responsible for providing the social care that the local authority used to provide, but if it turns out that a lot of people are using up that budget and that further health needs must be met, health resources will have to come into play. Integration is a brand new policy—it came in only on 1 April—and organisations are working together to find out how it is working. Besides giving the ability to fudge budgets, the approach will lead to scope creep because health moneys will be used to pay to meet identified social care needs alone. The pooling of resources leads to the blurring of boundaries.

I am sorry if I am not making myself clear.

**Bob Doris:** There might be genuine and honest disagreement here, because I think that what you are saying goes completely against the integration agenda. The RCN regularly says that we should use social care resources for preventative health spend.

I will read the evidence, and I thank you for your comments.

**Duncan Mackay:** Integration might be a new policy in the context of proposed legislation, but we can all remember the joint future agenda in the 1990s. Many of us were working on how to produce a suite of integrated services and approaches. The phrase “scope creep” is perhaps a bit unfortunate, because it sounds quite negative. When people have health and social care needs, it seems entirely coherent that there should be access to budgets from both areas.

**Gil Paterson:** I am looking for clarification from Mr Mackay. When you were talking about the work that you already do, it seemed to me that your approach is wider than is envisaged in the bill. Are you suggesting that the bill will prevent you from taking such an approach, or did I pick you up wrongly?

**Duncan Mackay:** I was trying to convey the sense that it was never the intention that an individual budget would be drawn solely from a local authority social work service or from the local authority itself, and that if we are to realise the potential that self-directed support offers people in exercising choice and control in their lives—especially people who have complex health and social care needs—to the full benefit of the individual, the only feasible way of doing that is by giving people access to funding from both parties.

**Gil Paterson:** You are not suggesting that what you currently do will be restricted.

**Duncan Mackay:** No. Self-directed support is one element of a wider approach to personalisation. There will be many people who do not have needs that meet the eligibility criteria that a partnership applies, but who require access to highly personalised approaches to meet their needs. Their support might not necessarily be in the form of an individual budget.

**Gil Paterson:** Thank you for shedding a wee bit of light on the situation.

**Jim Eadie (Edinburgh Southern) (SNP):** Does not self-directed support offer an opportunity to save NHS resources? People in Glasgow yesterday and a good written submission from Glasgow City Council gave examples of people who receive social care. One individual faced spending the rest of his life in hospital unless significant additional social care resources could be found to commission support in the community.

If we get things right in the community, we might prevent people from being admitted to hospital and becoming a drain—if that is the right term—on NHS resources. Have you considered the issue from that end of the telescope? Have you thought about the opportunities for, rather than the risk to, the NHS from self-directed support, which is ultimately about ensuring that the right care package is provided for the individual?

**Ellen Hudson:** That is absolutely what it is about. However, the bill gives no clarity on what constitutes a “relevant amount”, that is,
"the amount that the local authority considers is a reasonable estimate of the cost"
of securing the support. We do not know how much money will go into an SDS option or package. The recipient of the package will need clarity on that, as will the people who provide the service.

We would hate the bill to be used by local authorities that are struggling with their budgets to cut costs. In its written evidence to the committee on the draft budget, Unison Scotland said that Glasgow City Council had introduced SDS for people with learning disabilities and mental health issues

"in the belief that this will achieve a 20% saving over the two years 2011-13."

We are concerned about that. We also think that there is a risk that core services will be lost as more people opt out and take the SDS route.

It is about getting the balance right. There absolutely should be a suite of options for people—choice is really important—but, as Duncan Mackay said, there is a finite pot of money and the bill should not be used to get round that problem.

11:00

Jim Eadie: That is a helpful clarification. Notwithstanding your concern about cost cutting, does the RCN accept that, at the moment, people are being offered services almost—if not quite—on a take-it-or-leave-it basis? Mr Mackay suggested that, by purchasing services for an individual, we are able to ensure that they receive genuinely personalised services instead of being told that they can receive a service only at a certain time of the day. That is, ultimately, where we should be going with this. At the moment, a lot of the core services—as you describe them—that would be threatened by SDS if we removed personal budgets from the money that is available for them spend a lot of that resource on overheads rather than on providing a service to people. Before a service is provided to a person, money must be spent on transport or the upkeep of a building if it is a day service that is being provided. Do you understand that point?

Ellen Hudson: The NHS is already providing core health services. Within that, there will be various complex health packages for people with palliative care needs and things like that, which will take an incredible amount of input from a number of different agencies. That is the best way of working. We want to assure whoever is in receipt of any service, be it a social care service or a health service, that they are getting a good-quality service from the resources that are available and that the people who are delivering the service are skilled and know exactly what they are doing.

More closely integrated working is obviously a very good thing because it reduces duplication of effort and makes a service much better for the individuals concerned, but that is where there are jointly assessed needs. The bill is looking primarily at assessing for social care services, and that is the distinction that we are trying to make.

The Convener: This has been an interesting discussion. There is a contradiction in what we are trying achieve through the integration of health and social care. I think that Mr Mackay described a situation in which the social work budget was purchasing health services.

Duncan Mackay: Yes.

The Convener: I thought that that was a great, succinct example. We had discussions yesterday with service users who support self-directed support in principle. They were concerned that health service or clinical involvement was separate, but your example was a good one. That local authority's social care budget is being used to provide health services, but there is something not right about that—you would think that it is important how the budgets are shared.

Duncan Mackay: There is something not right about that only if the converse cannot apply and the bill's provisions do not impose the same duty on both partners.

Local authorities face cuts in the region of 15 per cent or more over the next three years, having already applied cuts of between 5 and 10 per cent over the past two years. Let us think about how a local authority budget is constructed. One large-spend area is education in which the budget is spent mostly on teaching and there is very limited scope to make savings through differences in class sizes and so on. Where the authority is a major housing provider, as my local authority is, the budget is almost overwhelmingly the housing revenue account, which is drawn from rent. Those two areas are largely immune from the savings that must be made. Social work services are, far and away, the next biggest area of spend, and in the region of 75 per cent of the budget is spent on community care services.

It is important to separate out the aspirations. The bill can be flagship legislation, support integration and place Scotland foremost among western nations in the way in which it supports its most vulnerable people.

In the situation that we face, there will have to be some budget reductions because resources in future will not be at the level that they are at now. There is a risk that self-directed support gets slightly discredited because it is being introduced
at a time when cuts are having to be made. The message to the public has to be that the cuts must be made regardless of whether self-directed support exists and that, in fact, self-directed support offers a way to navigate through some of the funding problems that face statutory agencies, because our experience is that people will choose to use the resources on what are not necessarily formal services but are perhaps more economic and more directly related to outcomes.

There is anxiety across the board that traditional services, if you want to call them that, might be adversely affected. That is part of the case that Ellen Hudson has made. Our experience is that, when traditional services are highly flexible, outcome focused and delivered at times and in ways such that people can have their needs met and have an active choice about who supports them and about where, how and when they are supported, people often choose the traditional services and do not necessarily seek a direct payment to have the support provided in a different way. That is why measuring direct payments is not in itself a measurement of very much.

**Ruth Stark:** I fully support what has been said, but there is also an issue with the overall health budget. Many people who will access SDS have to deal with chronic health conditions and other issues while living in the community. One issue for the health service is how to shift some resources from acute services into supporting people with chronic health conditions in the community. I believe that the health service has to provide its fair share of funding for that. That does not detract from the fact that, as I think all three witnesses are saying, there must be transparent resource allocation and it must be clear where the resource comes from. The burden of it needs to be spread between the major suppliers of education, health and social care services.

**The Convener:** Finally, I do not know whether we have had an announcement this morning, but we have had an insight that the proposed legislation on the integration of health and social care might have been kicked into the long grass and may not be necessary because partnership working can achieve that, so we do not need legislation. Would it not be good news if we could avoid that legislation and integration could happen naturally?

**Duncan Mackay:** That is a big question and another committee might be considering that. However, it is a legitimate question because, if we are outcome focused, which is the focus of this bill, it is perhaps questionable whether legislation on integration would drive those outcomes or have the perverse consequence of diminishing the likelihood of them being realised. That is perhaps a matter for another discussion.

**Ruth Stark:** This is about culture change as much as it is about legislative change; it is about how the public service providers work together. I suggest that you need to put as much investment into culture change as you put into the legislative agenda.

**Drew Smith:** I will come on to questions for all the panel members about workforce issues that might arise from the changes but, first, I want to ask a question of principle about the suggestion that there should be an appeals procedure in relation to the needs assessment that is made and the allocation of resources. Among the things that have been said to us is that having such an appeals procedure would involve a huge cost. When Mr Mackay answers this question, I ask him to take off his hat as a director of a social work department. From the point of view of directors of social work and social work professionals, do you believe that, in principle, we should consider having an appeals procedure?

As you rightly say, there is an issue with cuts that are going on. There has been controversy, particularly in Glasgow, about how decisions are made, given the funding situation. Leaving aside where the money would come from to administer an appeals process, from a social work point of view do you think that people should, in principle, have the right to appeal? I understand that, if agreement is reached at the start of the process, having a review of things might negate that, but in the current circumstances, in which there is controversy, does it make you uneasy that there is no appeals mechanism?

**Duncan Mackay:** There is an appeals mechanism—social work has to have a statutory complaints procedure. The Association of Directors of Social Work would strongly suggest that that procedure should be used, rather than creating a separate appeals mechanism. As Ruth Stark said, the issue is one of culture change. If we are serious, we want to embed self-directed support as normal, everyday practice. It would not be especially helpful to create a separate appeals process when there is already a statutory process.

A key aspect of self-directed support is that the person should know the indicative budget that is likely to be made available to meet their needs before the support planning is done, because the support planning must test whether their needs and the intended outcomes can be met from that budget. If they cannot, it is beholden on the local authority to review the level of budget allocation. If it remains a point of dispute, that is when the complaints procedure should apply.
Drew Smith: I think that there is a difference between a complaints procedure and an appeals procedure, but that was a very clear answer.

I want to ask about the wider workforce. As representatives of professionals in the system, do you have a view on whether other parts of the workforce will need to be regulated as a result of the bill? I am thinking, in particular, of personal assistants and the choices that people might make about whom to employ. Do we need to think more about how we regulate some of those people? As we move to having more and more providers, which involves a competitive element, costs will be driven down, and it seems to me that that presents a danger. To what extent is that a concern for you, as representatives of professionals in the system, with regard to both the parts of the workforce that you represent and other parts of the workforce?

Ruth Stark: It is absolutely the case that we need to have some checks and balances on who the personal assistants might be. Some of the worst situations that I have had to deal with as a social worker have been cases in which there has been abuse in a very intimate care setting, whether by parents, carers or support assistants. We must have proper checks and balances in our system because, in some cases, we work with extremely vulnerable people.

Duncan Mackay: It is a complex question, which challenges what we intend to achieve through the bill.

Self-directed support does not mitigate the need for local authorities and their partners to risk assess and risk manage, nor does it mitigate their public protection duties. There are many circumstances in which such an arrangement would not be appropriate, just as it would not be appropriate to make a direct payment for someone who needs emergency heart surgery to get it from the NHS. Only a relatively small proportion of people will choose to take the individual budget in the form of a direct payment, because that brings its own responsibilities, and an even smaller proportion will choose to employ personal assistants. That has been the experience when self-directed support has been rolled out on a large scale.

As you say, personal assistants are not subject to regulation, so the question, which you posed, is whether they should be. If I were seeking to employ a personal assistant for a family member or if I were a person with full capacity and a disability, I would probably say that I was perfectly able to decide for myself who would provide support. From a local authority perspective, we would respect that, unless there were capacity or protection issues, in which case we would intervene as appropriate. That might mean taking statutory measures through the adults with incapacity legislation, for example. The position is not black and white. Decisions should be based on good, sound risk assessment, risk management, the person’s capacity, and the circumstances that prevail around each and every individual.

11:15

Ellen Hudson: Obviously, regulation exists to protect the public, and it is very important for any individuals who are in the position to employ personal assistants that there is proper scrutiny. We need to ensure that they can be assured of the qualifications, training and competence of those individuals to deliver the package of care and that they have had a protection of vulnerable groups check. We did not see anything in the bill that drew our attention to that, so we wondered whether it would be possible for either the national health service or local authorities to insist on PVG records and undertake regulatory work. If they are employing anybody, they could ensure that those checks and balances are in place. Scrutiny is important.

Duncan Mackay: I would like to add a point that I omitted to make in answering the question. My understanding is that, under the protection of vulnerable groups legislation, an individual cannot access a check on a would-be employee. What that means in practice for the implementation of self-directed support is that, in my area, for example, we would link the person to the Scottish Personal Assistant Employers Network—SPAEN—which is one of the bodies that are empowered to undertake an advanced disclosure check, and strongly recommend that that be done.

Ellen Hudson: I suppose that that has the potential to be a loophole that could be exploited, and we certainly do not want that for somebody who is employing a personal assistant. They might not have access to that.

Drew Smith: I want to ask a general question; perhaps the answer to it will be no, so it will be brief. I refer to what was said earlier, particularly from the social work side, about the bill’s scope and the desire to see people in education, the health service and housing to some extent involved. We have had a bit of a discussion about that. Leaving aside the budgets from which the money will come, do you think that the four elements of self-directed support are sufficient?

Duncan Mackay: Yes, provided that the bill makes it explicit that the identification of an individual budget applies, whether or not the person ultimately chooses to draw down a direct payment. That is part of the consideration of how people exercise meaningful choice and control if they do not know what the budget is. If I were cynical, I could say, “Well, there are so many
thousands of people living in care homes. Every one of them can get a letter that says that the value of their care home placement is £20,000 and something and asks whether they want to take that in the form of a direct payment.” Thousands of people would then be offered an individual budget. It is clear that that is not the intention of the bill. The view of the Association of Directors of Social Work is that the bill would be strengthened if it clarified the point that an indicative individual budget exists and should be required to be shared with the person, regardless of how they ultimately choose to draw it down and even if they ultimately choose to exercise no direct control over it.

Fiona McLeod (Strathkelvin and Bearsden) (SNP): I want to move on to advocacy on behalf of those who apply for self-directed support and helping them to make their choice. Drew Smith asked about an appeals mechanism. We may want advocacy for the person at that time. I noticed that both the ADSW and the RCN referred to the need for people to be supported in the self-directed support process, but that is not explicit in the bill. Do you think that it is important or necessary that the bill should explicitly say that there should be a role for advocacy in that situation? Would you appreciate that?

Ellen Hudson: We would welcome any forms of support that helped with the decision-making process for individuals who apply for SDS options.

Duncan Mackay: It is fair to say that the ADSW would be content with a statement that people should have access to advocacy, because some people will need that. There is a risk that the people who most lack capacity will be the least likely to access individual budgets, because they will be determined to be unable to exercise meaningful control over a budget, so other legislation will apply. That could compromise the principle of minimum intervention that we apply generally under legislation on adults with incapacity or on mental health. However, it is clear and appropriate that some people will need access to advocacy, which should be part of the overall provision.

Fiona McLeod: Is the bill clear enough about advocacy? It talks about “reasonable steps” to provide support and so on. Do we need to be more explicit?

Ruth Stark: Flexibility probably means recognising that people have different levels of competence in their approach. I think that that covers the issue.

Duncan Mackay: Perhaps the bill could refer to “reasonable steps such as access to advocacy” or something of that nature.

The Convener: I will raise an issue that is in the ADSW’s submission and which is worth airing—we aired it a bit yesterday. The ADSW calls for a debate on state provision as against family provision. What would be the nature of that debate? Should it take place alongside the bill’s progress?

Duncan Mackay: The association recognises that most support is provided by unpaid carers. In many ways, sustaining people at home rests heavily on that. Carers should obviously have access to support, including support under the bill, when appropriate. Currently, there are exemptions on making payments, such as an exemption when a carer lives in the same household as the person who receives care. Local authorities have a limited discretion to exercise.

When a carer should be paid directly and when it should be a reasonable expectation that a carer provides care as a loving family member is a live debate in the context of the financial situation that we have discussed. That also raises a question about the kind of society that we want. Do we want a society in which people are paid to support family members or a society in which they are supported to support family members? That has wide implications for how we live and how vulnerable people in our communities are supported.

The ADSW supports the exemptions as they stand. Some discretionary elements are usually exercised in relation to rurality or ethnicity, when it makes sense for a person to employ a family member and that is the best way to meet a need. The bill’s steering group debated at some length whether there should be exemptions. As you know, the bill does not include any exemptions. For example, there is no exemption in relation to the choice whether to buy residential care with a direct payment, which is currently not lawful. The ADSW’s view is that, although residential care should be as personalised as possible, it is not self-directed support. You cannot choose who supports you, when you are supported or whether you are supported in the kind of meaningful way that self-directed support aims to achieve. However, the issue has been left to one side, presumably to be considered as part of statutory guidance and regulations, which in itself suggests that it requires careful consideration.

The Convener: Did the steering group discuss the eligibility issue that you highlighted earlier and—to take the most positive view—the enormous expectations that have been excited in people about the potential of this approach?

Duncan Mackay: As the only person on the steering group giving evidence this morning, I should point out that the ADSW repeatedly expressed the view that, if the bill did not recognise eligibility in some way, it might be interpreted that anyone could access an individual
budget. Clearly, resources would not permit that and, given the low level of need in many cases, that would not be the most appropriate way of meeting those needs. Of course, that pertains to children as well as to adults, which is why the association’s submission mentions section 22 of the Children (Scotland) Act 1995 and its reference to the “Promotion of welfare of children in need.”

Many people supported through that section’s provisions will not, in most local authorities, be eligible to access an individual budget—if anything, section 23 of the 1995 act, which relates to “Children affected by disability”, is more likely to apply in this case—but the fact is that regardless of whether we are talking about children or adults the capacity to meet people’s needs through either the individual budget or traditional services is not infinite. Indeed, we sought to make that very point in the bill steering group. Nevertheless, it has been suggested that it might be dealt with through statutory guidance and regulation.

The Convener: Do calculations of that kind bring us back to those questions of state versus family provision, eligibility and income?

Duncan Mackay: A great advantage—and indeed a challenge—that we have not discussed and which, I think, was raised in the RCN submission relates to the chargeable nature of social care services, the non-chargeable nature of healthcare services and how all of that applies in the world of integrated budgets. One of the beauties of self-directed support is that the budget can be calculated on a basis that does not require a charge to be drawn down, which means that, if you calculate your resource allocation system in a certain way, you can remove all the bureaucracy of charging and enforcing charges. Alternatively, you could set a higher individual budget, but you would have to reclaim that money through a charging policy. If the self-directed support budget were to be used for residential or nursing care, nearly all of it would have to be reclaimed because of the financial regulations that local authorities operate under.

Fiona McLeod: With regard to family carers, I have to say that Mr Mackay’s response has puzzled me. At this point, I should declare that, until last December, I was primary caregiver to a family member.

In response to the eighth question in the committee’s consultation, the ADSW says, “When an individual chooses to employ their own support, they should be able to do so without interference”, but then states:

“The current restrictions on the employment of close family members are important to preserve with existing discretion appropriate in exceptional circumstances.”

How do those two statements balance each other out? Should an individual not be able to use self-directed support to employ a personal assistant who is also a family member?

Duncan Mackay: You make a fair point. Those statements appear contradictory, but I refer you to my oral answer to the previous question. The exemptions are there for good reason but, given the context and challenges that we face, it is reasonable and appropriate to allow some discretion in navigating around them in certain circumstances.

Fiona McLeod: What are the good reasons for the exemptions?

Duncan Mackay: If carers were paid, the social work budget would be obliterated overnight.

Fiona McLeod: I am not talking about carers being paid. I am talking about the right of the individual under self-directed support to employ a personal assistant who happens to be a family member.

11:30

Duncan Mackay: That has the same effect of the local authority budget being used to pay for a family carer.

Fiona McLeod: You are saying that, under self-directed support, the local authority will exercise control over the employment of personal assistants.

Duncan Mackay: I am saying that the employment of personal assistants has some exemptions relating to carers that are there for good reason and that if, as a society, we moved to a position whereby a significantly higher proportion of carers were paid to carry out their caring responsibilities, then that would require a debate beyond the scope of the bill about the role of carers and how they are supported and about the role of the state in the provision of care and support.

Ruth Stark: Perhaps a parallel discussion has already taken place with regard to children being looked after by kinship carers and perhaps some of the lessons to be learned from that experience could inform this debate.

Nanette Milne: I have a question for the Association of Directors of Social Work. How ready are providers, particularly in the voluntary and private sectors, to deliver services in the flexible way that might be demanded if individuals seek those services?
Duncan Mackay: Just as local authorities will be in 32 different states of readiness, so providers will be in different states of readiness. Our experience of working with 18 providers over the course of implementing self-directed support has been that some have changed their financial systems, tackled their cultural issues and become flexible and dynamic in their practice; whereas others have struggled to make the transition and are perhaps wedded to existing ways of doing things and will ultimately find it more difficult to meet the expectations that people will have through the allocation of individual budgets.

There is one particular advantage to the bill’s proposals. At the moment there are severe constraints, through European Union regulations and so on, on how local authorities can commission services—the Public Audit Committee recently took evidence on that. Where people choose to exercise their right, an army of many commissioners will be created; once the budget is with them, they can choose where to place the business. Just like local authorities and others, providers who are slow to adapt the design of how they provide support will struggle to have a sustainable business, whereas those who adapt will be well placed to be cutting-edge providers in the new world.

Nanette Milne: So, as you said in your previous answer, the bill will lead to more efficiencies and economies in the provision sector.

Duncan Mackay: One of the great weapons in social work’s armoury is that there are many ways in which to meet a need. If we always resort to expensive formal services or the default ways of meeting the need, we will always incur costs that will mean that we will restrict access to fewer and fewer people. Self-directed support offers an opportunity for people to be much more engaged in how their needs can be met and to apply their own, often very imaginative solutions to that. At the same time it will release resources that can be used for reinvestment or, indeed, to contribute to the savings agenda.

Ruth Stark: People do not have to take services that they do not need. There is sometimes inflexibility in the current system in that regard.

Bob Doris: Mr Mackay referred to 18 providers in his local authority area. When assessment has been done and outcomes have been agreed, the main provider may be the local authority and one of its employees may determine or give advice on what provider may deliver the best outcome. Professionally, they would hope to be completely neutral, but is there a possibility for conflict of interest? If so, how could it be negated?

Duncan Mackay: The bill addresses any risk that people might be corralled and sent down one course of action or another by setting out the options that must be presented to the person, and facilitating access to expert support that is independent of the local authority. The most significant determinant of what people choose is the point at which the discussions take place. If they take place when people are in crisis, the opportunity to explore an individual budget is likely to be much less attractive to the individual. If good preventative work is done and intervention takes place at the appropriate stages, discussion becomes meaningful and there is no bias about how their needs can be met.

Bob Doris: If the bill succeeds, would it be worth doing post-implementation scrutiny across local authorities to see what the mix of provision becomes? Some local authorities are doing more valid and real working and being more proactive with third-sector and voluntary sector organisations to get a mix of potential products out there. We are more likely to see a cascading of services for carers going to those organisations. Would it be worth following the audit trail on that to see how one local authority compares to others?

Duncan Mackay: It would be worth doing that, but it is important to remember that the majority percentage of services is externally commissioned now, particularly in community care, although perhaps less so in children’s services. It would be interesting to monitor the implementation.

Bob Doris: We heard mention of the term individual accountable budget—I forget the precise term you used.

Duncan Mackay: Indicative.

Bob Doris: One of the traditional forms of care provision is the day centre for older people or for people who have learning difficulties. It might be an old building and staffed by people who are—I would hope—on reasonable pay and conditions. The building might be difficult to heat and, as a business model, that set up would be inefficient, so the indicative cost of sending someone there might be quite high. However, what would have to be applied through an individual indicative budget to disaggregate that service would, I imagine, have to be proportionally less than what it would cost to send someone there, so that an amount of core provision could remain with the service provider and we would not get to a tipping point. How do we weave our way through those kinds of issues?

Duncan Mackay: Earlier I made the point about traditional services needing to redesign themselves, if they have not done so already, so that they are flexible enough to meet need in ways that improve a person’s outcomes. From direct
experience of that, I know that it is sometimes necessary to allow some short-term, intensive services, such as those that have an assessment or re-ablement function, to operate outwith the framework of individual budgets. That can be used as a way of determining future levels of need that might then, because of that intervention, reduce the level of need, so that people do not need a lot of support thereafter, or determine the correct level of need that can be met in the individual budget. All those factors have to be taken into account in calculating resource allocation.

The Convener: We got some feedback about that yesterday. Earlier you mentioned the transfer of costs to individual budgets, and people have told us about the 25 per cent cuts in their budgets. They were aware of the global budget that was previously applied to an individual’s family and care, but when they took the self-directed support option in the pilot, they saw a deduction of 25 per cent in their budget. In those cases, that perception has poisoned the process from there on in. Those people do not see self-directed support as empowering or an opportunity; they see it in the context of a financial cut.

Duncan Mackay: I do not wish to dominate the evidence session, although I suppose that I have the advantage over some witnesses in that I have direct experience of operating self-directed support. In North Lanarkshire, we chose to do it in a very different way from the approach in Glasgow. I mentioned the first 150 people who now have fully implemented individual budgets. They were all new presentations of need, so they did not have an existing set of arrangements that we then had to reduce or potentially reduce.

Glasgow’s approach was to start with the existing population of service users and the existing resources and need. That approach is more challenging, because it is more likely to result in a reduction in resources. In North Lanarkshire, we have moved into the process of applying individual budgets to people who are already in services. That often involves people in long-stay institutional care or long-stay hospitals, such as people with learning disabilities, in which very little effort has been made to maximise their capacity. For example, some people who moved into their own house would wait at the door for somebody to open it, because that was what happened in the long-stay hospital environment.

Where the focus has not been on trying to restore or maximise capacity, the level of need and of individual budget is likely to be higher. However, after the move to an individual budget, the amount might be less than the amount that they received previously. There is a reduction, but people are likely to have much more flexibility in how they deploy the resource.

Richard Lyle: Every Government brings in a new policy or bill. To return to comments that Fiona McLeod and Ruth Stark made, we all know how the 32 councils have 32 ways of dealing with kinship care. Some have implemented it and some have not—I have fought with Duncan Mackay on the issue. How can we ensure that we do not have a postcode lottery under the bill, that everyone is treated equally and that the 32 councils implement the bill?

Ruth Stark: We need open and transparent scrutiny of the resource allocation to ensure that people throughout the country receive similar services. We must take into account the difficulties of providing services in, say, the Western Isles compared to the difficulties in the Borders or Glasgow, which will all have different cost implications. Therefore, we will need a complex system to ensure that we have an equitable service. Such a service might cost different amounts in different parts of the country.

Duncan Mackay: I am tempted to say that policy eventually catches up with best practice, but I will not. I am sure that that question will helpfully be directed at the care inspectorate—Social Care and Social Work Improvement Scotland—when it gives evidence in the next panel. It is a reasonable aspiration of Government—people can legitimately expect the same standards, support and service in all local authority areas. Some of the discussions on the bill steering group have examined whether there should be a national resource allocation system. The reason why that is not possible is that authority A might choose to allocate much more to social work than authority B, so the amount in the pot that can be distributed through individual budgets might be different.

The funding in Glasgow and Fife is different from that in North Lanarkshire or South Lanarkshire. The care inspectorate has done detailed work on that, and it will say that the situation does not necessarily mean that there is a difference in outcomes. There is not necessarily a direct relationship between spend and outcomes. Ultimately, the issue is about how we measure outcomes across the 32 areas. That is a challenge in itself, but ultimately that will be the acid test of whether policy is being implemented with equal vigour and success.

The Convener: As there are no more questions, I express the committee’s thanks to the witnesses for giving us their time and for their evidence. Thank you very much indeed.
11:45

Meeting suspended.

11:50

On resuming—

The Convener: I welcome our second panel of witnesses. From Social Care and Social Work Improvement Scotland—the care inspectorate—we have David Cumming, the director of operations, programming, co-operation and registration, and Professor Frank Clark, chair of the board of the care inspectorate. Sandra McDonald is the public guardian, George Kappler is deputy chief executive of the Mental Welfare Commission for Scotland. Adrian Ward is convener of the mental health and disability committee of the Law Society of Scotland.

Gil Paterson: My opening question is a general one, although we will come on to discuss capacity, which I know is of particular interest to the panel. Do you welcome the bill? Is it taking us in the right direction?

Professor Frank Clark (Social Care and Social Work Improvement Scotland): Thank you for giving us the opportunity to present evidence. The care inspectorate is supportive of the bill and the principles in it, but we do not see it in splendid isolation. We regard the bill very much as a logical step on the way to the integration of health and social care.

Adrian Ward (Law Society of Scotland): I welcome the basic principle of empowerment. We expressed a range of concerns about the draft bill and we are impressed by the extent to which our concerns were taken on board before the bill was introduced. We still have some concerns, which is why I am here, but much of what we and others said has been listened to and acted on, which we welcome.

Sandra McDonald (Office of the Public Guardian Scotland): The public guardian’s office feels likewise. We welcome the general tenor of the bill. We had specific concerns about people with incapacity, which have largely been listened to.

George Kappler (Mental Welfare Commission for Scotland): The commission is of the same mind. We certainly welcome the bill’s objectives and support the principles, but we have concerns about how capacity will be dealt with.

Gil Paterson: The Mental Welfare Commission’s submission set out issues to do with capacity. Please feel free to talk about your concerns.

George Kappler: A major concern is to do with the point at which assisting someone in making choices and in having their care delivered moves into making substitute decisions on their behalf. There can be a fine line in that regard. Capacity is not an easy thing to establish—we cannot take a blood level of it—but it can be enhanced. All of us, in isolation, would not be able to make certain decisions, especially complex financial decisions, that we could make if we had the appropriate help and support.

Assistance with choosing options and enhancing someone’s capacity is therefore an essential part of the bill, which we welcome. However, what is confusing is that the policy memorandum sometimes talks about the possibility of substitute decision making, particularly in the context of the use of section 13ZA of the Social Work (Scotland) Act 1968 to gain authorisation to take action on behalf of someone who cannot make informed choices. Someone who can be assisted to choose an option but cannot be an active participant in organising the care that will be delivered to them probably still has the capacity to choose to appoint a welfare attorney or financial attorney to act on their behalf.

Our concern, especially based on the explanatory notes, is that the bill might allow for the use of substitute decision making, and we do not think that there are appropriate safeguards in the bill to allow that. It might not take advantage of some of the protections that are in the Adults with Incapacity (Scotland) Act 2000.

Gil Paterson: Does anyone else want to say anything? I would be happy to hear any solutions that people might propose.

Sandra McDonald: Our concern related to the confusions that might be created by the use of the term “assisted decision making” alongside language that is very much the kind of language that is used in relation to adults with incapacity. We do not know whether practitioners might feel that they can assist those who truly lack capacity to make a decision, which would go beyond assisted decision making and towards substitute decision making. The policy memorandum makes it clear that that is not intended to be the case, but it is not clear in the bill.

David Cumming (Social Care and Social Work Improvement Scotland): You will appreciate that the formation of the care inspectorate last April brought together various previous workstreams. In our previous experience of carrying out social work inspections across the 32 councils, we have realised—primarily through the reading of files and records and trying to form a view about how sensitively they reflect the work of the frontline practitioners—that discussions of capacity issues and sensitive areas by practitioners is of key importance. We have seen
some good practice, but we have also seen some examples of a perfunctory approach being taken. If frontline staff tend to be anxious to get to the end point of an assessment, it can be difficult to convey to the service user that there is time to make a considered decision and that there is some understanding of their position, including how much capacity they have to understand the choices that are available to them.

Adrian Ward: I used the word, "empowerment". A balance to empowerment is protection.

We can think of three categories of people. There are those who are capable of making their own decisions and do not need help—that is easy. There are those who are capable of making their own decisions but need some help to get there, which is where empowerment comes in and where, potentially, some protection is needed to determine whether we are hearing what they want with assistance, or what the assister wants us to hear. Finally, there are those who are not capable of making decisions. If someone is not capable of a decision, you cannot assist them to make it. The draft bill was unclear in that regard. I agree with George Kappler and Sandra McDonald that there are still concerns about that, including concerns to do with the language in the section. Why are we referring to “mental disorder or difficulties in communicating”?

That is the sort of language that is used in the Adults with Incapacity (Scotland) Act 2000 when it talks about people who need help. If you need help, you need to define why you need help—you need to say, “I feel I need someone to help me.”

If someone is still capable, but is in need of help, why should the local authority appoint someone to help? If I need help, surely I would know who I wanted to help me. That should, perhaps, be my choice.

If there is no capacity, or the person is so vulnerable that the person who helps them is in danger of substituting their views for those of the service user, we need protections to be in place—we cannot get away from that. Of course, capacity can not only be at different levels in terms of the person’s ability to make certain decisions and their lack of ability to implement them, it can also change over the course of time. Someone who needed help at one point might have lost capacity to manage matters at a later point. We need to pick up those issues as well.

I was impressed with what Ruth Stark said during the earlier session about her concerns about the many issues that weave into self-directed support. Another one is this: if the local authority chooses the person to assist, what will its responsibilities be, both in terms of the choice and in terms of monitoring what goes on afterwards?

12:00

Professor Clark: I will make a more general point in response to Gil Paterson, who asked, “So what can we do about this?” You have heard about some of the technical issues, but we need to set the issue in a broader context.

Sandra McDonald mentioned confusion. The area is undoubtedly complex and, as a precursor to the legislation, we need effective communication with the public at large about what self-directed support means, what people can expect from it and so on. We also need those things to be communicated simultaneously to professional staff. I am talking not about training, but about providing information to people. We also have to engage service providers in the process of understanding self-directed support.

In particular—David Cumming touched on this—the engagement with individuals who might avail themselves of self-directed support needs to be handled consistently and in a manner that effectively markets it and adequately communicates its potential to people.

The Convener: In cases where capacity is under question, we heard yesterday that, under the full guardianship arrangements, people are having to use the legal process and present before a sheriff. Would you concede that the process does not need to be as formal as that? Should there be something less formal to enable people to access self-directed support?

Sandra McDonald: At present, only the two extremes exist. If the person has lost capacity or lacks capacity and they have not previously granted a power of attorney to somebody so that they can make the decisions, then, if they require self-directed support, the guardianship process is the solution. That would involve both financial and welfare guardianship, because both limbs would be required—one to administer the money and one to commission the services.

There is a proposal before the justice side of the Government, which is thinking about whether an interim measure could address the issue, but that will be some way down the line, even if the Government agrees that it would be a solution to that and other issues that we face in the area.

The Convener: Is there general agreement that something should be done? In some cases, things are not planned. Perhaps someone has a stroke or someone goes into hospital. People are anxious to push this on—not just social workers or local government employees, but family members. People who are closest to those who need support are anxious to make appropriate arrangements as soon as possible. What is the solution? If there is a general acceptance that an interim measure can be sorted out and there is willingness to work
towards meeting people’s needs, why is it taking so long?

Adrian Ward: For a person to have someone else managing their support probably puts that person in a dominant position in most areas of their life. It is not a minor matter. It is not like managing one bank account. It is a pretty major role with all sorts of consequences and it determines the quality of the person’s life. The question could then be whether the procedures and protections that the Parliament put in place at its outset for people with incapacity should be available to people who will potentially have somebody else exercising such a major role in their lives?

The Convener: You pose a scenario that the appropriate person would be someone other than the person who was appointed guardian through a legal process. In the vast majority of cases, it would be the same person, would it not? The appropriate person would be the spouse, partner, son or daughter.

Adrian Ward: Yes, but if you have a guardian with appropriate powers, your problem is solved. To pick up George Kappler’s point, if somebody has limited or deteriorating capacity, they can follow the much simpler procedure of appointing an attorney competently. You can be capable of appointing an attorney—you know what you want them to do but you are not capable of doing all the detailed things that that attorney is going to have to do. Those two routes are available.

Sandra McDonald has alluded to a debate that she deserves the credit for initiating, which is whether we can get in place some grades of—we will call it guardianship—that are less than full-blown guardianship. That raises a raft of issues. I doubt whether it is really a matter for this discussion. There will be many views on that and there are many issues relating to that.

The guidance suggests that we add to those two possibilities—guardianship as it now is, and power of attorney—section 13ZA of the Social Work (Scotland) Act 1968. I think that Sandra McDonald’s submission pointed out that section 13ZA is to do with welfare matters, not matters of financial management. It seems to me that to point people in that direction is rather circular, because that empowers the local authority to do what is necessary. For example, I have opted for self-directed support but I am shunted to an amended section 13ZA that includes all the financial and contractual matters. However, the local authority will do it, so am I not back to the local authority doing it in the first place?

George Kappler: We have considerable sympathy with families who feel that they have to take out guardianship just for self-directed support. What is harder to tease out are the gradations. How many of those people would have been able to appoint a power of attorney?

The other side of that is that if someone lacks capacity to such a degree that they cannot make decisions on a lot of aspects of their lives, it is hard to think why we would need only that one power and not other powers to make decisions and take actions on behalf of the individual.

We support the discussion that needs to be taken forward about the possibility of graded forms of guardianship. Arguably, a family that has been caring closely for someone for their whole life should not be treated in the same way as someone who is kicking over the traces, such as a 25-year-old with severely challenging behaviour who is alienated from his family or does not have a family. At present the law treats them in the same way. It should be possible to have something that is more proportionate to individual circumstances but still provides the necessary safeguards.

Section 13ZA came about because people were stuck in hospital waiting for welfare guardianship applications to go through. Three local authorities in particular—West Lothian, Perthshire and Fife—caused problems because the legal advice that they were getting meant that people who did not need to be in hospital were clogging up hospital beds. Section 13ZA was a way of clarifying what the Government felt was the authority of social work to take action when no one was in opposition to it.

The problem that we have is that no one has had any kind of oversight as to how that is working and whether it has been used properly. We get no indication that local authorities are on top of it, so it is hard to do any kind of central monitoring of how it is working.

Gil Paterson: I have a short question for the Law Society, although anyone is free to answer.

In order that the Government achieves what it has set out to achieve, there is a call for the issue of capacity to be included in the bill. Is that necessary, or is it adequate for the Government to show its intention to cover that issue in guidance?

Adrian Ward: Because of the confusion that Sandra McDonald and I referred to, the language of incapacity is leading us towards assistance. The first divide should be an assessment of capacity. Does the particular service user have the capacity to decide for themselves, either with or without assistance, or do they not have the capacity to make some or all of the decisions? It would be very helpful if that was in the bill, because at the moment what is in the bill creates doubt and confusion.
We are not talking about whether we will get the right outcome if we are all judging, or if the public guardian and a senior member of the Mental Welfare Commission are judging; we are talking about folk out there just picking up and working with the legislation. If there is scope for confusion in the legislation, confusion will occur and things will go wrong. That could be avoided if the drafting of the legislation was clearer on that point.

Sandra McDonald: There has to be some reference to capacity in the bill. To pick up a point that was made by one of our colleagues, assisted decision making is perfectly legitimate, but there is no reference to when assisted decision making may stop if the person then loses capacity. In such a case, the person who is assisting would become the substitute decision maker unless there was a clear differentiation between the capacity levels.

Fiona McLeod: Sections 5(3) and 5(4)(a) and (b) talk about the local authority taking “reasonable steps” to provide assistance. Would it help us in this situation if it was explicit that advocacy services had to be available to support people?

Before the panel answers that, I have a little statement to make. Professor Clark talked about doing a selling job on SDS, and I would like to do a selling job for the Office of the Public Guardian. One of our biggest tasks is to convince people to take out powers of attorney when they have the capacity to do so, so that we are not in a bad position later.

The Mental Welfare Commission talked about article 12 of the UN convention on the rights of persons with disabilities, which is about access to support. The care inspectorate talked about the use of advocates and advocacy. I know that this is not the complete answer to the problems that we are discussing, but would it be a step towards helping in such a situation?

George Kappler: There is no doubt that advocacy has a role to play. I am not sure whether it is necessary to put it in the bill—I am open to debating that—but advocates definitely have a role. The problem is that advocacy is a bit overstretched in many areas. Some attention would have to be paid to the funding of advocacy services if they are to be formally extended. There is a danger in not formally extending those services, because they are underresourced at the moment. Some attention would have to be paid to ensuring that the resources are there to make the provision of the service realistic.

Professor Clark: I am thoughtful about the whole issue of advocacy for a variety of reasons. It must be proportionate to the assessed needs of the individual and it is always difficult to get that fit. We must not lose sight of the fact that we are talking about independent advocacy as opposed to the advocacy that every doctor, nurse and social care practitioner should, as of right, provide on behalf of their patient, client or whatever. Independent advocacy should be provided as well as, and not instead of, that advocacy that must be in place.

We must be careful about the circumstances in which advocacy is engaged, the costs associated with it, and how much of the pot could be spent simply on advocacy but not on the front-line services that the individual might need. That is not to deny them the support of advocacy but, as was graphically demonstrated in the earlier evidence session, the pot is finite and only of a given size. If we use a significant amount of it on advocacy, by definition, the balance will be correspondingly less. We must be careful about that. There is no one-size-fits-all solution, and the issue is complex. I am being repetitive, but we must keep it in mind that independent advocacy is provided in addition to that which is provided by health and social care professionals.

12:15

David Cumming: A key factor in all this is the interaction between the social care professional and the person who is seeking and using the service. At the heart of that, there must be a strong element of trust and confidence that the eventual decisions are properly person centred and not foisted on the individual. I use the word “foisted” just to accentuate that point.

The decisions must be taken carefully. I read some of the evidence from last week’s meeting, which took me back to my earlier career as a social worker. We would expect to spend some considerable time with the service user. At that time we used the term “casework”, but it involved considerable engagement with the service user. The pressure on front-line services nowadays sometimes reduces that kind of contact and, correspondingly, the element of trust. I am not saying that it is absent, but it must be built up further.

Adrian Ward: May I respond, too, on advocacy? First, I declare an interest, in that I was responsible for establishing an advocacy service. I am totally in favour of such services.

The most difficult contested guardianship case that I ever had was eventually resolved when I said, “Let’s get everybody together and, among other things, make sure that the adult at the centre of it is represented by an advocate.” That gave us the key to resolving that case, so I am very much in favour of an advocacy service. However, there is more need than there is availability.

I read through all the committee’s proceedings of a week ago—people do do these things—
because I was interested to see what could be gleaned from the pilots about how issues were dealt with. I did not find very much, but I found this quotation from Dr Ridley:

“I will pick up something that was said about advocacy. To be honest, we found extremely limited evidence of the involvement of independent advocates in helping people to work through what should be in their assessments and what they wanted. That meant that assessments were sometimes tailored around carers’ perceptions. That was quite a gap.”—[Official Report, Health and Sport Committee, 8 May 2012; c 2182.]

I thought that that was quite a telling piece of evidence, which sets the scene for the discussion that we are having just now.

The Adults with Incapacity (Scotland) Bill was amended by the Parliament to include specific reference to independent advocates in the court processes—basically, sheriffs must listen to independent advocates. I do not know whether that would help us in this discussion, but it would do no harm. There has been the precedent of specific reference to advocacy being made in the Adults with Incapacity (Scotland) Act 2000, so perhaps it would be appropriate to discuss it in this context. I am neutral on that, but I can see that it could be valuable.

Fiona McLeod: The care inspectorate referred to the professionalism of social workers, healthcare workers and everybody who supports a person. I understand that. However, we heard at last week’s meeting that, particularly for social work departments, there will be a balancing act; they will support users and commission care for them, and they will also be providers of care. That is another reason why there should be an independent voice to speak for the user who cannot make their opinions understood.

Professor Clark: I would agree with what you said, with that last qualification for the individual who has been demonstrated as needing such a service and who can benefit from it. However, historically, we have seen local authorities acting in the capacity of the provider of services and having a multiplicity of roles in that regard, and doing that quite satisfactorily. They do it, for example, with care homes, so there should be no reason why they should not be able to translate that into responding to this particular area.

Fiona McLeod: On personal assistants and the regulation thereof, it was interesting that the care inspectorate talked about the regulation of care assistants when they are employed by agencies. However, increasingly we will see that individuals may employ their personal assistants directly. Should we consider moving personal assistants who are not employed through an agency into the framework that you are currently using? There is a date by which all personal assistants have to be trained or qualified to a certain level—I cannot remember when it is.

How would you inspect personal assistants, if they came within your remit? In the interim, would it be a sufficient safeguard to insist that personal assistants who are not employed through an agency must go through PVG disclosure?

Professor Clark: The issue goes almost to the heart of the bill and the detail in that regard. Personal assistants could represent a significant call on SDS and will not always be independent; in future, people could well employ family members.

The care inspectorate’s job—if you will indulge me for a moment—is to look at the totality of social work services in Scotland’s local authorities. As part of that, we will consider the extent to which local authorities are giving effect to SDS in their day-to-day work. We will consider whether authorities have systems and procedures in place and whether they actively promote SDS for individuals who might benefit from the approach, as we expect them to do. We will do case-record reading, to ascertain whether there is evidence of the approach being carried through, and we will sample or validate—call it what you will—the self-evaluation material, to determine whether anticipated outcomes for individuals are achieved. That is one way in which we can ascertain whether the presence of a personal assistant is achieving the benefit that was intended when the individual engaged them. That is our intention.

Let me put on another hat. I am a member of the board of the Scottish Social Services Council. Members know that we have been moving progressively towards regulation of the social care workforce. There is no doubt that to have a largely unregulated group of individuals offering services to the most vulnerable people in society would leave an anomaly. Effective care management and care co-ordination in local authorities should take account of that.

David Cumming: When the care inspectorate examines the arrangements that local authorities put in place, we will expect there to be an early reviewing mechanism. That is important. I am not saying that we expect a situation to get worse before it can be improved, but local authorities have an on-going duty of care. The care inspectorate expects there to be an active mechanism for review if someone says, “This isn’t really working for me. The outcomes aren’t being achieved and I want to have another think about it.” We will want to see evidence of how local authorities put into practice their reviewing arrangements.

It is about working alongside the person who is receiving the service and trying to advise them, while not undermining their autonomy, if there is
an issue that is prejudicial to their good care and independence.

**George Kappler:** Because of the nature of the work that the Mental Welfare Commission is involved in, we end up seeing perhaps the 1 per cent of people who will take advantage of a situation and exploit someone for their own purposes, so it is reassuring to hear about the care inspectorate’s intentions in relation to external scrutiny.

Internal governance is particularly important, and we are concerned that that is getting more difficult for local authorities, given their stretched management systems. We have had a few investigations that indicated that local authorities do not always take advantage of the mechanisms that exist in the legislation on the protection of vulnerable individuals, which are an essential part of the system.

I said that capacity can be enhanced; we must also remember that undue external influence on a person who is on the cusp can diminish their capacity to act freely and in their own interest. We must always be mindful of that.

**Sandra McDonald:** Our experience has shown that an on-going assessment or review of the person is more important in the first instance than a PVG check, which can be only a snapshot of a moment in time.

In the guardianship process, a nominated guardian appears before the sheriff. They are assessed as potentially suitable by that sheriff in a fairly onerous process, and are deemed to be suitable. However, some way down the line, under the current supervision arrangements, we find that the person is not actually suitable. It may be that they were perfectly suitable at the outset, but circumstances have changed. Stresses and pressures have arisen in their life, and they have succumbed to them and unfortunately abused the person for whom they legitimately and genuinely set out to care.

The PVG check may be perfectly fine in the first instance, but unless there is on-going supervision—I am thinking in particular of directly employed people—one would not notice that circumstances have changed. I would certainly support something taking place further down the care inspectorate route, rather than just a one-off initial PVG assessment.

**Professor Clark:** Regulation or registration of individuals by themselves will not prevent abuse occurring. We know that: we see it day and daily. However, with our input, such regulation could reduce the risk of that abuse happening.

**The Convener:** We have been discussing pretty reactive stuff to do with what happens when things go wrong—or are expected to go wrong—or where there is a lack of trust in the system. However, we have received written evidence from the Scottish Human Rights Commission, which advocates a more human rights-based element in the legislation and refers to a report on independent living by the UK Joint Committee on Human Rights.

The SHRC’s submission states:

“The Commission believes that this Bill represents an opportunity for Scotland to enshrine the right to independent living in this core piece of social care legislation.”

Would that address some of the problems? Would it shift the balance, so that we move from the right for people to live as independent a life as they possibly can and put the onus on others? Would it take us beyond the language of choice, partnership and participation, which we anticipate from our experience of previous legislation may not lead to the best outcomes?

**David Cumming:** How many hours will we spend debating that question? It is a good question, but it is very complicated.

One of the big challenges that we face is trying to enable people with significant difficulties to live lives that are as normal as possible. That intention is inherent in the bill, but we are struggling with how we take that forward.

We must consider what we have achieved since the National Health Service and Community Care Act 1990, which included directions in choice. We have moved forward quite considerably in that regard, as was alluded to in the previous evidence session. One obvious example that was mentioned was the fact that in the not-too-distant past, large numbers of adults with learning disabilities were living day and daily in hospitals. There has been a major transformation in that regard.

That is not to say that all is now as we would wish it to be, but the bill gives us an opportunity. On the question whether it is an opportunity or a threat, I think that it is very much the former. We must move forward in that spirit by enabling the individual to exercise control, and enabling the professionals—if that is the word—to work in full partnership, using terms such as collaboration. We need to include all those arrangements for working together.

That stands in distinct contrast to the service-driven approach that obtained prior to the 1990 act, after which there was a move towards a needs assessment approach. The bill represents another quite significant change with its move towards empowering people to take a view on how they wish to remain independent and to exercise that independence in their own lives.
The Convener: But many of the same good intentions sat behind the direct payments legislation, guidance and everything else and the proof of the pudding in that respect has been very slow take-up, resistance to the move and—some might say—the appearance of vested interests.

David Cumming: Earlier, Duncan Mackay acknowledged that in his authority the level of direct payments was very low, but he regarded it as one indicator of how people could be supported. He also set out some very impressive numbers on the people receiving individual budgets and I note that, in its inspections, the care inspectorate’s predecessor body examined how that particular local authority had enabled service redesign over an eight to 10-year period. An important principle is that some of these transformational changes will not happen over one or two years; it must be understood that they will take place over a longer term. That might require not only patience but some vision and confidence that this is the right direction, and I certainly think that some of the empirical evidence that Duncan Mackay cited earlier is correct in that respect.

The Convener: The basic issue is whether the bill is sufficient to shift the balance towards those who are in receipt or need of care. Earlier, we were discussing the question whether, if I become incapacitated, I can be confident that people are being compelled to do their best for me. Does the bill do what it says on the tin?

Adrian Ward: As a lawyer, I point out that our aspiration for the law is that it create the optimum framework for getting things right. In other words, the law itself does not get things right; people have to operate and work within it.

The fact is that we have come a long way. Prior to the Adults with Incapacity (Scotland) Act 2000, we had very fixed provision. Basically, a diagnosis put an individual in a certain box and, as a result, they got certain provision. The philosophy behind and legal framework set out in the 2000 act were based on assessing need, having a range of flexible possibilities and putting in place provision to suit the individual. Under this bill, the same will apply to the care and services that individuals receive. Instead of their being put into this or that fixed box, they will have a range of possibilities to meet their needs. Passing this bill will take things in the right direction but it will not simply make things happen. It is a bit like being in a traffic jam: there is a huge difference between being stuck in a jam and going nowhere and being stuck in a jam but moving in the right direction—if not as quickly as you would like to be. I am afraid that that is the reality of the world that we live in.

Professor Clark: I concur with Adrian Ward. Although legislation does not make things happen in and of itself, it provides the best opportunity for them to happen. However, a number of things have to take place alongside it. This is all about cultural and operational differences and how health and social care professionals interact and work with individuals to put them at the centre and to support them in making informed choices about what is right for them. That might shake some of the foundations of traditional thinking, because people will come up with imaginative and innovative ideas and we must ensure that we do not get in their way.

Richard Lyle: I have listened to those comments with great interest. Indeed, I have been through the situation myself and know that it is very complex.

I apologise if I seem to be moving in an entirely different direction, but the witnesses might have heard my earlier question about the possibility of a postcode lottery with 32 councils doing different things and the need to ensure that everyone is working towards providing people with the same service. Why do you believe that local authorities are performing at different levels with regard to SDS?

David Cumming: The starting point is different. Variation across the country is informed by local decisions. The point that was made during the earlier evidence session also recognises that the amount of resource that is committed by each local authority will vary on a per capita basis and in the real terms of the resources that are assigned to those services.

If we look at the issue very narrowly, it might be seen as a focus on one part of the public sector budget when, in fact, it is a much wider area. That point was raised earlier so I will not rehearse it again, but it is important. If people are to be independent and have fulfilling lives, they will want to access a range of services within the public and private sectors and they will have to be reflected in local circumstances.

Certain approaches will have to be taken that are fundamental to that situation, and I cannot see any change to how one will go about assessing jointly with an individual service user what they want in order to achieve their outcomes. That has to be a necessary starter.

The flipside is that we should not just take a one-dimensional approach. Other people within the individual’s household—I am talking about carers or extended family members—are vital, too. Sometimes the development of services for one individual might also have to take fully into account the consequences for another. When we are talking about the redesign of services for adults
who have a learning disability, for example, sometimes the pace at which that redesign takes place is significant. Sometimes the pace is too hasty and neither considered nor measured, and sometimes the consequences for those who had full-time care responsibilities are not given enough weight.

We might come on to discuss carer strategy and carer assessment later, but there has been a variability in those across the country for reasons that we can go into. We cannot easily state that the country has a uniform approach to such provision, and nor should we because of the contrast between island and remote and rural authorities and certain urban areas. They require quite different resources and provide different access to services.

Professor Clark: May I add to that? Richard Lyle has asked a very good question. I would not expect provision to be exactly the same across the country, for the reason that David Cumming has described; I would expect some variation.

I would like the care inspectorate, as a regulatory and scrutiny body, to be aware of and share a set of credible characteristics of good self-directed support that form a shade card that is known to and accepted by individuals so that, when we do our inspections, we can hold up the self-same shade card that the local authority is holding up and ask whether its self-directed support is characterised by the same elements, some of which are expressed in the principles in the bill. I am not advocating any kind of national prescription, because that would not work. It would also get in the way of innovation. However, we need some common characteristics so that what is expected is explicitly understood and so that, when the care inspectorate looks at the situation Scotland-wide and reports on it, we can highlight good practice and commend it to individuals, as well as identifying those areas that might be falling short of the mark and examining with them why that should be the case.

Nanette Milne: When the care inspectorate inspected social work services and their variability, did you detect any resistance to culture change, which would obviously have to happen if the bill goes ahead?

David Cumming: I suppose that resistance to change is always present in any circumstances. We should point to the achievements that have been made over a period of time. We are talking about reshaping care for older people or shifting the balance of care, and that is about transformational change. That is not to say that we have reached the end of the process; we are still on the proverbial journey.

There is a lot of evidence that front-line staff, especially when they are working with colleagues in localities, are more likely to know one another and have confidence in one another's abilities. We have talked about pooled budgets and shared activities. A very good point was made in the earlier evidence session about the local authority funding what might otherwise be deemed as a health response.

Some of the barriers can be broken down when there is confidence that the outcomes that are being sought in conjunction with the person using the services are the right ones. Again, we are in a precursor stage for where we might be in a few years, so it is important that we have a joint vision and that staff from different disciplines, whether that be education, health or social work, have the same understanding. That is part of the cultural shift that we have talked about. We need to be alert, too, to the public awareness issue that Frank Clark talked about. A risk-aversion position can obtain, but we can also see opportunities for promoting a good service.

Professor Clark: A relevant point is that unless we can get staff to behave in the manner in which we need them to behave, the change will not happen. The situation is a bit like what happened with the integration of health and social care, in that there is no point in getting the structure right unless practitioners on the ground behave differently.

To answer Nanette Milne's question directly, the people to whom I have talked are not resistant to change but they are uncertain about it. As the process unfolds, we need to give clarity and there must be strong leadership and support for individuals. Some find the process a bit threatening because they tend to convert it back into, "My budget and your budget are coming together, so what does that mean for me?" However, such reactions are natural and need to be managed.

I would not therefore say that there is resistance to change. I think that most people can see the benefits down the line and are not resistant, but they are probably a bit uncertain about what it might mean for them.

Nanette Milne: I am encouraged by your responses. My latter days as a councillor were when direct payments were first coming in, and I detected significant resistance to them at that point. Clearly, things are moving forward in that regard, although they have not gone the whole way.

The Convener: In our earlier session, Mr Mackay referred to work that the care inspectorate had carried out across local authorities. Is that available to the committee?
David Cumming: Each of the predecessor bodies—the care commission and the Social Work Inspection Agency—published end of session reports, so to speak, in 2010, which are very informative about examples of good practice. There are areas of good practice across the regulatory services and services that local authorities provide or commission. Each of the two reports highlighted key gaps that needed to be worked on. Indeed, as a scrutiny body, we continue to work jointly with local authorities and with the regulatory care providers on how the services can be improved. That is at the heart of our grading and engagement approach.

The Convener: We look forward to your accessing those reports for us. A recurring issue over the past couple of days has been postcode lotteries—Richard Lyle referred to that. We heard yesterday of good examples of practice, but the personalisation agenda is affected by what part of the country people live in and the different packages that may be available to them. We look forward to seeing information about that.

This will be made public anyway and I do not want to go on too much about it, but we feel from our engagement with service users that there are some issues about how assessments are carried out—the users have strong views about that—and whether there is continuity with regard to the social worker. Our work on those issues may be informative for you and the work that you carry out.

David Cumming: We will be able to give you some evidence from the work that I referred to about responses from various service-user groups and carers. For each of the 32 councils, we undertook considerable surveying and had direct meetings with carers and service users.

12:45

The Convener: Is the care inspectorate’s ambition to inspect this and other areas all budgeted for and subject to a planned programme? The committee is aware of its work in care homes but is the inspectorate getting out to a wider group of people who are not being put up by the local authority or social work and whose problems are unlikely to be presented on the day of the inspection?

Professor Clark: You asked two or three questions there and the answer to your first is yes, we are resourced to do the work. The cabinet secretary intervened to protect our budget—

The Convener: Is this work covered by your budget or is it additional?

Professor Clark: As I said earlier, given that we see self-directed support as an integral part of looking at local authority social work departments, we will examine it when we inspect other matters and will not treat it as something separate and independent. It is not a case of our saying that we are not resourced to do it.

Although our new organisation had a bit of a late start-up—the board did not come together until March last year—we have made very significant changes over the year; indeed, this year, we will start for the first time groundbreaking work on an integrated approach to the scrutiny of children’s services and hope that by the tail-end of the year we will be able to roll that out on a pilot basis to adult services. Instead of having a multiplicity of inputs, we will have a truly multiagency input and hope that, over time, such an approach will reduce the scrutiny footprint in these areas.

The Convener: So this is simply a continuation of the inspection of direct payments that you carried out in the past.

Professor Clark: Absolutely. However—and you would expect me to say this—I cannot at this stage dot the i’s or cross the t’s because there is nothing to dot or cross yet. We are as confident as we can be that we can accommodate all this within our future scrutiny plans.

The Convener: You can write to the committee with the planned programme for inspections.

Professor Clark: I am happy to share that with members.

Drew Smith: I apologise if I have assumed incorrectly but I believe that you were all present for the evidence from the previous panel, whom I asked about appeals with regard to the assessment of need. Do any of you wish to comment on that? For example, do you agree with ADSW’s statement that the complaints procedure was robust enough?

George Kappler: I was just about to raise that very issue. In order to fully avail themselves of the opportunities presented by the bill, people will need ease of access to a review, appeal or complaints procedure. Mindful of Duncan Mackay’s comments on the potential resource implications of having a separate appeals process and of the fact that the adversarial nature of complaints procedures means that parties often exhaust themselves without securing a happy outcome, I think that we should move from some kind of adversarial procedure to a system in which assistance is provided for, say, mediation.

Sandra McDonald: I certainly advocate the kind of separation of appeals and complaints that I think Mr Smith is alluding to. There is an appeals mechanism at every stage of the process for incapable adults, with whom I am concerned, and I think that for the sake of equity the same
mechanism should be available for capable adults
who are being assisted. However, I appreciate that
such a move would have resource implications.

David Cumming: I do not wish to say much
more about appeals, because we do not have a
strong locus in that respect. Our responsibilities
include following up complaints against regulatory
services—and, indeed, our own practices—but we
would regard that as part of our on-going work.

Professor Clark: We need to look at the issue
from the point of view of the individual who feels
unhappy, aggrieved or whatever. What matters is
their perception of the fairness of the process.
Whether it is defined as a complaint or an appeal,
the individual should feel that it is fair. The object
of the exercise is to give power to people. Part of
the exercise of that power must be to bring them
to a point at which they are perhaps not happy, but
they understand why the point has been reached
and they have a mechanism for dealing with it.

Adrian Ward: There is a huge difference
between a complaints procedure and an appeals
procedure. In practice, people often come to me
because they have been through complaints
procedures and they are still unhappy. They bring
great big long letters attacking what has happened
in the past and expressing their unhappiness with
individuals. They might have started off with one
or two complaints, but they will probably have
many more. Just yesterday, I read a letter that had
got up to about 14 complaints—the person was
thinking, “What else can we throw in?”

Complaints are all about looking backwards and
being critical. When people come to me and I have
read all that, I ask them what they are trying to
achieve and where they want to get to in future.
Sometimes, the answer is, “Oh ... um ... er.” An
appeals procedure is about saying that we think
that something has not gone right and asking
where we want to get to and what we want to put
in place. Complaints procedures tend to be
backwards looking and about criticising individuals.

As a practising lawyer, one of the first things
that I ask people when they get into any sort of
dispute is whether the person whom they are in
dispute with is somebody they will fight out the
dispute with and never deal with again, or
somebody they will have to work with in future.
Those are two different situations.

I am not sure that a clear appeals procedure is
more demanding of resources than a complaints
procedure. I have already alluded to the reason for
that. In a complaints procedure, people will drum
up everything that they can possibly find to attack
and they might go on for a long time. After
exhausting one procedure, they will go on to
another. They will write to their MSP, their MP and
the Prime Minister. Such cases come to me. I see
people who are so hung up on hammering their
complaint that they are almost disappointed if I
find a way of resolving it, because it has become a
way of life. That must have huge resource
implications for the people who are on the other
end, whereas, with a clear and focused appeals
procedure that considers what people want and
where they want to get to, we will get through the
procedure. The person might get a loaf or half a
loaf, or they might get nothing, but the issue will
have been addressed.

Drew Smith: It is useful to have that on the
record, particularly Mr Ward’s comments. I tend to
agree that we should not overlook the resource
implications of a protracted complaints procedure.
I presume that Mr Ward’s point on the budgetary
implications is a general view among the panel.
Bearing in mind that the main argument against
going down an appeals route, or having something
that is different from a complaints system and
closer to an appeals route, is to do with cost, are
you involved with or aware of any systems that
might present an opportunity to find a compromise?

Professor Clark: I would not want to give the
impression that cost is the only driver. Again, we
must consider the issue from the point of view of
the individual. A complaints procedure can be a
long, drawn-out and tortuous process. In most
circumstances in which an appeal is considered
necessary, that is because there is an immediacy
about the individual's needs, so they cannot wait
to go through a lengthy process. There must be a
mechanism for fast tracking so that the issue can
be resolved for the individual one way or t’other,
and with no guarantee of the outcome. There must
be continuity of care. The care cannot be put on
hold while the person works through a complaints
process in which statements are taken, witnesses
are called and so on, which would militate against
continuity of care.

Gil Paterson: If we had an appeals procedure,
would that do away with the need for a complaints
procedure? I see that everybody is saying no.

Adrian Ward: For your record, I point out that
everyone is shaking their head.

Gil Paterson: Okay, thanks very much for that.

The Convener: There is an issue about
whether or not the process is described as an
appeal. Yesterday, we heard about a number of
examples that we would not condone. Someone
was asked at 9 o’clock in the evening whether
they could complete the assessment form over the
phone, and not face to face, because the person
was under pressure. Someone discovered that if
he played down his carer’s role, that could affect
his package by up to 40 per cent. That might go
back to Fiona McLeod’s point about the issue being about information and advocacy.

More importantly, it is necessary to understand the assessment procedure, the criteria that are applied and the points system that is used, which may vary from one local authority area to another and, indeed, from one social worker to another—we heard examples of that on our visit yesterday. Disproportionately more weight should not be given to the carer than to the person who receives care.

Yesterday, I heard about people being asked, “Do you take your own medicine?” and answering yes, even though it was taken out of the box for them and put in their hand, or, in response to the question, “How do you go outside?”, saying, “Through that door,” and despite the fact that they needed constant help with that, the view that was included in the assessment form was that they could do those tasks. That is perhaps the point at which some of these issues need to be resolved. I do not know whether you have done any work on that. Are there any standards that could or should be applied throughout Scotland?

**Professor Clark:** You could say that defining the characteristics of good assessment is not difficult. There is probably a lot of commonality in that, in any event.

I worry about any artificial separation of health and social care, because a health condition can drive a social need and vice versa. I do not think that we should be artificially constrained by a need to separate out whose budget it is. That issue came up earlier. The assessment process must transcend the health and social care spectrum so that the right solutions are arrived at for the individual. The whole purpose of the integration of health and social care is to move away from the tribal or territorial separation of functions, and I think that that is true of SDS as well.

**David Cumming:** In working with our colleagues in Healthcare Improvement Scotland, we have recognised that when someone who is involved on a full-time basis in the care of a member of the family presents to a general practitioner, it is expected from a good practice perspective that that would allow for an understanding to be gained by the GP and the local authority of what the routes to better assessment or reassessment should be. It is not just that the quality of information on the service user and/or the carer needs to be improved; there is also a need for information to be updated, because sometimes information that might have been very good becomes obsolete, and it really needs to be current.

**The Convener:** That concludes the session. On behalf of the committee, I express our appreciation and thanks to you for giving us your time this morning. The session has been very interesting. Thank you very much indeed.
Social Care (Self-directed Support) (Scotland) Bill

Coalition of Care and Support Providers in Scotland and Providers & Personalisation

About CCPS
CCPS is the Coalition of Care and support Providers in Scotland. Its membership comprises more than 70 of the most substantial providers of care and support in Scotland’s voluntary sector, supporting approximately 270,000 people and their families, employing around 45,000 staff and managing a combined total income of over £1.2bn, of which an average of 73% per member organisation relates to service provision that is commissioned, purchased or otherwise funded by the public purse.

CCPS members provide services right across the spectrum of care and support, including services for older people; children and families; adults with physical and learning disabilities; and people facing a range of challenges in their lives, including mental health problems, addictions and involvement in the criminal justice system.

Providers & Personalisation (P&P) is a four year Scottish Government funded policy and practice change programme for third sector care and support providers, hosted by CCPS. The programme seeks to prepare providers for SDS by encouraging the sharing of best practice and ensuring a clear provider voice in policy development and implementation.

This submission is based on consultation with providers from the P&P network by email, face-to-face and in writing. The key points were then considered by the P&P reference group - a group of providers with specific interest and expertise in personalisation and self-directed support.

(1) Are you generally in favour of the Bill and its provisions? and (2) What are your views on the principles proposed?

We welcome the Scottish Government’s focus on Self-directed Support (SDS) and interest in the views of stakeholders as evidenced by the SDS strategy (2010) and the preceding consultations, including the consultation on the draft Bill.

Care and support providers view the Social Care (Self-directed Support) (Scotland) Bill, 2012 and the general principles set out within it as a positive move towards increasing choice and control for supported people. From a provider perspective, one of the most important elements of the legislation is that it will offer more options to people who wish to exercise choice within the market for social care, in contrast to the present situation where individuals are generally referred to services provided by organisations selected by the local authority, usually as a result of competitive tendering.

Further, we are very firmly in support of the general principle that “a person must have as much involvement as the person wishes in relation to...the
provision of support or services”, and we believe that this applies as much to services arranged by the local authority as to those services that a supported person might choose for him/herself.

In our comments on the draft bill, we expressed the view that the general principles ought to reflect the fact that self-directed support is a means to an end – that is, better outcomes: increased wellbeing, health and independence, and greater participation in society as a citizen – rather than an end in itself. We remain of this view.

CCPS is clear that proof of success following enactment will be in how the legislation is implemented locally. Our comments on the Bill therefore focus on areas where there needs to be a stronger steer (either in the Bill, regulations or guidance) to ensure that local implementation accurately reflects the principles of the Bill and is focussed on offering the maximum meaningful choice to the individual.

3. What are your views on the four options for self-directed support proposed in the Bill?

We support the four options outlined. In particular, as noted above, we very much welcome the “new” option (Option 2) whereby a supported person is empowered to direct their own support without necessarily taking a Direct Payment, as we believe this will widen opportunities for people to exercise choice in the market. However we would like to see the bill address a number of issues relating to resources and market diversity, as follows.

Equivalence of resource

We welcome the fact that the Bill does not focus on the creation of individual budgets for all supported people and instead, rightly, places at its centre the options that will enable a person to “have as much involvement as the person wishes” in the way their support is arranged. However our concern is that as it is currently drafted, the bill will not prevent the situation currently common among local authorities, where the amount of available resource for a person’s support differs depending on whether a supported person takes a Direct Payment, or has a service arranged for them. For example, many local authorities have a fixed rate for Direct Payments which is considerably lower than the rate(s) they pay to service providers. In our view, this significantly restricts a supported person’s choices. We believe that should a supported person choose a direct payment to purchase care directly from a provider, they need to be assured that the amount of this payment will enable them to secure the same amount of support as they would if the local authority arranged it for them (Option 3) The bill therefore needs to ensure that the choices of individuals are not fettered by assumptions on the part of local authorities that certain options will cost less than others.
The Self-directed Support guidance\(^1\) (2007) recognises this issue setting out that "The 1968 Act\(^2\) requires local authorities to ensure that the available budget is sufficient to enable the recipient to secure support of a standard that will satisfy the local authority that the person's needs are being met. It should meet the cost of providing a service which is of an equivalent standard to that which the local authority would provide." In Para. 63 the guidance goes on to add that: "It is best practice for local authorities to offer an individual budget of an equivalent monetary value of a council-arranged service to allow individuals to select their chosen option."

**Market sustainability**

As the bill currently stands there are no duties on local authorities to sustain and support a diverse market despite this being at the core of meaningful choice for supported people. While market sustainability is a complex issue and may require consideration within regulations and guidance, it is clear that core to sustaining a market is a commitment from local authorities to fund social care services at rates that are sufficient to cover all the costs of good quality support provision including workforce training and development, adequate management and supervision, regulatory and compliance costs and other organisational overheads. This would remove the need for third sector providers to cross subsidise core services from discretionary funds – where these exist - as currently occurs, and avoid potential market collapse through inadequate funding (note that more than 70% of providers in the third sector are running services at a deficit).\(^3\)

Where there is no duty to maintain market diversity, specifically through adequate funding to sustain different types of support, there are several issues:

- People must have the option to choose lower volume, higher cost services where this meets their needs rather than the default being a low cost service at a higher volume.

- Specialist providers may be unable to compete equally as their costs reflect the higher skill level of specialist staff.

4. Do you have any comment on the proposal that the self-directed support options should be made available to children and their families, together with the proposal that the degree of control a child may have over the process should vary with age?

While we welcome the Bill's extension of the four options to children and their families, providers note concerns, expressed elsewhere, that age may not be the best determinant of a child’s capacity to exercise control. However given

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\(^3\) Social Care and Support Services in the Voluntary Sector Funding Survey (2008) [www.ccpscotland.org/publications/research-reports](http://www.ccpscotland.org/publications/research-reports)
this is a larger issue about decision making for children and young adults we would not expect this Bill to diverge on this matter from existing legislation and policy.

5. Are you satisfied with the provisions relating to the provision of information and advice together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

We think that this provision is insufficient for the following reasons. Meaningful choice is underpinned by high quality information and advice and it is preferable that this advice be provided by an organisation independent of the local authority or provider. While the provision of advice and information is proposed as a local authority duty, we have some concerns as to how this will be resourced and independence maintained.

Particular concerns relate to vulnerable people without family/carers and how their decision making will be supported. We note the need for independent advocacy for all groups and a number of our members would propose a right to advocacy similar to that set out in s. 259 of the Mental Health (Care and Treatment) (Scotland) Act, 2003.4

However, we are concerned about how independent advocacy will be funded: if funding for advice, information, brokerage or advocacy has to come from the resource identified for a person’s care and support, there is a risk that people will not take up this type of essential support. We suggest that the resource identified under the Mental Health Act for advocacy may give a sense of the cost attached to this proposal.5

6. Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?

Current DP legislation can be difficult for individuals and organisations to navigate. We support the consolidation of DP legislation and regulations as this will go some way towards addressing this. However we would note once again our concern that the issue of resource equivalence for Direct Payments is not addressed in the bill. This is both a problem of principle and an issue that directly impacts on market sustainability and meaningful choice for supported people.

Delegated Powers Memorandum

We are in favour of the proposed variation of existing DP regulations to minimise the groups of people who are excluded from SDS. However there is less clarity on how practically some types of intervention (particularly compulsory interventions) would be delivered through an SDS budget. We should note, however, that there was no consensus among our members as

4 We refer the committee to the consultation response submitted by the Scottish Independent Advocacy Alliance (SIAA) for further details.
5 http://www.sehd.scot.nhs.uk/publications/DC20030116LocalGovFin.pdf
to whether some services should be excluded from SDS. Most agree that the services suggested in the memorandum (child protection, domestic abuse services) should be excluded. Other services suggested for exclusion included drop-in/preventative services and crisis provision, as some providers believe that SDS could potentially destabilise crucial services such as crisis support and lead to the closure of low level open access preventative services such as drop-ins.

7. Do you have any views on the provisions relating to adult carers? No views.

8. Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?

We understand the reason why Scottish Government has chosen not to place restrictions on who may be employed by an individual, as a key aspect of SDS is allowing individuals to make choices about who provides their care. However we are concerned that this will lead to a situation were there is effectively a two tier workforce: one regulated (support providers) and one not (PAs). There will be an attendant significant difference in the cost of care between these different types of support - something that has yet to be addressed by the bill and that closely relates to our concerns about equivalence of resource to enable choice for individuals.

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

We recognise the difficulty in predicting transitions costs to providers, as most existing work on SDS costs has been based on data about the cost of Direct Payments, and as such would question the claim that the move to SDS will be cost neutral. We agree with the list of cost areas in the Memorandum suggesting some additional areas:

**Staffing costs**

As individuals ask for more personalised care it is likely they will want more evening/ out-of hours support. Staff may also work more fragmented hours as people use their budgets flexibly for short periods of support throughout the day (e.g. staff accompanying an individual to meet their friends for coffee but not being required to support them during the meeting.) This has a range of implications for providers.

- Out of hours working usually attracts a higher rate of pay.

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• Providers need to consider how to pay staff working fragmented or highly variable hours e.g. in the situation above is the staff member on their own time during the meeting or are they ‘at work’?

• Providers need to train and support staff working to existing patterns on the principles of SDS and what this means for their practice and work patterns.

• Providers may need to recruit, support and train a larger staff team willing to work at high demand times of the day (e.g. early evening).

• Organising support becomes more complex and new rostering systems may need to be put in place.

**Budgets**

In the current system providers are funded primarily through block contracts from the local authority to deliver support and care to a number of individuals. Budgets are (reasonably) predictable and providers can plan for staffing and service needs. With SDS there will be a move to individuals (options 1 and 2) contracting directly with providers. The implications of this are that financial systems will need to change to handle individual contracting and invoicing.

**Business Risk**

Business planning also becomes more challenging in the move from block to individual contracting as it is difficult to predict income- particularly during transition. Additional business risk is posed by the fact that as the individual becomes a purchaser (and takes on the responsibility of paying for their care) providers may see an increase in people not able, or willing to pay for their service and thus carry increased levels of bad debt. Providers do not generally have significant reserves to draw on to manage this change (an estimated 70% of providers are currently operating at a deficit) SDS is a real challenge to business sustainability.

**Systems:** Looking beyond the Bill itself- implementation of SDS requires providers and local authorities to move to more focus on personal outcomes (the change a supported person wants to make in their lives) Current systems for collecting information about care and support, however, are focussed on outputs (time spent, numbers supported) and cost (hourly rate). The change in the type of information providers will need to collect is significant and implementing new outcomes monitoring systems is a costly process.

**Hidden costs:** Although it is maintained in the memorandum that SDS will be cost neutral in the long term there are hidden costs within the process. Learning from early implementers showed that providers gave advice and support, care planning and a degree of brokerage (supporting people to choose between care options) which was not resourced in any way- head of securing a contract with an individual. An additional hidden cost is the move
towards marketing support and care services to an individual instead of responding to a local authority tender.

**Smaller providers:** There are particular implications for smaller providers without the resources to make significant system changes.

**When costs will increase:** Some providers observed that the major costs won't come immediately on transition. Learning from early implementers suggest that when an individual is given a budget (options 1 and 2) they tend to stay with their existing provider as they have an established relationship with them. This means managing fluctuating need (as set out in the business risk section) may not be a significant cost until later in the change process. We anticipate that major costs will instead occur in 3-5 years time once the change has progressed and people seeking social care are routinely offered the four options.

10. **Effects on equal opportunities, human rights, island communities and sustainable development** Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?

No views

11. **Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?**

We have no other issues to raise with the committee at this time.

Coalition of Care and Support Providers in Scotland and Providers & Personalisation
24 April 2012
Social Care (Self-directive Support) (Scotland) Bill

Scottish Care

1. Are you generally in favour of the Bill and its provisions?

Our members are overwhelmingly in favour of the Bill, its overarching principles and outlined provisions. However, a sizeable minority are concerned that there is still inadequate information available for them to be able to positively respond to this question. We acknowledge that the success of the Bill will be considerably dependent upon the guidance issued to support its provisions and duties. Members are eager to ensure that this guidance properly reflects not just the principles of the Bill but evidences how the duties and provisions will be enacted, particularly to ensure equality of treatment regardless of age, local authority residence or the nature of support and care which is chosen.

2. What are your views on the principles proposed?

We welcome and applaud the principles which underpin the Bill and which are reflected throughout. The “involvement” of individuals in the arrangement of and delivery of their social care support is central to personalised services. Equally we believe that individuals need “informed choice” rather than the all too frequent deficiency of information which currently exists and further we agree that “collaboration” must lie at the heart of the relationship between the individual, commissioner and provider. These three principles are reflected well within the Bill and its duties. We are pleased that these principles are to be evidenced in the duties which local authorities will have placed upon them.

Members are, however, concerned about how these principles will be evidenced in practice and in particular about the element of choice an individual would have available to them if there is inadequate independent information and support provided for them.

3. What are your views on the four options for self-directed support proposed in the Bill?

The overall response from our members is a generally positive one to the four options outlined. However, some of our members have particular concerns about individual options.

The first option of direct payments is considered by many of our members as currently too restrictive. It is unclear if option 2 includes the ability for an individual to be allocated an Individual Service Fund (ISF) – we consider this should be more explicit and want to support the use of ISFs as central to a successful SDS. We would also strongly argue that each of the options should have a budget allocated to it and that this should not be the same as direct payments. In other words, the Bill needs to be much clearer about the process of budget allocation and choice for each option.
A majority of respondees to our consultation are unhappy or unconvinced about the option offering the LA to arrange support. Whilst we recognise the central role of the Las, and that many individuals will want to pass significant control to the LA, members argue that there needs to be transparent accountability in this regard. Can a LA be both a provider of care and a facilitator of independent choice? Our consultation reflected the fear that there will be inadequate independent information and independent brokerage.

We are pleased that the provisions will be made available to adults assessed as requiring community care services. This rightly acknowledges the importance of treating all with equality and equity regardless of age or condition.

It is important that care homes are recognised as providing a 'homely setting' which some older people will choose as a support option rather than remaining in their own homes. In principle, people entering residential care should have the same level of choice over their care package as people receiving care in their own homes. Our members are already working in ways which ensures that residential settings are inherently person-centred and are able to offer the greatest degree of flexible choice and support to those who choose to opt for them. We recognise the need to offer a variety of care and support provision which are dynamic and responsive in nature but which retain their person-centred focus.

SDS, in whatever form, requires the local authority to have a resource allocation system that often means eligibility and need is measured and then divided into the available budget. We hope that guidance will ensure that the principles of the Bill are at the heart of such systems of allocation.

Members have underlined the importance of the provision of independent information and advice to help individuals to make the best informed choice for themselves. The possibility of ensuring a right to independent advocacy would enable such transparency and ensure equal treatment across all LAs.

We believe that it would be beneficial if all LAs had a common information brochure on SDS and also who to contact if individuals are having problems with any aspect of their application. In addition, we are concerned that the Bill has removed an explicit role for a 'named person' as this would potentially alleviate considerable distress from families in exercising choice in cases of non-capacity.

Scottish Care would be cautious about the creation a network of brokers; how would they be regulated; who pays those providing brokerage and information? How can brokerage be considered to be independent?

4. Do you have any comment on the proposal that the self-directed support options should be made available to children and their families, together with the proposal that the degree of control a child may have over the process should vary with age?
Most of our members have indicated general acceptance of the proposals in relation to children and young people and the progressive age varying degree of control. In addition, some members have suggested that an independent agency should be available for advising older children/young people and that mental capacity should be an important determinant in exercising control. Greater emphasis also needs to be placed upon those in transition, what are the choices for these groups and what are the discretionary charging policies, assessment and ability to contribute?

5. Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

Less than a third of our members responding to this consultation were satisfied with what the Bill says on the provision of advice and information. The issue is not solely about support for those who may have difficulties in making an informed decision, but for all those who may have difficulties in accessing local information and the developing markets. Such advice must be independent and ideally divorced from providers, including the LA. There are also concerns that there is limited capacity within the current structures to provide such independent information and advice.

6. Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?

We recognise the need to make direct payments more flexible, widely available and more responsive to need. The powers expressed in the Bill to grant Ministers the ability to introduce regulations will be critical for the success of SDS.

Over half of our members responding to the consultation expressed concern or the need to know more about the practical outworking of proposed direct payment changes. Others in the sector see direct payments as risky, unconventional or “untested” which increases the reluctance to uptake. This is especially the case for older people and those with dementia. More work needs to be undertaken to provide models to ensure a dynamic, competent, consistent assessment when working with people towards a decision about their care and through their care journey. We hope that greater emphasis on direct payments and individual service funds will result in a reduction in block and volume contracting activity and a reduction in current in-house/traditional service models.

7. Do you have any views on the provisions relating to adult carers?

Scottish Care members agree strongly that adult carers should have an assessment of need and access to the four SDS options. The involvement of carers in a supported and informed manner is essential to ensure real informed choice and control for the supported person. We recognise the thousands of informal family carers who suffer ill health as a direct result of
lack of support in the care they offer. The exercising of this power by LAs needs to be audited to ensure that a carer postcode support lottery does not result.

However, whilst members approve in principle there is concern that such provision should be closely monitored to ensure equity of access and ability to meet need within current fiscal conditions.

8. Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?

Scottish Care members have expressed considerable concern about the lack of restrictions within the Bill for Personal Assistants (PAs) and the employment of family members. Such a lack risks the creation of a two-tier workforce within social care with diverse, perhaps conflicting, models of training, supervision and terms and conditions. The Scottish Government and Scottish Social Services Council’s (SSSC) regulations and requirements for the registration of the social services workforce seem to be compromised if we create a two-tier, partly unregulated workforce. Having more choice and control should not require that we accept an untrained workforce as a consequence. We are not convinced that the Bill has adequately achieved the balance between choice and control and risk and harm. At a time when there is increased transparency in access to information on individuals who may present a risk to the most vulnerable, we would suggest the lack of any safeguarding requirement for PAs and others is unhelpful in managing risk and enabling risk engagement. We would hope that the statutory guidance would make explicit the requirements upon those employing others, not only their duties as an employer but significantly the issues relating to adult protection and safeguarding. There is a potential for supported individuals becoming more restricted in their lives as a result of overly risk-averse practice by family members and PAs.

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

Our members do not consider that the memorandum has convincingly evidenced a cost-neutral calculation. Indeed, over two thirds of those taking part in our consultation considered that there would be higher than anticipated costs in the short term, not least as a result of significant systems and culture change.

The creation of a responsive and diverse market will not occur overnight and care must be taken to ensure real, adequate and meaningful choice is available where there is a limited market, especially in geographically isolated areas.

10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?
Members considered that the Policy Memorandum was broadly acceptable and applaud the work undertaken to ensure that human rights are at the heart of the SDS provision and principles. However, there was some concern expressed that the impact upon rural and island communities is at present hard to determine. What will the true level of choice be for isolated communities? Will there be sufficient encouragement for independent providers to become established in such communities?

11. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

- There remains a risk without statutory guidance that we will have 32 local authorities with varying commitment and resources to SDS and thus promote the creation of a postcode lottery. There needs to be clear and strong guidance to stop any conscious or unconscious protection of traditional in-house services.
- A national model framework with agreed ranges of rates will assist local authorities to take SDS forward and to achieve the desired outcomes. Scottish Care members are keen to explore a national model framework open to all registered care services with a range of rates for service delivery.
- Some of our members are concerned that local authorities may continue to have too much power as not enough is said within the Bill around challenging eligibility, unmet need or what families might do to challenge. The right to independent advocacy and the explicit right to a review would help this.
- Why is it only social care and local authorities with duties? We would have liked a greater and more explicit indication of the role of health. Joint commissioning is becoming a welcome feature of older people services and we would argue the strides being made through the Change Fund process need to be evidenced in SDS practice at local level. Individuals who use services do not recognise that provision comes from different sources. For SDS to become successful there needs to be a developing perspective which sees support as centering around the individual rather than being directed by whichever source of funding pays for that support, whether health or social care. Integration has to focus on the individual not the system.

Scottish Care
24 April 2012
Social Care (Self Directed Support) (Scotland) Bill:

Scottish Personal Assistant Employers Network

Recommendation 1: in addition to LAs ‘promoting’ SDS, at section 17, the Bill places a duty on them to identify potential SDS users and monitor and record how they do this

Recommendation 2: that Scottish Government and local Authorities fully recognise and fund the statutory obligations placed upon SDS recipients as employers

Recommendation 3: regulations underpinning specific circumstances around delivery of each option, are drawn broadly enough to ensure they enable the widening and simplification of access intended

Recommendation 4: to help facilitate this, the regulations should be coproduced with disabled people, their organisations, other user led groups and carers

Recommendation 5: the duty to “give effect to” the option chosen be aligned in the Bill to the timescales within the National Eligibility Framework

Recommendation 6: the principles and framework supporting the options in the Bill, are underpinned by a comprehensive system of support for disabled people and other service users

Recommendation 7: an amended set of principles, underpinned by a “statement of intent” are developed, the principles include: Freedom, choice, dignity, control, better outcomes for individuals, mutuality, equality & portability

Recommendation 8: any involvement in SDS, from assessment to provision, is underpinned by a legislative right to support and advocacy for it

Recommendation 9: that the Bill be clearer and stronger on the role of advocacy, peer support and support organisations; especially Disabled People’s Organisations, including on where they sit in terms of the overall framework for SDS and on the LAs duties to engage them. Specifically, we would like to see the addition of duties on LAs to refer people to such support organisations at sections 2(3), 5 and 8 of the Bill

Recommendation 10: gateways to accessing support from the LA and therefore SDS, are considered within the Bill

Recommendation 11: charging for community care services is a significant barrier to independent living and that it should be free at point of delivery

1 “It’s our world too”; ILiS, 2010
Recommendation 12: provisions to charge carers be removed and instead use the Bill as an opportunity to address some of the issues in relation to the powers on LAs to charge, under section 87 of the 1968 act

Recommendation 13: a Commission on the Funding of Social Care in Scotland be set up

Recommendation 14: that the disabled person or other SDS user receive SDS directly to meet the needs that arise from the informal carer’s role.

Scottish Personal Assistant Employers Network (SPAEN)

1.1. SPAEN is uniquely placed amongst user lead membership organisations in having a Scotland wide remit. SPAEN is able to take a Scotland wide view in addressing issues that affect the needs and requirements of persons who are substantially or permanently physically, mentally or sensory impaired or others in need of community care services and also those individuals who wish to become personal assistant employers or manage their self directed support. SPAEN promotes the Social Model of Disability and the aims of the Independent Living Movement through the provision of high quality services and a range of advocacy services, monitoring and disseminating of information on local and national developments.

SPAEN was established and constituted as a registered charity in March 2000 and SPAEN’s objectives over the last ten years have been and continue to be the provision of high quality services to enable individuals to improve their conditions of life, encouraging them to live fulfilling and independent lives by facilitating their active participation in and full integration into the community. To achieve these objectives SPAEN provides a comprehensive service of high quality advice; assistance; guidance; support and training and in addition it supports those who require help to make appropriate, sound and suitable decisions in managing their self directed support packages and in safe recruitment.

Our Vision is of an inclusive society in which disabled people and other Community Care Service Users are fully integrated by leading full and independent lives.

Our Method is that of promoting mutual support among those who are striving to lead full and independent lives by taking control of the management of everyday affairs.

Our Impact will be to reduce the social exclusion of disabled people; as well as the social cost of this exclusion.
1.2. SPAEN welcomes the Scottish Government’s proposal for a Self-Directed Support (Scotland) Bill and sees it as another opportunity to further the implementation of self directed support in Scotland. Our response deals with the issues we feel are most appropriate to our organisation. SPAEN broadly mirrors the views of our sister organisation ILiS in general adding our own additional comments. Whilst the Bill recognises the obligations upon the Local Authority it fails to fully appreciate the similar obligations placed upon the recipient once they become an employer in their own right. These statutory obligations include such matters as redundancy, TUPE, Family Friendly rights and discrimination duties. These matters are dealt with more fully in section 3.

Independent living

1.3. 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”. With such support, disabled people can exercise their rights and duties of citizenship via their full and equal participation in the civic and economic life of Scotland – thereby changing the public misperception of them as being a drain on society’s resources rather than an active contributor.

The principles of independent living, *freedom, choice, dignity and control*, do not only relate to specific services and provisions for disabled people, but to the whole of disabled people’s interactions with society; its organisations, facilities and structures; and every aspect of their quality and equality of life: These principles are underpinned by the following basic rights.

- Full access to our environment
- Fully accessible transport
- Technical aids and equipment
- Accessible and adapted housing
- Personal assistance
- Inclusive education and training
- An income, including income within the state-benefit system for those unable to work
- Equal opportunities for employment
- Accessible and readily available information
- Advocacy and working towards self-advocacy
- Counselling, including peer counselling
- Accessible and inclusive healthcare provision
- Communication and appropriate support for communication
- Civic participation

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For some disabled people SDS is an essential link in the chain of rights needed to ensure they are free to live their life in the way they choose, to be in control of it and to do this with dignity.

2. The Bill

2.1 A drive to entrench disabled people and other community care users as people with equal rights and as equal citizens in the delivery of social care, is not only morally, but legally and financially just. We therefore support the intention and aims of the Bill.

2.2 Furthermore, in line with the principles of independent living, we further support the intentions of the Bill to provide people with choice and control over their support and to increase uptake of DP’s as one mechanism of doing this.

2.3 We also support the aim of the Bill in widening access to SDS overall. However, would recommend that in addition to LAs ‘promoting’ SDS, at section 17, the Bill places a duty on them to identify potential SDS users and monitor and record how they do this and how many people it ‘attracts’.

Provisions in the Bill

2.4 We welcome the suite of options for support offered in the Bill. However, we are clear that the strength of their success lies in the proposed regulations on conditions of their payment, who can access them and in what circumstances. For this reason, we recommend that the regulations underpinning specifics circumstances around delivery of each option, are drawn broadly enough to ensure they enable the widening and simplification of access intended. We further recommend to help facilitate this, that they be coproduced with disabled people, their organisations, other user led groups and carers.

2.5 We also welcome the duty to give effect at section 9, to the choice of options at section 3. However, we note that currently, many LAs operate waiting lists for provision such as Direct Payments. In order to meet current eligibility criteria timescales, people are often offered traditional forms of support, until Direct Payments ‘become available’. To this end, we continue to recommend that the duty to “give effect to” the option chosen be aligned in the Bill to the timescales within the National Eligibility Framework.

Principles of the Bill

2.6 The principles are a crucial and welcome addition to the Bill. The nature of SDS is such that few circumstances around it will be the same. For this reason, principles underpinning decisions around it are essential to set
out the ways in which professionals and individuals should operate, within the levels of discretion needed.

2.7 We welcome a focus on involvement, assistance and collaboration and particularly that these principles extend to assessment and provision, we recommend that the principles and framework supporting the options in the Bill, are underpinned by a comprehensive system of support for disabled people and other service users, we will return to this in the next section.

2.8 Whilst we welcome the existing principles, we still feel they are too focussed on process and imply that SDS is an end itself. This does not account for the wider independent living context in which SDS plays a part (section 1.3 & 1.4 above).

2.7 The SDS Bill offers a once in a lifetime opportunity not only to ensure disabled people and other community care users have the principles of choice and control over their community care enshrined in law, but so too for Scotland to lead the way and set down in domestic law, the intention to support independent living and disabled people’s right to participate in society and live an ordinary life. The Joint Committee on Human Rights report, published in March 2012, recognised that the current framework of legislation supporting independent living was insufficient to protect the rights to it, set out in the UNCRPD. One of their recommendations to do this, is to ensure that upcoming legislation on social care has independent living as an outcome of it.

2.8 To support this and seize the opportunity the Bill presents for Scotland, we continue to believe in and recommend an amended set of principles, underpinned by a “statement of intent” could address this. We suggest the following text for the statement of intent could sit under an amended version of the current preamble to the Bill so that it would read:

"An Act of the Scottish Parliament to enable local authorities to provide support to disabled people, other community care users and carers; to make provision about the way in which social care services are provided by local authorities; and for connected purposes.

SDS is one type of provision society makes, among several, which underpins disabled people’s right to independent living. Together with the other rights of independent living, it is intended that SDS, through this Bill, will empower those using self-directed support, to lead independent lives, to have the same freedom, choice, dignity and control as other citizens at home, at work, and in the community, so that they may participate in society and live an ordinary life"

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3 JCHR; “Implementation of the right of disabled people to independent living: 23 annual report 2010/12”; 2012
2.9 Underpinning this and in keeping with a human rights based approach to policy making and service delivery, we recommend an amended set of principles, that include:

2.10 Freedom: users of SDS are free to live their life in the way that they choose and SDS aims to support this to happen.

2.11 Choice: users of SDS can choose how to live their life, what they do with it and who they involve in it and SDS aims to support this to happen.

2.12 Dignity: everyone is entitled to dignity in their own life and others respect this dignity.

2.13 Control: people can and should control their own lives, including what they do, who with, and when they do it and SDS aims to support this.

2.14 Better outcomes for individuals: rules and processes, including assessments and eligibility criteria, work for the individual and their best interests. The outcomes for disabled people and other users of SDS, in terms of better health and well being, should be at the centre of both the legislation and the way that it is implemented.

2.15 Mutuality: SDS is a tool provided to support users to participate in their own life, in their local community and this includes in decisions on their care and support. It is provided alongside the tools needed to make decisions on the way people obtain their care and support and the type that they select. Disabled people and other users of SDS must be equal partners in care.

2.16 Equality: SDS is one tool among many to ensure the equality of disabled people and other users of it, within our society. SDS enables disabled people’s participation in wider society and their empowerment to take charge of their own lives. SDS is empowering in its design and delivery and plays a key role in the overall empowerment of disabled people and other users.

2.17 Portability: Disabled people and other users of SDS have clear entitlements to SDS, regardless of where they live. Disabled people, and other users of SDS, know that they can move freely, for whatever reason, across Scotland and that their support package can come with them.

2.18 Accountability: Service users, providers, assessors and professionals must all be accountable to the principles within the Bill.

2.19 It is our belief that without such principles, not only are we missing an opportunity on which to build on the rights of disabled people and other service users, but that the basic underlying intentions of SDS; control and choice, citizenship, equality; cannot be truly realised.

3. Support, assistance and information
3.1 SDS is not only a relatively new concept to professionals and disabled people and other users alike, but has the potential to change a person’s life for the better. However, as with anything new, people often need support to make decisions on it and for various reasons, including their well documented discrimination and oppression, disabled people, sometimes need targeted support to do this. This support is not just with decisions relating to the mechanisms of SDS, but so too on the decisions associated with the potential life change SDS carries with it. The statistic that; by age 26, young disabled people are more than three times as likely as other young people to agree with the statement “whatever I do has no real effect on what happens to me” reflects the frustrated aspiration experienced by disabled people and the challenge in raising the consciousness of disabled people.

3.2 For this reason, we welcome the focus on support and information at sections 5 and 8. However, we feel, specifically since choice is the default option, that in order to ensure the potential of SDS is fully realised for the individual and so too society at large, any involvement in SDS, from assessment to provision, must be underpinned by a legislative right to support and advocacy for it. The provisions currently offer support with decisions on SDS at various sections, however, these are offered mainly on the basis of individual capacity (section 5(1b)), are open to discretion on the grounds of what one person deems ‘reasonable’ (section 2(3)) and are not underpinned by a duty to signpost at key points in the framework.

3.3 Specifically, section 2(3), recognises that people may need assistance with decisions. However, the assistance provided is only to be what is “reasonably required”. In light of the complex issues outlined above in terms of frustrated aspiration, coupled with the dominant assumption that someone with capacity is unlikely to need support, the term ‘reasonably’ in this context is problematic.

3.4 Furthermore, the link between the need for support and capacity issues means that generic support to manage SDS is not in the Bill. We would argue that depending on the SDS option chosen and degree of control that it demands, an individual may need support to manage and may initially appear unable to do so. It should not be assumed that because someone does not appear to know about or manage provision under a particular option e.g. how to be an employer, that they cannot manage that option. The role of generic support and training is crucial.

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here. If support were by default, as suggested above, people could access it to varying degrees.

3.5 In practise, as well as having implications for the decision making process as outline above, the Bill also leave unclear, similar provisions for Guardians, those with Power of Attorney or parents (sections 5(2a & b) & 7 in the Bill); all of whom may also need support to make informed choice around such fundamental life changing options.

3.6 To address these issues, we continue to recommend that the Bill be clearer and stronger on the role of advocacy, peer support and support organisations; especially Disabled People’s Organisations\(^5\), including where they sit in terms of the overall framework for SDS and on the LAs duties to engage them. Specifically, we would like to see the addition of duties on LAs to refer people to such support organisations at sections 2(3), 5 and 8 of the Bill.

3.7 We feel this will ensure a clear legislative link between how the principles of the Bill are supported in practice with regards to Employment Law in particular e.g. Redundancy, TUPE, Family Friendly rights and discrimination duties as per our comment in 1.2. We recommend the following:

- Compulsory training on the basic employer’s statutory obligations for staff commissioning and administering the support package.

- A basic employer’s statutory obligations module within the vocational qualifications and becomes part of a LA SWD induction programme and continuous skills development within specific area teams.

- That finance teams have employers statutory obligations included in any induction programmes. Equip the finance teams with the information required to sufficiently fund a support package enabling the obligations under the Employment Rights Act, amongst others, to be fulfilled on matters such as redundancy, sleepovers/National Minimum Wage, false self employment and mispayments.

- To help encourage and evidence the support provided by the Local Authorities monitoring of the service users agreement to manage and direct the support package details of the specific employer obligation requirements should be issued. This provides the SDS recipient with the information they have been assessed as knowing and provides the Local Authorities with security in the knowledge that the individual has the information required. The Bill needs to be more prescriptive in section 8 so that when it is enacted it makes clear the duties and

\(^5\) “It’s our world too”; ILiS, 2010
obligations, of a Local Authority, as at present it is open to interpretation which leads to a postcode lottery of information provision.

- Compulsory training on the basic employer’s statutory obligations as a prerequisite in supporting those wishing to become a PA employer. Specific specialised training is available to service users/or those assisting them who decide to employ, with a monitoring system in place to ensure that this is attended. Therefore, shows an understanding/willingness to comply with the contractual obligations they will have with the Local Authority: signing to agree to be a good and competent employer and meet all their employer obligations.
- By inputting the above stages in place the recipient will be assured that the appropriate safe guards are in place both at Social Work and Finance Department level permitting the recipient to undertake their duties and obligations in statute as an employer.

4. Gateways to and charging for provision

4.1 Whilst we recognise that SDS is a mechanism of support rather than a fundamental change in provision duties of LAs, we believe that to monopolise on the potential it offers for equality and human rights, the gateways to accessing support from the LA and therefore SDS, must be considered within the Bill. Without this focus, SDS will remain an unmet aspiration, accessed by the few.

4.2 Rising eligibility criteria is seeing many disabled people excluded from access to social work services. This not only creates demand in the system at a later stage but, prevents many disabled people and users of community care from accessing SDS and so too in many cases, as the JCHR report highlights with some concern, their basic human rights. Addressing this then, is not only needed to ensure we get the most out of SDS, but also for compliance with the UK’s human rights obligations under the UNCRPD.

4.3 In addition, disabled people are faced with impossible choices between paying for essential costs such as food and heating, or paying community care charges. The result is hardship and in some cases a decision to stop paying for all or part of the community care, thus effectively surrendering it. People are left with unmet needs that threaten their enjoyment of human rights and inevitably their access to SDS.

4.4 Disabled people have said of community care charges:

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6 JCHR; “Implementation of the right of disabled people to independent living: 23 annual report 2010/12”; 2012
“What you’re buying with your charge is a human right, and I don’t believe that anyone in our society should have to pay for a human right. No-one else pays to go to the toilet or to get out of bed in the morning.”

4.5 Recent published opinion has referred to community care charges as a ‘tax on disability’; a ‘tax on economic and social opportunity’; a ‘tax on participation and citizenship’ and a ‘financial penalty directly related to impairment and the need to use services’; therefore institutional discrimination of the highest order.

4.6 When the extra costs of being disabled are taken into account, 47.5% of households including a disabled person live in poverty: 50% of disabled people of working age are in work, compared with 80% of non-disabled people of working age: and of the £18bn in benefit cuts proposed as part of Welfare Reform, a disproportionate amount will fall on disabled people. Disabled people therefore already live in poverty. They face a double disadvantage when it comes to public cuts; once in their pocket and again in their services. They are also disproportionately affected by them. Disabled people cannot afford to bridge the gap between demand for public sector resources and supply of them.

4.7 Article 14 of the European Convention on Human Rights states that “The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination”. Article 19 of the UNCRPD highlights that in order to ensure disabled people equally enjoy the rights laid out in the ECHR; states must ensure that “disabled people have a right to live in the community, with the support they need and can make choices like other people do”. One of the things states must do is, put simply, to make sure that disabled people get the help they need to live in the community. Paying for equal enjoyment of human rights in this way is specifically unique to the experience of disabled people who use community care; there is no other sector in society which is charged to enjoy human rights. We therefore believe that any such charge discriminates against disabled people in their access to

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7 Elder Woodward; “The Ethics of Charging”, 2011
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13 “Know the Score on Welfare Reform”; Inclusion Scotland, 2010
the support they need to enjoy their rights and freedoms under all such regulations and conventions

4.8 At a CoSLA Community Care Charging Listening Event (August 2011), Mike Brown, Convenor of the Association of Directors of Social Work’s Resources Standing Committee, presented a handout which showed that local authority income from charges for social care services in the fiscal year 2009-10 was £228m. Of this, £225m came from charges for community care. Income for ‘non residential services’ amounted to £42.6m; only 3% of the £3.6b gross expenditure on social care in Scotland. Yet, as Laurence Clark points out, for the individual disabled person, community care charges can amount to over 70% of their weekly income. In addition, as the Audit Commission in England reported in 2000 that between 20-40% of income from charges is spent on administration costs. These figures alone indicate that charging for community care is not only inefficient and insignificant, but it is incongruent to any sense of social justice.

4.9 Community care is essential for the equal enjoyment of human rights of disabled people (The British Institute of Human rights have produced a guide that outlines the role of community in securing these rights) and so systematic barriers to accessing it have implications for enjoyment of them. As the policy memorandum points out, SDS advances human rights in terms of delivery of care, however, if barriers to accessing it, such as charging for it, are not addressed, it can never achieve this aspiration.

4.10 In light of the figures involved and of the impact on human rights, it is the view of ILiS, and many disabled people and Disabled People’s Organizations, that charging for community care services is a significant barrier to independent living and that it should be free at point of delivery, as health services are.

4.11 We also believe, for the reasons outlined above and since carers are considered partners in care, it is fundamentally wrong to charge them for services, as proposed in section 16 of the current of the Bill. We recommend that provisions to charge carers be removed and instead used as an opportunity to address some of the issues outlined above, particularly in relation to the powers onLAs to charge, under section 87 of the 1968 act.

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4.12 We recognise however, that without a fundamental reassessment of how we spend our money, there are significant fiscal challenges for funding social care. For this reason, we continue to recommend a Commission on the Funding of Social Care in Scotland, to facilitate widely informed local and national budgetary decisions on the funding of community care in the future. We believe that the introduction of this Bill, coming from intentions of a human rights based approach, is an excellent time to set Scotland ahead of the international game in terms of its recognition of the value of social care and to set up such a commission.

5. Carers

5.1 Starting from the premise that unpaid carers can benefit indirectly when the person they ‘care for’ has greater choice and control over their support, we believe that, where possible, the LA should seek to offer support to the service user.

5.2 However, where informal care is the express choice of the disabled person or other SDS users, we recommend that the disabled person or other SDS user receive SDS directly to meet the needs that arise from the informal carer’s role (other than in cases where the individual is considered not to have capacity). We continue to believe this is a much more empowering method of supporting informal carers.

5.3 We believe that any move to offer support to unpaid carers directly, must be supported by a separate system of assessment and a ring fenced budget for this provision, so that provision of support to a user doesn’t impact on the funding available to the carer and vice versa.

Scottish Personal Assistant Employers Network
24 April 2012
The Scottish Consortium for Learning Disability (SCLD) is a Centre for Excellence that is made up of 12 partner organisations that have joined together, with funding from The Scottish Government, to help people make the changes set out in ‘The same as you?’ ‘The same as you?’ provides a national policy framework for supporting and transforming services for people with learning disabilities and their families in order that people are enabled to lead full lives in their communities. 2010 marks its tenth anniversary. SCLD’s partner organisations are ARC, BILD, Badaguish Outdoor Centre, Capability Scotland, Central Advocacy Partners, Down’s Syndrome Scotland, ENABLE Scotland, KEY Community Supports, PAMIS, University of Dundee, University of Glasgow and the University of St Andrews.

1. SCLD strongly endorses the Social Care (Self-directed Support) (Scotland) Bill. We believe that the Bill can help to deliver greater choice and control to people with learning disabilities and/or on the autism spectrum. We would like a more explicit recognition of the fact that the purpose of self-directed support is to enable people to achieve the aims of independent living and identify and move towards the outcomes which matter most to them.

2. SCLD generally supports the principles in section 1 of the Bill. However, with respect to Principle 2, we think the concept of ‘reasonable requirement’ for assistance may not go far enough towards ensuring that people with learning disabilities are provided with the information and support they need to enable them to express views and make an informed choice. The recent evaluation of ‘The same as you?’ found that there is still low awareness of self-directed support and a significant unmet information need in this area. We would urge local authorities to work together with people with learning disabilities to ensure that their information and processes are enabling people to engage with self-directed support.

3. SCLD supports the availability of different options for different people in order to maximise choice and control. However, it is our view that all people who use services, whatever the option they choose, should be advised of the monetary resource which has been defined for them to meet agreed outcomes.

4. SCLD welcomes the proposal that the self-directed support options should be made available to children and their families and also that the degree of control a child may have over the process should vary with age. However, we would suggest that a person-centred approach would allow for discretion, so that, for example, a child under the age of 12 who had formed a
view of the way they wish to receive their support should be allowed to express this.

5. SCLD welcomes the Bill’s focus on timely, accessible information and support in relation to self-directed support. We would stress that people with learning disabilities must be involved in producing and evaluating information and guidance on self-directed support for this to be meaningful. Furthermore, it will not be sufficient for local authorities merely to make sure that people with learning disabilities receive accessible information. To be enabling, accessible information is a tool to be used alongside skilled information support workers. We would welcome some more detailed acknowledgement of the types of information which local authorities are expected to provide under Section 8, for example, easy read information, plain English information, large print information etc. We would also highlight that one individual may have multiple information needs – for example easy read information in another language.

In addition, the policy memorandum refers in paragraph 31 to people with ‘severe learning difficulties.’ We would advise that even people with capacity and with relatively low support needs may need quite a considerable amount of support to understand the options available to them and to make an informed choice. Furthermore, even people who do lack capacity may not wholly lack capacity and may be able to engage with some aspects of their support planning.

6. No response

7. SCLD supports the idea that local authorities should be able to release support to carers following a carers’ assessment. In recent research evaluating ‘The same as you?’ we found that carers’ assessments rarely led to offers of additional support and this would offer the potential to change this. However, we do not believe that additional support for carers should in any way affect or detract from the support which the disabled person chooses.

8. No response

9. No response

10. SCLD acknowledges that many of the principles and goals of the Bill are underpinned by human rights, particularly the focus on greater choice and control, participation and inclusion. However, SCLD is not satisfied with the assessment which has taken place in regard to the effect of the Bill on human rights. Human rights essentially describe the relationship between an individual and the state. They set the expectations both of what the state
must refrain from doing as well as what it must actively set out to do in order to respect, protect, fulfil and promote human rights. Given that social care is still an arena in which individuals may be heavily dependent on services provided by the state, any change to the mechanism by which individuals receive state funded support must inherently give rise to human rights issues. We are particularly concerned that the fact that self-directed support effectively places a distance between the individual and the state could lead to public authorities effectively abnegating their responsibility to the protection and promotion of human rights. We would suggest that human rights based outcomes should play a part in the commissioning and monitoring of an individual’s care package to ensure this does not happen.

We acknowledge paragraph 52’s assertion that local authority intervention into an adult’s life could have impacts on their article 8 right to protection of private and family life. However, it should also be noted that if an authority were to fail to undertake intervention into an adult’s life, this could also be an interference with a person’s human rights. Authorities have both positive obligations to undertake activity to protect rights (e.g. organising and holding elections or taking steps to protect life, for example through policing) as well as obligations to refrain from proscribed activities (e.g. torture). Failing to provide appropriate care and support could interfere with article 3 rights and, as the JCHR has recently highlighted, UNCRPD Article 19 right to independent living.

11. No response.

Scottish Consortium for Learning Disability
24 April 2012
Recommendation 1: in addition to LA’s ‘promoting’ SDS, at section 17, the Bill should place a duty on them to identify potential SDS users and monitor and record how they do this.

Recommendation 2: regulations underpinning specific circumstances around delivery of each option, are drawn broadly enough to ensure they enable the widening and simplification of access intended.

Recommendation 3: to help facilitate this, the regulations should be coproduced with disabled people, their organisations, other user led groups and carers.

Recommendation 4: the duty to “give effect to” the option chosen be aligned in the Bill to the timescales within the National Eligibility Framework.

Recommendation 5: the principles and framework supporting the options in the Bill, are underpinned by a comprehensive system of support for disabled people and other service users.

Recommendation 6: an amended set of principles, underpinned by a “statement of intent” that recognises the role of SDS in promoting and preserving human rights and independent living, should be developed to include: Freedom, choice, dignity, control, better outcomes for individuals, mutuality, equality & portability.

Recommendation 7: any involvement in SDS, from assessment to provision, is underpinned by a legislative right to support and advocacy for it.

Recommendation 8: that the Bill be clearer and stronger on the role of advocacy, peer support and support organisations; especially Disabled People’s Organisations¹, including on where they sit in terms of the overall framework for SDS and on the LA’s duties to engage them. Specifically, we would like to see the addition of duties on LA’s to refer people to such support organisations at sections 2(3), 5 and 8 of the Bill.

Recommendation 9: gateways to accessing support from the LA and therefore SDS, are considered within the Bill.

Recommendation 10: charging for community care services is a significant barrier to independent living and so it should be free at point of delivery.

Recommendation 11: provisions to charge carers be removed. Instead the Bill should be seen as an opportunity to address some of the issues in relation to the powers on LA’s to charge, under section 87 of the 1968 act.

¹ “It’s our world too”; ILiS, 2010
**Recommendation 12:** a Commission on the Funding of Social Care in Scotland be set up

**Recommendation 13:** that the disabled person or other SDS user receive SDS directly to meet the needs that arise from the informal carer’s role

1. Independent living in Scotland

The Independent Living in Scotland project

1.1. The Independent Living in Scotland project ([www.ilis.co.uk](http://www.ilis.co.uk)) is funded by the Scottish Government, hosted by Inclusion Scotland and steered by a group of disabled people. It is part of the wider Scottish Government initiative on independent living. The Scottish Government’s commitment to independent living is set out in the “Vision for Independent Living” ([http://www.ilis.co.uk/independent-living/a-vision-for-independent-living-in-scotland/](http://www.ilis.co.uk/independent-living/a-vision-for-independent-living-in-scotland/)). It aims to support disabled people in Scotland to have their voices heard and to build the disabled people’s Independent Living Movement (ILM)

Independent living

1.2. 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”. With such support, disabled people can exercise their rights and duties of citizenship via their full and equal participation in the civic and economic life of Scotland – thereby changing the public misperception of them as being a drain on society’s resources rather than an active contributor.

1.3. The principles of independent living, **freedom, choice, dignity and control**, do not only relate to specific services and provisions for disabled people, but to the whole of disabled people’s interactions with society; its organisations, facilities and structures; and every aspect of their quality and equality of life: These principles are underpinned by the following basic rights.

- Full access to our environment
- Fully accessible transport
- Technical aids and equipment
- Accessible and adapted housing
- Personal assistance
- Inclusive education and training

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2 [http://www.ilis.co.uk/](http://www.ilis.co.uk/)
• An income, including income within the state-benefit system for those unable to work
• Equal opportunities for employment
• Accessible and readily available information
• Advocacy and working towards self-advocacy
• Counselling, including peer counselling
• Accessible and inclusive healthcare provision
• Communication and appropriate support for communication
• Civic participation

1.4. For some disabled people SDS is an essential link in the chain of rights needed to ensure they are free to live their life in the way they choose, to be in control of it and to do this with dignity.

2. The Bill

2.1. A drive to entrench disabled people and other community care users as people with equal rights and as equal citizens in the delivery of social care, is not only morally, but legally and financially just. We therefore support the intention and aims of the Bill. Furthermore, in line with the principles of independent living, we further support the intentions of the Bill to provide people with choice and control over their support and to increase uptake of DP’s as one mechanism of doing this.

2.2. We also support the aim of the Bill in widening access to SDS overall. However, would recommend that, in addition to LA’s ‘promoting’ SDS, at section 17, the Bill places a duty on them to identify potential SDS users and monitor and record how they do this and how many people it ‘attracts.

Provisions in the Bill

2.3. We welcome the suite of options for support offered in the Bill. However, we are clear that the strength of their success lies in the proposed regulations on conditions of their payment, who can access them and in what circumstances. For this reason, we recommend that the regulations underpinning specifics circumstances around delivery of each option, are drawn broadly enough to ensure they enable the widening and simplification of access intended. We further recommend to help facilitate this, that they be coproduced with disabled people, their organisations, other user led groups and carers.

2.4. We also welcome the duty to give effect at section 9, to the choice of options at section 3. However, we note that currently, many LA’s operate waiting lists for provision such as Direct Payments. In order to meet current eligibility criteria timescales, people are often offered traditional forms of support, until Direct Payments ‘become available’. To this end, we continue to recommend that the duty to “give effect
to” the option chosen be aligned in the Bill to the timescales within the National Eligibility Framework.

Principles of the Bill

2.5. The principles are a crucial and welcome addition to the Bill. The nature of SDS is such that few circumstances around its delivery will be the same. For this reason, principles underpinning decisions around it are essential to set out the ways in which professionals and individuals should operate, within the levels of discretion needed.

2.6. We welcome a focus on involvement, assistance and collaboration and particularly that these principles extend to assessment and provision, we recommend that the principles and framework supporting the options in the Bill, are underpinned by a comprehensive system of support for disabled people and other service users, we will return to this in the next section.

2.7. Whilst we welcome the existing principles, we still feel they are too focussed on process and imply that SDS is an end itself. This does not account for the wider independent living context in which SDS plays a part (section 1 above).

2.8. The SDS Bill offers a once in a lifetime opportunity not only to ensure disabled people and other community care users have the principles of choice and control over their community care enshrined in law, but so too for Scotland to lead the way and set down in domestic law, the intention to support independent living and disabled people’s right to participate in society and live an ordinary life.

2.9. The Joint Committee on Human Rights report, published in March 2012, recognised that the current framework of legislation supporting independent living was insufficient to protect the rights to it, set out in the UNCRPD. One of their recommendations to do this, is to ensure that upcoming legislation on social care has independent living as an outcome of it.

2.10. To support this and seize the opportunity the Bill presents for Scotland, we continue to believe in and recommend an amended set of principles, underpinned by a “statement of intent” could address this. We suggest the following text for the statement of intent could sit under an amended version of the current preamble to the Bill so that it would read:

“An Act of the Scottish Parliament to enable local authorities to provide support to disabled people, other community care users and carers; to make provision about the way in which social care

4 JCHR; “Implementation of the right of disabled people to independent living: 23 annual report 2010/12”; 2012
services are provided by local authorities; and for connected purposes.

SDS is one type of provision society makes, among several, which underpins disabled people’s right to independent living. Together with the other rights of independent living, it is intended that SDS, through this Bill, will empower those using self-directed support, to lead independent lives, to have the same freedom, choice, dignity and control as other citizens at home, at work, and in the community, so that they may participate in society and live an ordinary life”

2.11. Underpinning this and in keeping with a human rights based approach to policy making and service delivery, we recommend an amended set of principles, that include: Freedom, choice, dignity, control, better outcomes for individuals, mutuality, equality' portability and accountability. Detailed descriptions of these principles can be found in our submission to the Scottish Government’s proposal on a SDS Bill, in July 2010, at sections 5.7 – 5.15.

2.12. It is our belief that without such principles, not only are we missing an opportunity on which to build on the rights of disabled people and other service users, but that the basic underlying intentions of SDS; control and choice, citizenship, equality; cannot be truly realised.

3. Support, assistance and information

3.1. SDS is not only a relatively new concept to professionals and disabled people and other users alike, but has the potential to change a person’s life for the better. However, as with anything new, people often need support to make decisions on it and for various reasons, including their well documented discrimination and oppression

3.2. For this reason, we welcome the focus on support and information at sections 5 and 8. However, we feel, specifically since choice is the

default option, that in order to ensure the potential of SDS is fully realised for the individual and so too society at large, any involvement in SDS, from assessment to provision, must be underpinned by a legislative right to support and advocacy for it. The provisions currently offer support with decisions on SDS at various sections, however, these are offered mainly on the basis of individual capacity (section 5(1b)), are open to discretion on the grounds of what one person deems ‘reasonable’ (section 2(3)) and are not underpinned by a duty to signpost to advocacy and support at key points in the framework.

3.3. Specifically, section 2(3), recognises that people may need assistance with decisions. However, the assistance provided is only to be what is “reasonably required”. In light of the complex issues outlined above in terms of frustrated aspiration, coupled with the dominant assumption that someone with capacity is unlikely to need support, the term ‘reasonably’ in this context is problematic.

3.4. Furthermore, the link between the need for support and capacity issues means that generic support to manage SDS is not in the Bill. We would argue that depending on the SDS option chosen and degree of control that it demands, an individual may need support to manage and may initially appear unable to do so. It should not be assumed that because someone does not appear to know about or manage provision under a particular option e.g. how to be an employer, that they cannot manage that option. The role of generic support and training is crucial here. If support were by default, as suggested above, people could access it to varying degrees.

3.5. In practise, as well as having implications for the decision making process as outlined above, the Bill also leave unclear, similar provisions for Guardians, those with Power of Attorney or parents (sections 5(2a & b) & 7 in the Bill); all of whom may also need support to make informed choice around such fundamental life changing options.

3.6. To address these issues, we continue to recommend that the Bill be clearer and stronger on the role of advocacy, peer support and support organisations; especially Disabled People’s Organisations 6, including on where they sit in terms of the overall framework for SDS and on the LA’s duties to engage them. Specifically, we would like to see the addition of duties on LA’s to refer people to such support organisations at sections 2(3), 5 and 8 of the Bill.

3.7. We feel this will ensure a clear legislative link between how the principles of the Bill are supported in practice. It will also ensure that

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the ability to make informed choice and to manage its provision is underpinned by a secured framework of support to do so.

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\textsuperscript{11} “Destination Unknown”; Demos report, 2010
\textsuperscript{12} Office for National Statistics - Labour Force Survey, Jan - March 2009
\textsuperscript{13} Inclusion Scotland; “Know the Score: Welfare Reform Briefing”, 2010
\textsuperscript{14} “Know the Score on Welfare Reform”; Inclusion Scotland, 2010
\textsuperscript{15} Brown, Mike, (2011) “Context for charging – Financial Challenges”, CoSLA Community Care Charging Listening Event (ADSW Resources Committee)
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Independent Living in Scotland Project
23 April 2012
Barnardo's Scotland

- Are you generally in favour of the Bill and its provisions?

Barnardo’s Scotland is in favour of the general principles underlying the Bill. We believe that people have the right to control and choice in all aspects of their lives, especially when choosing what care they receive and how they receive it.

- What are your views on the four options for self-directed support proposed in the Bill?

Barnardo's Scotland agrees with the options for self-directed support set out in Section 3 of the draft Bill.

With regards to the provision of information about self-directed support set in Section 8, we would urge local authorities and the Scottish Government to present information in a format accessible to children. We have responded to this further in the last section of this response.

- Do you have any comment on the proposal that the self-directed support options should be made available to children and their families, together with the proposal that the degree of control a child may have over the process should vary with age?

Section 7 of the draft Bill, which relates to options for children and family members, is of most relevance to Barnardo's Scotland.

We are concerned that there has not been sufficient testing of self-directed support when relating to children. Three local authorities took part in the SDS pilot programme. Of the case studies reviewed in the evaluation of the programme, however, only a very small minority of them related to children. The focus of this work has been largely geared towards adults and adult services.

We believe that much more comprehensive evidence needs to be gathered regarding children and SDS to ensure that it can be delivered effectively to support their needs. There is not yet sufficient evidence available to support services and providers to make changes in order to operate effectively in the new system and this could ultimately lead to problems in the delivery of services. There is still not enough evidence to support local authorities and social workers to fully understand how this will work in supporting children and families, and there is not enough evidence to reassure the families and children that moving into this system will provide them with the best possible care and deliver on the principles of the Bill.

Section 7 point 35 makes it clear that once a certain chronological age is achieved a child is presumed to be of sufficient maturity to form views
regarding their self-directed support. Barnardo's Scotland believes that if a child's cognitive ability is not also considered then there is a danger that the child/young person will be set-up to fail, as decisions may not be made based on the child’s full ‘understanding’, but simply reflect what the child and young person has asked for.

With regards to section 7, it is our view that the Scottish Government should consider a longer lead in time for implementing this section of the Bill until comprehensive evidence has been gathered and a full analysis of pilot programmes has been completed on SDS for children and young people. There are currently a number of projects and programmes being undertaken to assess how SDS can and will work for children and families and we believe that the findings from this work should be considered before this element of the legislation comes into force.

If legislation is rushed to implementation then this could quickly lead to significant, unanticipated, problems arising in ensuring the right service is delivered in the right way to children and their families.

- Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?

Barnardo's Scotland believes that the Scottish Government should consider developing a Register of all Carers and Personal Assistants (with the exception of family members) and anyone else in receipt of funds to provide a service as a result of the legislation.

The Scottish Government has taken great steps to ensure a culture of child protection for our children and families in service provision and this must be reflected in this new system. It should be a condition of funding that only those listed on such a register can be eligible to be employed by families and children, particularly when working directly with children.

Registers for those working in caring roles with children already exist, such as the child minder’s register and the Scottish Social Services Council (SSSC) register. The Scottish Government should consider looking at ways of expanding the SSSC Register to fulfil this role.

Government and local authorities should consider the training needs for potential personal assistants and those that might be employed into a caring role from a non-professional background.

We also believe that those that are employed by individuals and their families to carry out care and support must be on the PVG register.

We are concerned that in some circumstances those who will be employed to deliver services or care may not have the appropriate training and will therefore not be able to deliver the same quality and level of service as received before or by an appropriately qualified professional.
• Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?

One of our major concerns regarding this legislation is that it will lead to a postcode lottery of support and service delivery across Scotland.

Within the legislation or explanatory notes there is no indication with regards to timescales for full implementation of the new system. There are a number of potential issues that arise out of timescales. By leaving timescales open some local authorities may take considerably longer than others to introduce the new system, which would exacerbate the postcode lottery effect. If a timetable is set, depending on when, it may rush local authorities to introduce the system when it is not ready to do so, which would have a significant effect on service users.

Barnardo's Scotland would like the Scottish Government to consider introducing an agreed timetable for implementation, bearing in mind our comments relating to section 7 above, and also consider individual timetables for each local authority to reflect their readiness.

We are also concerned about overview, and would like the Scottish Government to clarify what oversight will there be across the local authorities by the Scottish Government to ensure that SDS is being implemented as envisaged by the Government. What sanctions will be imposed on those local authorities deemed to be failing?

Advocacy services

Under the new system there is likely to be a greater need for advocacy services to support people with disagreements with decisions by the council, disagreements with service providers, and other areas of dispute.

It is not clear who will provide these advocacy services and how they will be funded. For example, will budget holders be expected to pay for advocacy services out of their individual budgets?

Will those in the employ of service users, such as Personal Assistants, be able to act as advocates? If this is the case then there would be the potential for conflicts of interests, as such employees might gain financially as a result of decisions they have advocated for.

We are concerned that there will not be enough independent advocates available to appropriately support those in the system.

As the new system unfolds there is likely to be a greater demand in the short term for advocacy services as the system beds in. The Government/local authorities will need to ensure that services users can access the support they need.
Children, young people and families could also face a dilemma if they employ family members and close associates in caring and personal assistant roles. It would seem unlikely that they would use advocacy services against their own family members if they are not getting the service they need.

- **Do you have any views on the assumptions and calculations contained in the Financial Memorandum?**

Barnardo's Scotland recognise that the Scottish Government has identified funding in the short term to support the transition to the new self-directed support options. However, we have concerns with regards to this transition and available funding.

Principally, we have a concern with how quickly people will be moved over to the new funding options. If there isn’t sufficient available funding then there could be significant waiting lists for direct payments.

The Financial Memorandum highlights the potential concerns with bridging costs and states (p23) that there is little evidence to show how much is required. A lot of local government funding will be tied up in commissioned services and would be difficult to withdraw quickly.

We would have some concerns if local authorities withdrew funding rapidly from commissioned services, as this may affect those services, particularly for providers contracted by local authorities. We understand that local authorities may be obligated, at least in the short term, to provide both commissioned/contracted services and SDS support packages to individuals and their families that may choose not to use those support packages. This would cause significant financial pressure for local authorities, at a time of growing economic pressures.

We understand, but are concerned that some of the administration costs of providing care will transfer to the individual and their family and we hope that local authorities will ensure that such costs are factored into assessments of final budgets presented to those in receipt of direct payments or individual budgets.

With regards to wider costs associated with moving on to the SDS system we also have a number of concerns.

We are concerned that the year-on-year value of recipient’s budget will decrease in real terms, if budget rises do not increase inline with the price/cost of services. The Scottish Government and local authorities must work to ensure that service users are protected from price increases by providers and explore options of linking budget rises with the rise in provider costs.

When moving to direct payments and individual budgets it is essential that local authorities ensure that recipients receive the equivalent level of funding to afford the same level of service they would receive from commissioned
services. If value of what they get in their budget is not the same as what they would receive in commissioned services then the family will receive a loss of service.

We also concerned about the rising cost of services, particularly specialised services for children. It will be crucial for the Scottish Government and local authorities to monitor the costs of services and ensure that those in need of specialist services are not priced out.

In the current financial climate service providers, such as charities, will increasingly be unlikely to be able to subsidise services through voluntary funds. This will likely mean an increase in the cost of services available to individuals and their families, which may increase at a quicker rate than children and their families-allocated budget.

Barnardo's Scotland also has some concerns that the shift towards the personalisation agenda might be used by some local authorities across Scotland as a way of making savings and reducing costs. Such an approach could have significant negative effects for service users and their families and carers. It would also be against the spirit of the legislation.

- Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

Information and knowledge

We are concerned that the level of knowledge and information needed to understand the proposed system is substantial and that without adequate support children and their families will face difficulties in maximising their options and receiving the best service suited to their needs.

Information must also be given in good time, as families need as much time as is possible in order to make informed decisions.

Information must also be made available to families and children in an easily understood way and empower them to make the choices that best reflect their needs.

There is no provision for training and support for managing budgets within the Bill or its supporting documents. We have concerns that those without experience or support in managing budgets may not manage them appropriately and may fail. If this happens what provisions will there be to protect and support the individual and their families?

For example, if a child is given a 12 month budget up front and spend it all in the first nine months what would a local authority do? Would they take over service provision, provide more budget or would the family be left to find the money themselves? This is especially relevant to children as local authorities have a duty of care to them.
Training should include awareness around the costs of services. We are concerned that there families will be awarded substantial amounts of money without the perception and understanding of the value of that budget when compared to the costs of services and this may affect choices.

Barnardo’s Scotland believes that local authorities should ensure that adequate training is provided to all those given individual budgets before they receive it. There should also be provisions in place for the local authorities to carry out short term/crisis reviews of families and individuals. We would also recommend that consideration is given to the monthly release of allocated budgets.

There will also be a need for children and their families to be provided with up-to-date information on all services available to them in their surrounding areas and the costs of those services. This information should be managed by the local authorities and shared with social workers and those supporting families and individuals.

The role of the social worker

Barnardo’s Scotland recognises the hard work and dedication given to their professions by social workers across Scotland. Following this legislation the role of the social worker will be essential in ensuring that service users and their families understand what options are available to them and how they can best exercise their choices in order to receive the best care and support possible.

The role of the social worker in facilitating the personalisation agenda with children, young people and their families is one that will carry significant influence and power, and as such it will be crucial for social workers to understand the responsibilities that come with that.

First and foremost social work staff must see the relationship as a partnership. Social workers should use their position to inform and advise not to influence and prescribe what the best options for families are. The objectives of care and support should always be outcome focused and not dictated by available resource. This position must be set out clearly in guidelines.

Ensuring that all social workers are given appropriate training and support in both the functions and the spirit of personalisation and self-directed support will be essential in ensuring that children, young people and families’ needs and choices are met.

We are concerned that the proposed legislation and accompanying documentation says little with regards to available training for social workers and staff, as well as timescales for completing this training, which we believe to be an essential component to the successful role out of self-directed support.
Assessment

The success of self-directed support relies heavily on greater involvement of children, young people and their families from the initial stage of ‘assessment of need’ through to making informed decisions and for some going onto be employers and manage their allocated budget.

From the outset it is vital that all aspects of collaboration between the local authority, children, young people and their family, should be outcome and needs focused rather than resource led. If decisions become resource led then there is a great danger in creating a dichotomy between ‘quality’ and ‘quantity’ as children, young people and their families are forced to take a lower cost services in order to receive the quantity of support they need. If this happens then it is likely to assume that many specialist services will struggle to be sustainable. Therefore Barnardo’s would suggest it would be prudent that the role of specialist services, within Scotland, is given further consideration in the context of self-directed support.

An asset-based, community-wide approach

The proposed legislation is an opportunity to shift the culture of how we deliver care in Scotland. As well as engraining control and choice into the lives of those that need care and support it is an opportunity to move towards an asset-based approach to assessment and one that considers the whole community and not just the individual. This would relate to the words of the Christie Commission quoted under point three in the policy memorandum that services are “built around people and communities, their needs aspirations, capacities and skills.”

It is Barnardo's experience that far too often current assessments do not consider the whole community in developing care packages. We believe that there are substantial untapped resources within communities throughout Scotland that could be utilised to support people. This would tie in with Principle 3 of the Bill. In the policy memorandum under point 20 where it states, “Assessment processes based on identifying strengths, assets and opportunities and agreeing desired outcomes, represent best practice in relation to this principle.”

Under the new system and with the upcoming changes to the benefits system there will also be a key role for community groups and benefits advice services to ensure that people our maximising their income. Local authorities and community resources must be encouraged to work closer together.

Barnardo's Scotland would like to see the Scottish Government undertake a substantial community mapping exercise, which would identify community resources and assets across Scotland. The findings of this exercise should be disseminated widely to children, young people and their families, service providers, community projects and leaders and serve to play an important role in service planning and delivery.
The changing nature of providers

The move towards SDS will create a market which will allow the emergence of much stronger private forces, both larger organisations and much smaller one-person operations. This presents both opportunities and challenges.

Many private organisations are already in or better positioned to advertise within the ‘social market place’ and to provide low cost basic support packages. ‘More for less’ is an attractive commodity that children, young people and their families may choose to buy as they take decisions based on their finances rather than care and support needs.

The Government, as far as possible, needs to ensure that all providers deliver a guaranteed level of support and service based on the assessment and outcome needs of those they are supporting. Moves must also be made to protect against a race to the bottom, as private organisations/individuals seek to be the most competitive financially.

Furthermore we are concerned that with an influx of low-cost private providers there is the possibility that service users may be targeted by ‘hard sell’ marketing. The Government will need to ensure that safeguards are in place to allow individuals and families to make quick changes to their care, regardless of provider, if it is not delivering what the family and individual needs/wants. There needs to be an element of contract protection for families and individuals in entering a commercial relationship with providers.

Central and local government will need to ensure that such activity is monitored and regulated, if necessary, to ensure that individuals and families are properly protected.

Barnardo's Scotland would like the Scottish Government to consider a Quality Charter, Kite Mark or Approved Provider system to ensure that services offered meet certain standards. This will also reassure those purchasing services that their providers are safe, trustworthy and of high quality.

Safeguarding

Barnardo's Scotland has a number of concerns regarding safeguarding.

Firstly, ensuring appropriate child protection is in place to make certain that those employed by children and young people and their families have the appropriate training and have been properly vetted is essential.

Financial safeguarding is also a crucial element in getting this system right. Barnardo's Scotland has some concerns that those in receipt of Direct Payments and individual budgets will be open to exploitation and abuse, especially if they are particularly vulnerable. This could be at the hands of family members or close associates.
The Scottish Government and local authorities will have to make sure that adequate safeguards are in place to protect budget holders from exploitation and to ensure that funds are being spent entirely on services to support their care and outcome plans.

Barnardo's Scotland would recommend that the Government, consider exploring a number of options to do this including a pre-paid card system which would enable local government to track where the money has been spent. Edinburgh City Council has tried out such a system.

**The right budgets for the right people**

We have some concerns about ensuring the right people receive the right budget and are assessed appropriately.

For example, in the case of a child with disabilities and a parental carer will the parent/carer assessment of need and allocated budgets be viewed separately from the assessment of need and allocated budget for their child with disabilities?

We would be concerned if budgets not allocated in this way might see carers/parents entitled to services, such as respite care, but not taking them as they elect to spend their resource on their child.

It will be important for guidelines to ensure that everyone entitled to support within a household receives that support.

**About Barnardo's Scotland**

Barnardo's Scotland works with more than 10,000 children, young people and their families in 98 specialised projects in communities across Scotland.

Barnardo's Scotland
25 April 2012
The Social Care (Self-Directed Support) Bill
Carers Trust

1. Summary of key points & recommendations

1.1 Principles / Framework

There is an opportunity to amend the legislation to include a principle which recognises carers as equal partners in care. We believe this would build on existing recognition of carers in policy terms and the principles outlined in supporting guidance for the 2002 Community Care and Health (Scotland) Act where carers are recognised as key partners in providing care. This would send out a clear message that unpaid carers in Scotland and their contribution is both valued and supported.

1.2 Provisions Relating to Adult Carers

We would urge the Committee to consider and recommend a strengthening of the Bill to offer a duty - and not a discretionary power – to recognise and support carers. We would further recommend, in line with the 2011 recent Law Commission review of Adult Social Care (England) that every carer should have access to an assessment and the offer of support proportionate to their needs. Experienced carers’ organisations such as Carers’ Centres can contribute directly to this, ensuring carers are identified, assessed and supported in their caring role and to have a life outside of caring.

1.3 Provisions Relating to Information and Advice

Information and advice is critical; carers and their families need to have access to clear information and advice about the options for support and what the Bill itself will mean in practice. This needs to be impartial, and from a carers’ perspective must come from a specialist carers’ organisation such as a Carers’ Centre where staff will have built up relationships with families and understand the needs of carers. Carers’ Centres in Scotland are already preparing for this by putting in place training around Self-Directed Support (SDS) for unpaid carers and the centre’s staff teams.

The capacity of these organisations must be supported.

1.4 Effective Assessment and Involvement of Unpaid Carers/Families

The need to effectively assess families’ situations is vital and in doing so, we cannot lose sight of the needs of unpaid carers. This is vital to achieving successful outcomes for SDS. Carers and their families must be directly involved in the local implementation of the Bill and in local authorities’ work to expand personalisation.

1.5 Real Choice
The underlying intention of the SDS Bill is that people should have real choice in how social care/support is delivered. However, self-directed support will not suit everyone and carers may not want to take on the additional responsibility of for example employing Personal Assistants, accounting and managing the delivery of services. Families who choose to retain existing packages should not have to be reassessed or go through a Resource Allocation System.

The principle of choice underpinning the Bill must also extend to carers’ right to choose to care/not to care.

1.6 Self-Directed Support and Local Cuts

Moving towards more personalised services cannot sit alongside local cuts. What Self-Directed Support can offer is more effective use of resources as services more fully meet the needs of unpaid carers and their families.

1.7 Charging

The Self-Directed Support Bill opens up the possibility that unpaid carers could be charged for services which help support them in their caring role. We strongly oppose this provision. As key providers of health and social care, it is wrong that carers might be expected to contribute to the costs of services which enable them to maintain their caring role and their own health and wellbeing. Plans to integrate health and social care services may provide a good opportunity to look at how charging operates in Scotland.

1.8 Young Carers

The needs of young carers must not be lost in assessment processes for Self Directed Support. The potential impact of Self Directed Support for young carers needs to be considered – e.g. will they end up managing personal budgets for family members on top of any current caring responsibilities?

1.9 Employing Family Members to Provide Care through Direct Payments

In line with other carer organisation respondents, we would ask the Committee to recognise the need to strengthen existing regulations relating to employment of close relatives through Direct Payments.

1.10 Mental Health and SDS

We would urge the Committee to consider how carers and their families dealing with mental ill health can get access to SDS and to take note of points raised in section 8.5 of this submission.

2. Introduction

2.1 The Princess Royal Trust for Carers in Scotland (part of Carers Trust – see appendix 2) welcomes the opportunity to present a written submission to the Health and Sport Committee for Stage 1 of the Social Care (Self-Directed Support) Bill. The Princess Royal Trust for Carers in Scotland (PRTC)
currently helps some 53,000 carers and young carers cope by giving them information, support and advice through our work with the unique network of Carers’ Centres and young carers’ services. Additional support is provided through our interactive websites, [www.carers.org](http://www.carers.org) and [www.youngcarers.net](http://www.youngcarers.net) and partnership work with smaller conditions specific organisations. We have been involved in the development of the Bill through the Bill Steering Group and have focussed our involvement on the needs of Scotland’s unpaid carers. Our submission is drawn from consultation with our Network Partners, carers and other key stakeholders.

2.2 It is important to point out that the current Government has strongly progressed support for carers both directly and through local authorities and health boards in a range of ways, not least of these being through increased investment in carer support e.g. through the Change Fund, Carer Information Strategy funding and through short breaks. **The Bill presents the next stage on a journey** to ensure carers across Scotland are effectively and consistently recognised and supported to have a life of their own and to maintain their own health and wellbeing.

2.3 Our starting point is that supporting unpaid carers makes good economic sense and that the Scottish Government has a significant opportunity to strengthen the rights of unpaid carers by **delivering a duty to support carers through local authorities.** Our contribution highlights some key issues which we would ask the Committee to consider both in seeking oral evidence and in pulling together its’ Stage 1 report.

3. **Principles / Framework Provisions**

3.1 We support the Bill’s intentions and principles:

- To offer more choice and control through a range of Self-Directed Support options;
- To ensure people have the information they need to make an informed choice; and
- To ensure there are mechanisms to review people’s situations as and when needed/when circumstances change.

The Bill presents a clear direction of travel, and seeks to empower people to have more choice and control. **The challenge will be in moving from legislation to implementation both for service users and unpaid carers, especially in the current financial climate.**

3.2 Aligned to the Bill and the Self-Directed Support Strategy, we very much welcome the additional investment from the Scottish Government to help kick-start change at local level. The PRTC and Carers’ Centres in Scotland, will work hard alongside statutory and other voluntary sector partners to help carers (and their families) understand and make informed choices about Self-Directed Support.
3.3 For service users, bringing the Bill’s principles to life is driven by legal duties. This is different for unpaid carers (Section 4). Supporting guidance for the 2002 Community Care and Health Act acknowledges the principle of carers being treated as key partners in care. \(^1\) Policy has moved on significantly since then and now recognises carers as equal partners in care. \(^2\) The next step would be to recognise carers as equal partners in care in legislation, sending out a clear message about the value of unpaid carers in Scotland and the need to support their contribution, as appropriate. We would urge the Committee to recommend an amendment to the legislation to include a principle which reflects this.

3.4 Access to social care remains confusing and difficult for many for a range of different reasons. The changes which the Bill seeks to drive will add new facets to social care and the Bill recognises that service users, carers and their family members need to have access to clear, impartial information and advice about support options and what the Bill itself means in practice.

3.5 For unpaid carers, that information should come from specialist carers’ organisations such as Carers’ Centres, through Carer Support Workers who will have built up a strong relationship with the family and who understand the specific role and needs of carers. Carers’ Centres in Scotland are already preparing the way by employing specialist staff (Dundee, Midlothian) and offering SDS training to unpaid carers (south Glasgow).

3.6 Driving change in the delivery of health and social care through Self-Directed Support must not be used as a mechanism to cut social care budgets and people’s packages at a local level. Effective assessment and involvement of individual service users and their carers – of families – is critical in this context and for the successful implementation of the legislation. Research in England around Self-Directed Support for people with mental health issues highlighted this (e.g. inappropriateness of assessment documentation for some individuals; waiting time from assessment to service input) \(^3\).

3.7 The recent experience of carers and their families in Glasgow clearly demonstrates the importance of effective assessment, illustrated by Carolan Connolly’s story (appendix 1). The rights of carers can and do sometimes get lost in assessment processes for Self-Directed Support \(^4\), particularly in self-assessment processes. The effective involvement of both service users and

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\(^1\) Carers and their Rights – Carers Scotland, 2006 – p11. Also CCD 2/2003 3.1.1
\(^2\) Caring Together – Carers Strategy for Scotland (July 2010)
\(^3\) Self Directed Support for Mental Health Service Users in West Sussex; West Sussex County Council and West Sussex NHS Primary Care Trust - 2009
\(^4\) The Individual Budget Pilot Projects: Impacts and Outcomes for Carers (The Princess Royal Trust for Carers/Crossroads Caring for Carers (April 2009)
carers in assessment processes leads to better outcomes for all, and in turn, better use of resources at the local level.

4 Provisions relating to adult carers: Making the Case for A Duty to Support Carers

4.1 The policy document accompanying the SDS Bill highlights the benefits to the public sector of good quality, well targeted support and the role it can have in reducing pressure on demand for services in health and social care. There is also a clear recognition that the right support, at the right time, can prevent crisis or emergency situations from developing. This prevention argument is critical to the SDS Bill, and underpins our argument to strengthen the Bill’s provisions for unpaid carers.

4.2 Unpaid carers are a key provider within the health and social care system and deliver substantial amounts of care. Not only is it cost effective to support carers in that role, it makes sense that they themselves have clear rights to support which in turn prevent them from suffering ill health and from being unable to continue caring. Having access to a life of their own can be tied up around the supports and services offered to family members – and so widening access to and improving services for service users through Self-Directed Support can directly benefit unpaid carers.

4.3 The Scottish Government and CoSLA have clearly acknowledged the preventative, economic and social benefits of supporting unpaid carers in their role. This is reflected in the Carers’ Strategy and the Self-Directed Support Strategy which acknowledge that support for carers can reduce demand on social care (and other) services – both from the perspective of the carer or the cared for person. The Carers’ Strategy also acknowledges that much more needs to be done to achieve practical support on a consistent and uniform basis, whilst outlining the need to support carers in the context of demographic change (pgs. 19-20).

4.4 At a recent meeting of the Cross Party Group on Carers (22 March 2012) the Scottish Government representative from the SDS Bill team outlined that part of the rationale for not creating a duty to support carers was down to cost. However, providing direct support to carers delivers clear economic and social benefits to statutory services. This is highlighted by a recent Social Return on Investment analysis of the work of Carers’ Centres and a related press release outlines the key benefits:

This gain in value arises from carers maintaining better physical and mental health by reducing stress and depression. In addition to this the person who is cared for is able to continue living at home while some carers may be able to continue working. The services targeting young carers play a crucial role in assisting [them] to continue education, find employment or receive training.

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5 As above
6 Self Directed Support Bill, Policy Memorandum
7 Caring Together (2010) – p21
Carers’ Centre Services result in a real return to society, helping carers to continue to care confidently and safely. Carers provide support that is valued at £119bn a year. And services that help carers to continue caring are vital to society’s ability to look after its increasing elderly and disabled population.  

4.5 The cost effectiveness of carer support is recognised in the Welsh Assembly’s ongoing consultation on the Social Service (Wales) Bill. The consultation document clearly acknowledges the financial benefits of more consistent access to support and assessment of carers’ needs:  

4.6 We understand the Scottish Government’s rationale that a discretionary power to support carers can help drive front line change and empower professionals working with carers and their families. However, the Bill in its current format does not give parity of esteem between the rights of carers and the rights of service users - and indeed by giving local authorities a discretionary power, there is a risk that the current postcode lottery of support for carers will continue. 

4.7 Lastly, there is a human rights perspective to consider. Carers should have access to the same rights to a life which helps them achieve their own potential, to achieve their own goals, to find or keep employment, and to maintain their own health and wellbeing. By not setting a standard through legislation to support carers more consistently, we are missing the opportunity to demonstrate the value of carers’ contribution and the need, as the Carers’ Strategy outlines, to support that more consistently across the country.

In light of this, we would urge the Committee to both consider and recommend a strengthening of the Bill to include a duty – and not a discretionary power – to recognise and support carers based on a Carers’ Assessment.

4.8 We would further recommend, in line with the 2011 recent Law Commission review of Adult Social Care (England) that access to a Carers’ Assessment should be widened beyond carers who provide or who are willing to provide “regular and substantial care”. Any carer should have access to an assessment and the offer of support proportionate to their needs. In line with current and developing practice, experienced carers’ organisations can help support this vision; indeed, Carers Centres already work in partnership with statutory bodies on this - such as in the Borders.

4.9 Recognising the current financial climate, the widening out of Carers’ Assessments to all carers could be phased in – through a power which can be enacted later or potentially through Statutory Guidance. It would be a positive step if the Government indicated a willingness to consider this, particularly in

9  http://www.carers.org/news/value-carers-services-put-%C2%A3814m-year

light of the focus on preventative spend and the need to identify and support carers before they or their families reach breaking point.

4.10 We are aware of the concerns raised by other consultees that the number of Carers’ Assessments requested (and therefore requests for access to support) would increase because of the Bill. However, the Financial Memorandum does not agree with this and we agree with the analysis within this document. The work of Carers’ Centres through, for example, Carer Information Strategy funding has had a strong focus on identifying and in turn, assessing their needs through links with the Primary and Acute sectors.

4.11 We do however need to take into account the following points:

- Carers are sometimes still not informed of their right to an assessment and the assessment may not always affect positive change. (See Carolan Connolly’s story in appendix 1.)

- It is also important to consider who carries out the assessment and how this is then taken forward. Voluntary sector carers’ organisations carry out what is, effectively, a full Carers’ Assessment when supporting unpaid carers. Greater flexibility in carrying out assessments will hopefully increase the uptake and also assist with local planning of services based on a better understanding of local needs. Early involvement of Carers’ Centres can mean a more speedy response to immediate needs, and prevent the development of more expensive crisis situations. The role of specialist carers’ organisations such as Carers’ Centres must therefore be recognised and supported.

- Eligibility for a statutory (local authority) Carers’ Assessment is based on carers providing regular and substantial care which raises the question as to how this is interpreted? In the worst possible scenario, there is a risk that local authorities only offer a Carers’ Assessment to carers in crisis situations rather than in a way in which helps identify and prevent any issues developing earlier on.

- The range of local services available will be key in ensuring that choice and capacity of provision is available to those looking to take up SDS and the local authority role in developing this ‘market’ should not be underestimated.

- Local authorities should also have in place systems to clearly articulate how resources and budgets are prioritised and allocated to individuals, and what redress individuals might have if they choose to challenge the decision.

4.12 The Bill presents an opportunity to strengthen the importance of a Carers’ Assessment. There are positive opportunities to address the challenges outlined above through statutory guidance linked to the Bill and
through the development of practice guidance to strengthen the assessment process.

4.13 In addition, we concur with points made by other National Carer Organisations in their submissions to the Committee where they have outlined the importance of carers’ needs being recognised and supported through the assessment processes linked to SDS. The principle of choice underpinning the Bill must also extend to carers’ right to choose to care/not to care. Assumptions cannot be made about the carer’s willingness and ability to care.

4.14 Lastly, access to carer support must not be included in the service users’ Direct Payment or personal budget. It is important that the needs of the carer are supported separately – ensuring there is a strong duty to support carers would be a positive enabler in this context.

5. Charging

5.1 We strongly oppose the notion that carers, acknowledged as equal partners, could be charged for services which support them in their caring role. The Self-Directed Support Bill opens this up as a possibility. As an essential element of providing health, social care and other services in Scotland, it is wrong that unpaid carers may have to contribute to the costs of services which in turn can help them maintain their caring role and their own health and wellbeing – thereby reducing statutory interventions and costs.

5.2 Given that carers accessing Direct Payments / personal budgets may potentially only need relatively small amounts of money, to charge carers in this context is wrong and is likely to reduce any benefit gained from the Direct Payments / SDS investment to support the caring role.

5.3 On charging more widely, we would agree with the views of service user organisations, such as Independent Living in Scotland, that charging in Scotland needs to be fair and equitable, and that charging may well work against the vision and outcomes for Self-Directed Support. At a recent Carers’ Question Time event in Dundee (16 April), carers talked about the impact of charging for services provided to those they look after. Increased charging can push families into poverty; it can place an additional burden on unpaid carers who may have to provide more care when families can no longer afford to pay for social care services. Plans to integrate health and social care services may provide a good opportunity to look at how charging operates in Scotland.

6. Young Carers and Self Directed Support

6.1 Young carers over 16 will benefit from the provisions within the Bill and this is to be welcomed. As they are entitled to the same rights to an assessment as adults, some of the concerns we have raised above and indeed wider recognition of young carers and their specific needs is important.
6.2 Assessment of family situations and needs may show that a family is coping because of the support being provided by a young carer. The needs of the young carer can therefore become lost amongst this. Assessments for SDS and more widely must take account of the specific needs of a young carer and ensure they are supported to have a life of their own. For young carers under 16, this is particularly important.

6.3 The needs of the young person in this context should be considered paramount. Direct Payments / SDS may well benefit the service user but do they place additional burdens on a young carer who may, for example, already be managing the household budget?

7. Access to the Options – Other Support Mechanisms

7.1 Whilst we welcome the opportunity for carers to have access to Direct Payments or any of the other SDS options in their own right, it is important to note that there is another option which needs to be recognised – the range of direct support services already offered by voluntary sector carers’ organisations and Carers’ Centres to unpaid carers.

7.2 Such support must be recognised as a valid choice for unpaid carers and young carers. This type of support can sit alongside or indeed be offered in place of the options outlined above. The evidence base supporting the real impact and value (social and economic) of direct support for unpaid carers is strong.\(^{11}\)

7.3 We have also heard, albeit anecdotally, that one local authority has mooted the idea of withdrawing its’ funding for the voluntary sector carer support infrastructure and instead provide carers with Direct Payments to purchase support. The danger in doing so is that an important element of preventative and on-going support for both carers and their families is removed. It would not be a huge step to assume that this could apply to user-led organisations which play a critical role in enabling and empowering disabled people.

8. Wider Issues & Challenges

8.1 The Impact of Personalisation / Self Directed Support

The principles underpinning the Bill are to be welcomed. Carers and people with disabilities themselves welcome the move towards services which work more effectively around their needs. However translation into reality can present significant challenges when, for example, the assessment of needs and resource allocation systems lead to cuts in personalised budgets which leave a gap in care as highlighted by the KM case in Cambridgeshire.\(^{12}\)

\(^{11}\) For example - Caring Together: The Carers’ Strategy for Scotland e.g. page 23; Supporting Carers – The Case for Change (The Princess Royal Trust for Carers, 2011); Social Impact Evaluation of Five Carers’ Centres using Social Return on Investment (The Princess Royal Trust for Carers 2011).

\(^{12}\) [http://www.guardian.co.uk/society/2012/feb/07/blind-man-care-funding-case](http://www.guardian.co.uk/society/2012/feb/07/blind-man-care-funding-case)
8.2 Much has been said about the experience of personalisation in Glasgow City, and the Committee will no doubt examine the experience of both carers and services users as part of their considerations.

8.3 Barriers to creating more personalised services

A SCIE report\textsuperscript{13} published earlier this year highlighted specific challenges which may arise in implementing the SDS Bill. These include:

- The need to develop a market of services which people can access in order to have real choice—this particularly affects rural areas. We need to consider how local markets can be stimulated.
- Funding cuts / impact of contractual changes— for services which deliver personalised services and support services. However, the impact of initiatives such as Carer Information Strategy funding has been positive in Scotland and has been utilised in Glasgow to help prepare carers and their families for personalisation.
- Inflexibility around the use of personal budgets / Direct Payments for families and for individuals. Work carried out by Voluntary Services Aberdeen and The Princess Royal Trust for Carers in 2009 highlighted the need for more flexibility in how Direct Payments can be used by families and the positive outcomes which emerge as a result—particularly for families in rural areas.\textsuperscript{14}

8.4 Employing Close Relatives to Care

Submissions from the Coalition of Carers in Scotland and other carer organisations will highlight the need to strengthen existing guidelines which cover the employment of close relatives to provide care and support through Direct Payments. The PRTC in Scotland supports this. Currently, carers and their families can find it difficult to take this option forward, even for a trial period. One carer who will submit written evidence to the Committee, Karen Hogg (East Lothian), outlines the processes and difficulties she faced when trying to set up Direct Payments which enabled her mother to employ her. Her story is powerful and the outcomes in her situation are very positive.

The existing regulations covering this provision will, we understand, be revised and we would urge the Committee to support stronger regulation which ensures that where a family chooses to use a Direct Payment in this way, they are supported and able to do so.

For some mental health service users, unpaid carers can be best placed to take on the role of personal assistant, therefore being employed may be a natural move. However this is not universal and may cause conflict of interest in some situations, such as procedures involving detaining a patient.

\textsuperscript{13} Social Care Institute for Excellence – Report 55 “People not processes: the future of personalisation and independent living. (Feb 2012)

\textsuperscript{14} A Study into the use of personalised services, notably Direct Payments, to benefit carers living in rurally isolated areas. (The Princess Royal Trust for Carers, Oct 2009)
8.5 Mental Health and Self-Directed Support

There is a need to ensure that staff in relevant agencies (statutory and non-statutory) are fully versed in the AWIA and Mental Health (Care and Treatment) Act and the Self-Directed Support Bill to ensure proper compliance and safeguards are in place.

Currently patients with mental disorders who are subject to compulsory measures under the Mental Health (Care & Treatment) Act, including those on community based compulsory treatment orders, are ineligible for Direct Payments. This is seen mainly to be due to the use of capacity testing in assessing whether a person can manage a Direct Payment. However, individuals may well have capacity to make choices about social care and support which is wider than medical treatment for mental health disorders. There is a need to consider how patients in these situations – and their carers – could potentially access SDS to help in rehabilitation, the development of independent living skills and to carers themselves to access vital support.

Unpaid carers can be left to cope with patients on a Community Compulsory Treatment Order, with limited service provision in place which may be difficult for the patient to engage with. Very often people recovering from mental illness need people they are familiar with and trust to help them. Supporting a patient about to become subject to community compulsory measures could enable them to put SDS in place, or resume it, prior to moving out of hospital. This might be of benefit to both service users, carers and their families.

One of the main components of SDS is the ability for service users to become more socially included in their community. This can be difficult for mental health service users where society still has opinions shaped by stigma and lack of understanding.

It is important to take account of the fluctuating nature of mental disorder. This can often mean periods where the caring role is more or less intense. What needs to be addressed is how quickly would a carer assessment pick this up and activate a Direct Payment to the carer, if one was deemed necessary, in this situation?

9. Conclusions

The Princess Royal Trust for Carers in Scotland (part of Carers Trust) continues to support the principles and intention behind the SDS Bill and will work with the Government to develop statutory regulations and guidance to support the implementation of the Bill, should it become law. Our longstanding aim is to work with the Government and other partners to ensure that the opportunities presented by the Bill are fully realised for carers.

We are happy to provide further information as needed and to assist the Committee as it considers the Bill.
Appendix – The Princess Royal Trust for Carers in Scotland

In April 2012, The Princess Royal Trust for Carers merged with Crossroads Care (England and Wales) to become Carers Trust. In Scotland, at the request of its Network Partners, the charity retains The Princess Royal Trust for Carers in Scotland brand and name.

The PRTC in Scotland currently helps some 53,000 carers and young carers cope by giving them information, support and advice through our work with the unique network of Carers’ Centres, young carers’ services and interactive websites, www.carers.org and www.youngcarers.net

The Princess Royal Trust Carers in Scotland’s Network Partners throughout Scotland deliver services in almost all local authority areas from Orkney to the Borders. Each centre provides specific expertise for their particular area. The centres belong to the local carers and the services include:

- finding hidden carers through outreach in GP surgeries, hospital wards and schools
- finding the right information to provide personalised services
- campaigning for carers’ rights and entitlements and giving them a voice
- supporting carers emotionally
- helping to make caring a positive experience, by ensuring access to breaks, education or employment and the opportunity to share experiences with other carers.

Many Carers’ Centres also support young carers – children and young people under the age of 18 who take on caring roles and responsibilities that are inappropriate for someone of their age.

Support for young carers includes:
- help to find other sources of support so that fewer families rely on a child for vitally required care
- running clubs, activities and holidays that give young carers a break and time to be children
- giving one-to-one support and mentoring, together with raising awareness in schools
- educating and training teachers, doctors, youth worker and social workers to recognise the signs of a hidden caring role, offer a carer-friendly response and access to specialist help.

Carers Trust
24 April 2012
Age Scotland welcome the opportunity to comment on the draft Social Care (Self-Directed Support) (Scotland) Bill ahead of the Committee’s consideration of it. Age Scotland believe this Bill and the Scottish Government’s Self Directed Support Strategy have the potential to revolutionise the way we deliver social care by giving the service user control over the care he or she receives, including who is to provide the services and how and when they are to be provided.

Given the breadth of the questions asked by the committee Age Scotland has not found it possible answer all eleven questions and keep to the submission limit therefore the charity has limited its response to areas where it can provide the greatest value to the committee.

1. Are you generally in favour of the Bill and its provisions?

Age Scotland believe Self-Directed Support (SDS) can have a positive effect towards sustaining and improving health through an emphasis on self-help and support that is continuous, integrated and individualised. The rebalance of the relationship between the state and individual is key to giving people more control over their lives and promoting confidence and well-being. Age Scotland recognises that when empowered to direct their own support, families effectively combine state resources around their own support systems — creating a truly personalised care package.

Further the charity recognises there is a significant level of research that demonstrates the benefits of a SDS approach to social care delivery for service users.

- The Scottish Government SDS test sites, which were launched to trial activities to around leadership and training, cutting red tape and bridging finance, found that those that accessed SDS packages were extremely positive about their support and very satisfied with the flexibility and choice that SDS had offered them.

- A North Lanarkshire Council review published in 2009 found individual budgets had "filled in the gaps" by enabling people to spend money on gym membership and other services not funded by the council and improved control and flexibility for users.

- A 2008 review of SDS conducted by the Scottish Government found that an overwhelming majority of users and informal carers had a positive experience of using SDS funding to purchase their support.

By focusing limited resources on personalised need, local authorities will be eliminating unnecessary waste and duplication, and delivering a system better suited to the needs of the individual. This was a key issue highlighted by the Christie Commission and is supported by the findings of a Age Scotland 2012
opinion poll where 75% of respondents over 50 said they wanted to have an input into how their local care services were delivered.

However Age Scotland believe that entrenched pockets of local authority resistance are denying many older people the opportunity to benefit from choice and control and that this will continue unless personalisation becomes the system, not an add-on or peripheral option. The SDS test site evaluation demonstrated that, overall, people with learning disabilities were the main group to access SDS and that other groups including those with mental health problems, older people and parents of disabled children were less likely to access SDS. Further, the test site evaluation concluded implementation of Direct Payments was seen as highly inconsistent, with some local authorities adopting more enthusiastic policy and practice than others and that the lack of sufficient support infrastructures for service users and carers was seen as a further obstacle.

The law in Scotland places a duty on local authorities to offer a direct payment to eligible groups after a formal assessment. In reality, this means that the individual has a right to opt in to direct payments but that the traditional method of obtaining care remains as the 'default' position. This has lead to somewhat patchy uptake of SDS provision across the country where Scottish Borders had the highest per capita clients receiving SDS at 26 per 10,000 and North Lanarkshire the lowest at 3 per 10,000. The lack of awareness about SDS is reinforced by the results of the four consultation events the charity held in 2010 to investigate the views of older people on SDS; and of the forty four older people consulted fewer than ten were even aware of SDS. Other anecdotal evidence obtained by the charity suggests there are doubts about eligibility and concerns about complex paperwork. Given the potential positive impact that personalisation can have for social care users Age Scotland believe there is a need for a Self Directed Support Bill which will raise the profile and awareness of SDS as a social care option.

2. What are your views on the principles proposed?

Age Scotland is fully supportive of the principles in the draft Bill, as detailed above public bodies need to capitalise on the experience of and commitment of service users and see them not just as beneficiaries but as participants and contributors. Involving them in the control, design and delivery of social care makes for higher quality and more appropriate services, and increases people’s satisfaction with the services they receive. Without this change we will fail in delivering the outcomes we need and at a huge cost to the public purse.

We do suggest however that given reduced availability of public money over the next few years and the Scottish Government’s focus on public service reform, as a way to improve the quality and economic efficiency of our public services, consideration should be given to whether a principle of prevention should be one the guiding principles of the legislation. This is suggested more widely for adult social care law reform in a Law Commission’s consultation submission in England and Wales. Their consultation paper suggests that “a principle might be based on a requirement that wherever possible support
should be provided that removes or reduces the level of help that will be required in the future and builds independence”. This would also build on the Power to Advance Well-Being that currently applies to local authorities in Scotland since 2003iii. This discretionary power enables local authorities to do anything they consider is likely to promote or improve the well-being of their area and/or persons in it and the principle of prevention would fall under this power.

3. What are your views on the four options for self-directed support proposed in the Bill?

Age Scotland believes it is extremely important to ensure that SDS is promoted in its widest sense and is pleased the draft Bill contains a menu of options for people to choose from. We welcome the current position, where local authority arranged services are the assumed norm, being replaced with the clear framework of options detailed in the Bill.

SDS options should be a matter of choice for all service users (where possible), in full knowledge of both positive and potentially negative aspects, such as financial or employer responsibilities that not all service users want. The choice should be informed by an understanding of the support that will be available to the person to help them manage their SDS, should they be interested in receiving support in this manner. The system can be complicated for individuals and families to manage therefore local authorities, independent advocates, information centres and service providers should provide information to individuals and families about their options in a clear and simple way. In particular, there must be transparency in the decision-making process and the appeals system with decisions communicated in the means appropriate to the service users.

5. Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

To ensure there is sufficient knowledge about, uptake of and migration across the four options detailed in the Bill, developing the capacity of peer support organisations is a necessary pillar of SDS policy and practice implementation. While social work department will in most cases be the first port of call for service users there is a need to ensure all users can access independent advice, support and advocacy and the social work department should provide this signposting in a timely manner to ensure that the decision making process for service users is seen as transparent and not local authority led. Access to independent advice, information and advocacy should be available continually as a means to encourage service users to self review the service they receive to determine whether it can be improved upon. The charity recognise there are resource implications from continually reviewing and changing services but the principle of personalisation ensures that the service user has the right to migrate between SDS if their circumstances and needs change.
SDS is likely to increase demand on third sector advice and advocacy providers. The charity expect the third sector to take a leading role in providing independent, advice and support to service users but would encourage the Committee to seek assurances from the Scottish Government about any measurement it has made to ensure that there is a sufficient nationwide advice and information network established to support service users. The charity recognises the concern from some service users about the potential for conflict of interest where advice and information is provided by a local authority or even a third sector service provider. To address these legitimate concerns we believe the Bill should be amended to include a right of access to Independent Advocacy as defined by S259 of the Mental Health (Care and Treatment) (Scotland) Act 2003. A national right of access to advocacy services will ensure that everyone accessing SDS will make informed decisions about the services that are right for them.

7. Do you have any views on the provisions relating to adult carers?

While 3,000 older people in Scotland receive 20 hours or more care at home each week, 40,000 older people provide the same level of care for friends and family. Age Scotland recognise the vital role Scottish carers play in delivering preventative services and that as our population ages society as a whole will become even more dependent on their contribution to health and social care delivery.

SDS and the personalisation agenda means thinking about public services and social care in an entirely different way – starting with the person and their individual needs rather than the service and we are keen to.

There are of course issues about resource allocation that will be considered more fully by the committee and whether carers should be supported with money that would have been previously directed to service users, but the given the vital work the carers do in Scotland, and the strains that caring responsibilities put on finances and relationships Age Scotland support the measures contained in the draft Bill to allow local authorities to assess their relative need and then provide a menu of support options to carers. The Bill currently refers to SDS for carers who have undertaken a carers’ assessment, yet these assessments aren’t widespread and many carers aren’t aware that they can get one to access support. The committee should consider whether there is another, more effective, mechanism for encouraging carers to access Direct Payments.

Nonetheless the principle builds on the proposals set out in the Scottish Government’s Carer’s Strategy. This strategy and the upcoming Carers Charter are both crucial developments for Scotland’s unpaid carers – for the first time, existing rights for carers and the principles which should underpin support for carers will be consolidated and shared widely with the statutory sector and voluntary agencies. The proposed legislative changes in the draft Bill by enabling carers to access Direct Payments can in part realise the ambition in the Strategy and Charter. The extension of eligibility will also mirror practice in England where carers can access direct payments from local authorities.
8. Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?

The current direct payment legislation states that in exceptional circumstances a close family member can be employed as a personal assistant, this proposal is an extension to this approach.

The majority of personal and other care in Scotland is currently provided by spouses, partners, and other family members, rather than by employees or agencies funded by the local authority. Although the public sector would be understandably reluctant to start paying for care that was previously unpaid it is critical that the Government appreciates the preventative nature of the care provided and that by investing in this care they will realise even greater savings.

For example by allowing individual to employ close relatives the Scottish Government can create a well designed, targeted, preventative early intervention and wellbeing service which has a huge potential to promote a healthier, more active and independent older age for many people and their carers; thereby reducing the negative aspects of ageing for individuals as well as easing demands on.

Age Scotland believe the current restrictions in relation to service users being prevented from employing carers and family members of their choice through direct payments are inadequate and discriminatory. For example current restrictions potentially discriminate against:

- BME carers, as they fail to give people with specific cultural and language needs the option to employ family members by right.
- People in rural and remote communities who often struggle to recruit and retain Personal Assistants
- People with conditions which result in challenging behaviour, or anxiety associated with unfamiliar people. In these circumstances the best outcomes for the service user is often care provided by those with whom trust has already been established, which may be family members.

Current needs such as these are not being met through the existing system, leading to inequalities in the provision and accessibility of services.

The existing landscape is the worst of all worlds with different local authorities interpreting regulations in different ways, leading to an inconsistent approach across the country to employing relations. An unambiguous national framework detailing where relations cannot be employed by service users would be desirable as this would help eliminate inconsistency in local practice. For example it may be appropriate to have national employment exclusions in place for people with power of attorney / guardianship.
However we would also draw the committee’s attention to circumstances where a personal budget is used to pay family members to provide care, there are reports of family members feeling under an open-ended obligation to be available and therefore we suggest that imposing some national guidance restrictions on availability (for example, at weekends) for some family members is appropriate in some situations.

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

The charity does not have any views on the calculation contained in the Financial Memorandum per se however it would re-iterate its response to question 5 where we detailed that the necessary advocacy and advice service are not developed across the country. Age Scotland recognise money has been allocated within the budget to increase the capacity of the information and advice sector (£1m was allocated in 2011/12 and a further £2m per annum will be allocated over the following three years) but believe the committee should seek assurances from the Government about the progress of this community capacity building and also what the financial costs will be to adequately develop Independent Advocacy services. Peer support and advocacy is necessary to overcome existing inertia in SDS uptake and the development of truly personalised social care provision.

The financial memorandum notes there will be an impact on administration costs of third sector providers due to the shift from block contracting to individualised purchasing of support but no estimation is made about the value of these costs. Given reductions to local authority budgets and a difficult funding environment for third sector organisation it is crucial that there is finance to cover new costs in short to medium term in delivering SDS or the capacity of many support organisations may be severely restricted.

10. Are you satisfied in the assessment that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?

Age Scotland agrees with the Scottish Government assessment made on the impact on island communities. One of the main attractions of the bill is that it can provide more flexible solutions for small and rural communities who may have a less developed statutory care sector. However to ensure that we deliver a truly national Bill that is empowering for all disabled people across Scotland, Age Scotland believe that Scottish Government must assess the respective local authorities ability to deliver on the bills principles and evaluate what further support is needed for those council with have a heavily weighted elderly and disabled population. This may include a review of local implementation strategies and ongoing support to overcome local barriers.

However there also a need for greater consistency and uniformity across all local authorities to consider the portability needs of all service users- a key human rights principle with respect to autonomy of decision making. Councils must not act in ways which are incompatible with the European Convention on Human Rights (ECHR) under section 6 of the Human Rights Act 1998. In
particular Article 8 (right to private and family life, including autonomy in decision making, the right to work and the right to live with dignity) and Article 14 (non-discrimination on a number of grounds, including “any other status”).

Currently service users:

- Can’t take a support package from one local authority area to another;
- Will need to be assessed by new local authority;
- Don’t know if they will be eligible for SDS;
- Can’t be sure of getting the same level of SDS;

This localised support landscape may prevent or disadvantage service users from moving house and / or taking up job opportunities in other areas. To ensure SDS has an enabling framework for all service users in Scotland there is a need to overcome some of the challenges that 32 separate systems creates. The charity believe a clear set of minimum entitlements which are genuinely enforceable agreed by CoSLA and Scottish Government and/or a ‘passporting’ system supported by a protocol can help overcome the blockages with respect to any Equalities and Human Rights issues.

Age Scotland
24 April 2012

1 http://www.jitscotland.org.uk/downloads/1262961334-North%252520Lanarkshire%252520way%252520ahead%252520report%252520(3).pdf
Social Care (Self-directed Support) (Scotland) Bill

Scottish Association for Mental Health

1. SAMH

SAMH is a mental health charity which provides an independent voice on all matters of relevance to people with mental health and related problems, and delivers direct support to around 3000 people through over 80 services across Scotland. SAMH provides direct line-management to respectme (Scotland’s anti-bullying service) and ‘see me’ (Scotland’s anti-stigma campaign).

2. GENERAL COMMENTS

- Are you generally in favour of the Bill and its provisions?

2.1 SAMH believes that Self Directed Support presents an unprecedented opportunity to empower people to live fulfilling lives, as valued and participating members of society. We particularly welcome initiatives which aim to offer people with mental health problems more flexible ways to meet their individual needs and circumstances. As such, we are broadly in favour of the Bill and its provisions.

2.2 SAMH responded to the foregoing Scottish Government consultations on the Self Directed Support Bill. We are therefore pleased that subsequent amendments appear to address several of the concerns we had previously raised. However, the Bill could be further improved still to deliver better outcomes for people experiencing mental ill-health throughout Scotland.

3. DETAILED COMMENTS

- What are your views on the principles proposed?

3.1 SAMH supports the principles of ‘involvement”, “informed choice” and “collaboration”. We would expect these principles to form part of a broader rights-based approach to the design and delivery of public service support to disabled people.

3.2 We are pleased that the wording of the current Bill has been amended to limit the scope for local authorities to act out-with the spirit of the legislation i.e. ‘should’ has now been replaced with ‘must’. However, the Bill could be further strengthened in this regard; SAMH would argue that local authorities must ‘uphold’ the principles rather than just ‘have regard’ to them.

3.3 We particularly welcome the theme of principle 1(3) which, by providing assistance, should enable the person to make an informed choice about their treatment. It is essential that guidance under the Bill makes clear that the level of assistance which might be reasonably required will differ depending on the person’s mental health condition, and local authorities will need to take this into account when deciding what is ‘reasonable’. SAMH would also like to see an
• What are your views on the four options for self-directed support proposed in the Bill?

3.4 SAMH is pleased that the Bill provides a menu of options, with no single option assumed to be the default and a sliding scale of control. We also welcome the addition at 4(5) which will introduce a requirement for all decisions to refuse a direct payment to be in writing and any other means appropriate to the person’s disability or communication requirements.

3.5 The Bill gives local authorities’ discretion to deny a person their preferred choice. SAMH would want assurances that the decision-making process to reach this conclusion would be transparent, and scrutinised by the Scottish Government; and that the right of the individual to appeal such a decision would be upheld. The updated Section 10 appears stronger in outlining a person’s right to have a decision reviewed by a local authority if it decides that a person is ineligible to receive direct payments. However, the Bill still does not allow the decision of the local authority to be appealed or reviewed, except when a person has been deemed ineligible for direct payments. We hope that the Bill will be strengthened to ensure that all decisions could be appealed and reviewed. Transparent decision-making, appropriate scrutiny and a robust appeals process will be fundamental to ensuring the success of self directed support.

• Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

3.6 SAMH opposed initial proposals for local authorities to have the power to facilitate an appropriate person arrangement. We are pleased that the revised Bill appears to address many of the concerns we raised. Section 5 maintains the duty on authorities to take reasonable steps to enable the supported person to make a choice. It also places a duty on local authorities to identify and involve interested persons to assist the individual to make a choice. This seems more aligned to the original intent of enabling interested parties to assist those with limited capacity, rather than risking a situation whereby appointed persons are making decisions for people who lack capacity. However, the Bill does leave some aspects open to interpretation and SAMH would seek further clarification on these. In particular, it is not clear what would constitute an ‘interest’ in a persons care and treatment. Furthermore, the Bill should contain a provision to ensure that local authorities take all reasonable steps to ascertain and uphold the wishes of the service user. Ideally, it should be the social care user who decides whether or not it is appropriate to involve third parties.

3.7 SAMH welcomes the inclusion at 8(2)(c) for information about how to manage support to be provided. This could be a particular issue for some
people with fluctuating mental health needs, who may not always have the insight necessary to manage their own support. We also welcome the inclusion of information about support by persons who are not employed by the local authority. However, it remains a concern that information pertaining to advocacy has not been included. The provision and sustainability of quality and timeous information, advice and advocacy services will all be crucial to the success of this Bill.

- Do you have any views on the provisions relating to adult carers?

3.8 SAMH is clear that expenditure should and must not be the key driver in providing support to carers. We are therefore pleased that the section requiring local authorities to consider “whether provision of the support would be likely to prevent or reduce expenditure that the authority might otherwise incur” has been removed.

3.9 It must be made absolutely clear when payments are intended for carers' own personal needs and when they are intended to meet the needs of the person being cared for. Local authorities will require robust guidance detailing how these provisions are intended to help meet carer's needs, or there will be substantial risk that these powers will be interpreted differently.

- Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?

3.10 SAMH believes that individuals should be empowered to select the method of care and support which best meets their needs and to have their views on who should be involved in their care taken seriously. However, we reiterate that robust safeguards will be required ensure that people receive the services or support they need and that funds intended for them are not abused or misdirected. Account must also be taken of the disparity in the current level of inspection that we and other social care agencies are subject to and relative lack of inspection/regulation that carers working directly for individuals will be subject to. As such, the potential for exploitation of vulnerable people is high. It must be ensured that any person providing support is properly skilled, willing and able to do so.

3.11 SAMH understands that the Scottish Government intends to publish statutory guidance which would cover ensuring individuals are aware of their duties as an employer and the risks in not adopting safe employment practices. In our experience, people’s awareness and understanding in this regard is extremely low and so this guidance will be particularly important.

- Effects on equal opportunities, human rights, island communities and sustainable development. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?
3.12 SAMH is satisfied that the Social Care (Self-directed Support) (Scotland) Bill, in itself, is both equality and human rights compliant. The UK Parliament’s Joint Committee on Human Rights recently raised concern about the effects of reductions in funding for local authorities, changes to Disability Living Allowance under the Welfare Reform Bill, and caps on housing benefit, and the way in which these changes might interact to restrict enjoyment of the right to independent living. ¹ SAMH believes that Self Directed Support presents an opportunity for Scotland to mitigate some of these impacts, but this will only be possible if the Bill is implemented effectively and backed by sufficient resource and investment.

4. CONCLUSION

4.1 SAMH believes that this Bill presents an excellent opportunity to ensure that people have greater involvement in their communities and opportunities to control their own lives. We are pleased that the Bill has been amended in a number of key areas, making it better able to deliver its intended aims. We very much hope that the recommendations we have made in this response will be used to further strengthen the Bill.

4.2 The funding and sustainability of effective and timely information, advice and advocacy services will be crucial to the success of this Bill. Furthermore, robust safeguards and guidance will be required to ensure its safe and effective implementation. Other aspects which are not addressed by this Bill, such as the eligibility criteria for care and support, will also be key to its success.

Scottish Association for Mental Health
24 April 2012

¹ Joint Committee on Human Rights, Implementation of the Right of Disabled People to Independent Living, Twenty–third Report of Session 2010–12
Social Care (Self-directed Support) (Scotland) Bill: Stage 1

09:49

The Convener: Item 4 is our third oral evidence session on the Social Care (Self-directed Support) (Scotland) Bill. I welcome Dee Fraser, programme manager for providers and personalisation with the Coalition of Care and Support Providers in Scotland; Ranald Mair, chief executive of Scottish Care; Peter Brawley, director and manager of the Scottish Personal Assistant Employers Network; and Noni Cobban, vice-president of the United Kingdom Homecare Association. Our first question is from Fiona McLeod.

Fiona McLeod (Strathkelvin and Bearsden) (SNP): Good morning. I will go straight to an issue that I have explored in several oral evidence sessions: the employment of personal assistants. All the witnesses have more direct knowledge of the issue than many of our previous witnesses have had. In reading your submissions, I was struck by the worry that the ability under self-directed support for people to employ a personal assistant directly might lead to a two-tier care system, because if personal assistants are not employed through an agency, they do not come under the regulation of the Scottish Social Services Council. How could we move towards regulating personal assistants who are outwith the employment of agencies to ensure that we do not have a two-tier system? We would be putting constraints on the ability of individuals to employ whom they wish to employ, but we need to ensure that the workforce is regulated and inspected.

Peter Brawley (Scottish Personal Assistant Employers Network): I will start. I hope that members can hear me okay, because I cannot reach over and pull in the microphone.

I am the director and manager of the Scottish Personal Assistant Employers Network—the hint about what we do is in the title. Disabled people such as me have been employing personal assistants for many years and very effectively, in the main. Personal assistants have the same rights as any other employee in the country. Disabled people, or those assisting them, who employ personal assistants have the same responsibilities as the captains of industry have to ensure that their workforce is adequately trained and paid and treated fairly and equitably.

For the past 11 years, our organisation has been working on that. I read the papers before I came to the meeting and I am concerned about some of the myths that still surround the employment of personal assistants. In the main, the process works well, but one drawback arose in
the past few years when the system changed from the disclosure system to the protecting vulnerable groups—PVG—scheme. Our organisation had in place a system through which we helped people to access the disclosure system. We were an umbrella organisation and we remain so under the PVG scheme. The reason why we became an umbrella organisation was that disabled people are not corporate or unincorporated bodies and therefore could not access enhanced disclosures through the central registered body in Scotland, which is based in Stirling.

In effect, we allowed disabled people who were employing personal assistants to access enhanced disclosures and we gave them support to effectively recruit, monitor and evaluate the people who were going to work in their home. We still do that to an extent. Under the PVG scheme, disabled people, who are not corporate or unincorporated bodies, still cannot go to Disclosure Scotland as an employer can. They now have to ask the person whom they want to employ if they will volunteer to register for the PVG scheme. As an employer, I do not need them to register but, to me, that is a false premise. I do not want regulation for personal assistants—I will explain that later if I get the opportunity. However, like other people, I want to know that I have done everything possible to ensure that I know about the people who are going to come into my home to support me at the most crucial times of day—I want to know their records and where they come from. I want to make a fully informed decision about who comes into my home.

I am a vulnerable adult under the PVG scheme, but we are talking about equal citizenship and the right to act freely in our society. Right now, the PVG scheme does not afford me that opportunity if it is foisted on me that I need to have people who are registered with the scheme. That is not a problem, but what we do not seem to be able to do now, because there are costs attached to it, is get the equivalent of an enhanced disclosure. Local authorities do not want to pay the extra money for organisations such as SPAEN to take that role on and have the person come directly to us, although we could give people the confidence that, when they recruited, they would have a good idea about the crimes that people may have committed when they were younger and would be able to make a decision on that basis. That is not the only factor in the decision, but it is in line with safe recruitment practice.

I think that I have said enough.

The Convener: Does anybody else want to respond?

Ranald Mair (Scottish Care): I will make two or three quick points. I support and agree with Peter Brawley’s right to choose and control who comes into his house. However, there are issues to do with how we maintain professional standards. We need to upskill the social care workforce as we maintain more people in their own homes so that they can retain their independence and quality of life. If we are to do that successfully, we must ensure that we have a fully skilled workforce.

As well as a skills and standards agenda, there is also a safety agenda. I would not want anybody to be exploited as a by-product of the fact that we have tried to give people more power and control—that would be a downside to self-directed support. We must look at how we can bring PAs within the scope of some elements of regulation without restricting the scope of individuals to choose and have control. That would ensure both safety and standards, and PAs would have access to continuing professional development. We would not have unlicensed nurses out there; there are professional standards to be maintained, and that is true of social care workers as well. This is not about diluting social care and saying that we do not need standards and regulation; this is about maximising choice and control for people who use services.

The strategic agendas to do with upskilling and ensuring safety remain. It is not beyond us to come up with something that manages to strike the right balance.

Dee Fraser (Coalition of Care and Support Providers in Scotland): We recognise that people should be allowed to employ whom they wish. We understand the impulse behind that in the bill, but our concern is that individuals must be sufficiently resourced to be able to choose between quality-assured, regulated and therefore more expensive third sector or independent sector providers and PAs. Our concern hinges on whether people will have enough money to make a real choice on the issue.

Noni Cobban (United Kingdom Homecare Association): As a citizen, I am fully in agreement with Peter Brawley. If I were in his position, I would be exactly where he is. However, in my role in an organisation representing the sector, I must take a wider view than my personal view.

The UKHCA operates a disclosure service that it could develop—it is proposing to do so—to enable people to secure PVG clearance for individuals as well as for organisations. The organisation has the scope and the infrastructure to respond to that.

10:00

I support everything that Ranald Mair said about standards and safety. That is critical. A number of years ago, I did some work at the University of Stirling on developing a system of licensing social care workers. We called the licence the home care
practice licence, and the approach was modelled on the driving test. A person would learn the theory, take a theory test and then there would be practical observation. The person would either pass and carry a licence or fail. Unfortunately, that model was not seen in the educational and training system as fitting within the upskilling workforce, but it would be quite readily adaptable to engage with large numbers if we move from the way in which PAs have been employed for a number of years by disabled people.

If we are talking about the whole social care market, there is a large number of older people and there are concerns about their accessing direct payments. I am fully in favour of people having choice and control and think that we should do everything that we can to make exercising choice and control easier for people, which will greatly increase the numbers involved and therefore increase the risks. However, we would not employ a chauffeur if they did not have a driving licence, and whether they do have one is easy to check with the Driver and Vehicle Licensing Agency. From the research that I did at the time, such a model for large numbers of people would not be hugely expensive and would be quite achievable even in rural districts of Scotland.

I simply put that model on the table. It has sort of gone to bed, so somebody would need to revitalise it, but I still think that it is useful.

The Convener: Does Mr Brawley want to respond to some of the comments that have been made before Fiona McLeod comes back in?

Peter Brawley: Yes, please. I want to clarify what we are doing.

What is a personal assistant? Can I be given a personal assistant’s job description? The answer to that question is no, not really. A personal assistant can go into somebody’s home and assist them. Perhaps they can open their mail and help them to do their business. Perhaps they can make a wee bit of breakfast or whatnot. The range of people can go right through to those who have quasi-medical qualifications so that they can deal with the extreme nature of a person’s impairments, but the fundamental moral and ethical issue is that the non-medicalisation of personal care is involved.

Our organisation and other user-led organisations have looked at and are very aware of the needs of our workforce. A couple of years ago, our organisation ran a course for personal assistants in conjunction with Coatbridge College, which was underwritten by European funding. What I am saying is that, at the base or entrance point, I do not need a medical practitioner to come into my house in the morning to assist me to get my clothes on. That is a waste of a professional’s time. I need someone who is empathetic to my situation, has a bit of common sense and can understand my needs. I will train them as well as I can—there will be assistance training and so on.

I want my workers to have the opportunity for personal development, as a PVG scheme member will have a licence to work in other social work areas. I did not say that earlier. On the basis of that principle alone, I want to encourage my personal assistants to develop themselves personally, because I will not last for ever or they might get fed up and want to go somewhere else, as we all do when we are fed up with our job. That is crucial.

There is the fundamental idea that a personal assistant must be a professional. I mean no disrespect to professionals, but I do not need a professional in my home, and neither does anybody else. However, I appreciate that my worker might want to develop to become a professional, and I fully and whole-heartedly support their doing so. I say that on behalf of the independent living movement.

Fiona McLeod: It has been very interesting to hear all the different thoughts on that matter. I will not put my question directly to Mr Brawley, but I want to consider the development opportunities for individuals, which is exactly what he spoke about latterly. To echo what Ranald Mair and Noni Cobban said, it is not about a medicalised professional organisation; it is about a regulated profession, for want of a better phrase.

If there is a regulated way of employing personal assistants, does that make it much easier to allow people to employ family members? That seems to be the intent behind the bill, but the likes of the Association of Directors of Social Work have informed us that it would still be only under exceptional circumstances. My thought process is that, if regulations govern the skills of personal assistants and their ability to operate safely, anybody can be a personal assistant, whether or not they are a family member. Does that sound logical to the panel?

Peter Brawley: The family member would become an employee and, as soon as they become an employee, there is an employer-employee relationship, which changes the whole picture. I know that there will be exceptional circumstances, although I do know what the benchmark is for an exceptional circumstance. However, from our experience over many years—nationally and internationally—we would say that it would need to be an extremely exceptional circumstance.
Independent living is about the person who needs the service. Please believe me that, in the past—I am not being disrespectful to all family members—in some family units the barrier to independent living has been within the family, because of the income that the disabled person brings in and the fact that there is a new mobility motor at the front door every three years. Seriously, that is a barrier. I would not say that if it was not true.

The idea of independent living is that somebody who needs support should be able to live independently outwith the family unit. They are part of the family, but they should not be a burden to the family. The bill refers to care. People need care but, more important, they need support. I do not need care. I like to be cared for in general terms and I hope that you all care for me as a fellow human being, but I do not need your care. I need your support when I need practical things to be done. That is a fundamental principle behind what we are trying to achieve. I am not knocking the opportunity for some family members to be employed in exceptional circumstances, but so far nobody has come up with a very good exceptional circumstance.

**Ranald Mair:** The current system of care relies heavily on large amounts of informal care or unpaid care being provided by family members. Perhaps one reason for the equivocation on the issue is that we do not want to lose that unpaid care.

It is right that we have to look at how we ensure that carers are fully supported, and one aspect of SDS is to enhance the support for carers. That should include, where it is appropriate, the employment of family members. I have a terribly dysfunctional family and I would not want any of them near me. However, individuals have the right to say that a family member is the person who most understands their needs, who is most available to them and who not only provides care as a relative but does a quasi-job of work so there is scope for them to be remunerated. When that happens, there must be some element of oversight. That is about non-exploitation.

I am concerned that unscrupulous relatives might see that they could control direct payments and personalised budgets. It is about the safeguards that we build in so that there can be choice. It is not about not giving the choice; it is about considering what safeguards we need to ensure that the exercise of choice does not lead to exploitation of any kind.

**Noni Cobban:** I agree with everything that has been said. We are talking about a hugely complex issue. I support what Peter Brawley said.

There is a wide range of potential situations, but if we are serious about personalisation, flexibility and helping people to lead their lives, there should not be too many barriers in the way of dealing with circumstances—I will not say “an exceptional circumstance”, although I think that social services use that phrase. Every individual has their circumstances. It might be that a family member is appropriate; it might be that a family member is not the person’s first choice, as Peter Brawley said. In a rural community, the issue is bound to crop up, and Scotland is a very rural country. It is about preventing putting barriers in the way of true personalisation and enabling people to employ the person of their choice who can best meet their needs.

On behalf of home care providers, I will say that good work between providers, families and users could enable organisations to give support in times of holidays and illness or at short notice. There does not need to be an either/or situation, as long as the person has someone on whom they can call if their personal assistant is unable to do their job while they are sick or on holiday. The sector ought to strive together to get the best outcome for the person who needs support—support at home, in the case of my organisation.

**Peter Brawley:** A family member who looks after someone in their own home does not need to be a PVG scheme member; those people are excluded from the scheme. The Protection of Vulnerable Groups (Scotland) Act 2007 also talks about people who are working for no commercial benefit. I am just suggesting that people who have had a caring role for a long while might think that it is a matter of getting paid to do the caring.

Believe me, the salient point is that the person who needs support is adequately assessed and is given appropriate support under SDS options 1, 2, 3 or 4. If the person is properly assessed and given the resources to ensure that their support is in place, the need for the caring role diminishes. Yes, there will still be interaction with the family member, but the person will not be a burden to their family.

This is not the place to talk about my experience when I was young, but I will say this: my father worked 12 hours in a brickworks, six days a week and, when he got home, he had to take on a caring role to support my mother, who had multiple sclerosis. Unfortunately, my mother landed in a geriatric hospital when she was 44 years of age, and it was there that she died.

What I am saying is that a proper, funded package to support the person at home frees up the person who has been the major carer. That is the fundamental principle of what we are trying to do. Carers definitely need emotional support and every other kind of support; now they are wanting.
financial support. How do we double-budget in the one household—whatever the cost of caring will be? The founding principle is about adequately funding the person who needs the support, and then watching the situation blossom.

**Nanette Milne (North East Scotland) (Con):** Ms Cobbans comment about outcomes leads neatly to my question. The whole point of the bill is to try to secure better lives for people who need support. It is crucial that we focus on outcomes, rather than on SDS itself, which is just the tool to achieve outcomes. What are the panel’s views on how good outcomes can best be achieved, and how they can be monitored?

10:15

**Noni Cobban:** It starts with the individual—that is self-apparent—and their assessment, and working with them, possibly involving a multi-disciplinary team or a group of people, to seek out what they are looking for and what would help them most in terms of supporting their lives.

I realise that the legislation extends into other settings, but when I speak, I am always talking about care in the home. My personal experience started off in home care in Edinburgh before the Community Care and Health (Scotland) Act 2002, when home care was mainly driven by people with independent means who could purchase a service. It was clear then: people approached you, you had a conversation with them about how you could best help them, and as they had their own resources they could absolutely control how and when they did what you did. Your relationship was directly with that individual and their household, and you worked together.

In the main, the outcomes were excellent. Obviously, there were times when they were not quite so excellent, but people had the freedom then to go out to the market to look for someone else. If people are going to be in charge of their own affairs and have the resources to do so, there must be providers for them to call on. The first principle is not about supporting businesses to run businesses, but the choices of the individual are limited if there are no businesses. We need to strike a fine balance.

If people receive the resources to make their own decisions, things can be exactly as they want them to be. At the moment, spot contracts—which most of our members in Scotland are involved in, although there are a few block contracts—are controlled by the care manager, not the service user and service provider. Even a minor change of time or day—for example, when a service user’s daughter comes to take them out for lunch—must be agreed by making a phone call to the care manager. That is cumbersome and does not give the provider and the individual the opportunity to have a proper purchaser-supplier relationship, which should be short, tight and more easily dealt with. A good outcome would be one in which, once decisions have been taken, somebody is able to manage—and chooses to manage—their own resources to purchase their care. There would then be that relationship between the provider and the person, with the funding authority only being involved in the external review system. That would improve outcomes, in my opinion.

**Dee Fraser:** I very much agree with what Noni Cobban says about the move meaning that it will be primarily for the individual to understand and make decisions on outcomes. Individuals will need to know whether a provider will make the change or difference that they want to see in their life. The question for us, as providers, is whether we communicate outcomes to individuals. At the moment when we communicate outcomes, we communicate them up to funders.

Within this process, we have a great opportunity to address difficulties in the system around reporting and monitoring that exist for commissioners, purchasers and providers. A conservative estimate is that it costs the Scottish voluntary sector about £450 million a year to report and monitor. We have a great opportunity to see whether we can achieve outcomes that are proportionate and relevant—rather than input focused—and useful for everyone. To do that is quite tricky, and we will need to move away from our input-driven system.

The question is complex and I do not have much time to talk about it today, but substantial learning can be taken from the discretionary funding sector about how things can be done, and how it is perfectly possible to draw a line from the individual outcome to the provider outcome, to the local authority outcome, and from there to the national outcome. I would be happy to share with the committee some written material on that, if that would be of interest to you.

**Nanette Milne:** That would be helpful.

**Ranald Mair:** The planning of care needs to be qualitative—it should be focused on outcomes, which should be largely about an individual’s quality of life. If my quality of life involves going to see Kilmarnock on a Saturday afternoon and watching them lose on a regular basis, it should be possible for that to be part of my care plan.

However, inputs cannot be ignored altogether. There is a quantitative element. A calculation has to be made about how much time it will take to deliver a particular outcome and what resource will be required to achieve it. We cannot ignore inputs altogether. There is a danger that the rhetoric is moving in the direction of everything being about...
achieving outcomes. A contract cannot simply say, “Go and deliver this outcome for this individual.” From a provider perspective, I need to know how many people I will need to employ and for how long to deliver on that. Such a calculation still needs to be done, and adequate funding and adequate resource need to be available to deliver the outcome.

It is correct that we are pursuing a personalised outcomes agenda and giving control to the individual—that is exactly what we need to be doing—but we must also ensure that we are doing the sums right so that we can resource the individual and the provider to achieve those outcomes. The danger is that, by talking about outcomes and not talking about inputs, we might look to save costs and people might be left with a budget that is insufficient to allow them to achieve the outcomes they want. We must balance the outcomes and the resourcing.

Peter Brawley: I like to call what we are talking about creating a business plan for life. It is true that the process operates on a commercial basis. You are allocated the number of hours that you need support for, you are allocated a unit cost for that and then you are given your budget, which you have to work within to maximise your outcomes. I am a wee bit lost about that. I have been using self-directed support, direct payments and the independent living fund for a long while and my outcome is the fact that I managed to come to speak to the committee today because I was in control of when I got up this morning and what time someone came in to help me. My PA is with me to support me while I am here. That is my outcome.

The process does not take over my life, but I know that what I need to do at the end of the month when I report back to North Lanarkshire Council and the independent living fund is to give them a breakdown of how my money has been spent. The way I spend my money is dead simple—I use it to employ personal assistants. My contribution to society is that I take responsibility for managing my own support. I manage the public purse to the best of my ability, and I have given people the opportunity to be employed, to learn things and, I hope, to get some personal development. At the end of the quarter, the end of the year or whenever my review is, I can report back. The test of whether things have worked will be whether I am still there, I am still at work and I am still getting on with my business.

There is no need to add bells and whistles to all that. I am not a widget; I am human being who needs support. During the war, Churchill said, “Give us the tools and we’ll do the job.” On behalf of disabled people, I ask that we be given the money so that we can get on with our lives and not be seen as a burden. I totally understand the commercial aspect. We are responsible for spending the public pound, we are responsible for the people who work for us and we are responsible for maximising our own potential.

What is that potential? With the advent of self-directed support, young people who are going through the educational system can now plan their outcomes. When they leave school, they will be able to take up a career, go to college or do whatever it is that young people want to do. With the advent of self-directed support, we are giving the young people in our society who are coming behind me and the rest of the us a vision for the future. We are giving people who were traditionally stuck in institutional settings the chance to see that such situations do not need to happen. We can afford the support to keep people in their own homes.

The power of such support is that it is not about disabled people, people who are not well or anyone else who has to use community care services; it is about all of us. After all, none of us knows the time, the hour or the day when we will want to use self-directed support. We are all potential community care service users and have never had a greater chance to make our society a beacon for the world with regard to the support that we can afford people.

Nanette Milne: That was very helpful. I would welcome the written evidence that Ms Fraser has offered.

If individual service users are going to control their own support, there will have to be significant variety in service delivery. How ready are the voluntary and independent sectors to provide services in that diverse way?

Noni Cobban: As far as home care is concerned, the social care sector has developed out of entrepreneurs seeing and responding to local need. Indeed, they are able to respond very rapidly. Sometimes regulation can slow things up—for example, registering with the Social Care and Social Work Inspectorate Scotland can take an inordinate amount of time—but in the main the sector will be able to respond as long as it can survive financially in a period of huge change. If self-directed support causes a massive shift in how contracts are delivered, it might make some organisations vulnerable. It is not a high-margin industry and there is not a lot of fat in the system. Nevertheless, given the huge amount of will to make this work, I think that it can and will work and that people will respond to local need in local communities.

I also hope that the move will lead to the regeneration of smaller businesses. I believe that small is good and that huge means just another
big mechanism that does not militate for personalisation. The sector will develop; indeed, it is already working hard on the quality and standards that Ranald Mair referred to earlier.

In the main, our membership is ready to respond to the move, to break down certain concerns about the commercial sector and to ensure that they can work with the people who benefit from self-directed support. The approach will open up new opportunities and ways of doing things, will provide new, different and more imaginative services and will perhaps get us away from, say, having 15-minute slots for getting elderly people up and dressed. I want a situation in which people are referred to a service—or in which the person and the service come together—and in which, as Peter Brawley has suggested, the two of them can decide within a week how the needs in question might best be managed within the budget. The aim is to ensure that the user and the provider directly manage care and that decisions on how and when a slot is bought are not driven from outside.

**Ranald Mair:** I want to make two or three quick points. First, to prepare for self-directed support, we have an on-going project with the independent sector for which we have received funding from the Scottish Government.

Self-directed support is about not only a change in commissioning relationships by which some older people may become the purchasers and commissioners of their own care, but a culture shift that puts the individual at the heart of the care that is being delivered. People are to be not just recipients of care; they and their choices are to be at the centre. That includes the hard bits—for example, what does self-directed support mean at the end of life? What sort of choices do I want for my last days? There is—correctly—a lot of focus around independent living, which is how it should be. However, if we are extending self-directed support to encompass the whole range of needs—those of children, adults and older people—to the end of life, we must ensure that our culture of care embraces that.

10:30

The on-going work among providers of home care services and care home services involves a shift of culture towards personalisation, which puts the individual at the heart of care delivery and considers how they can be empowered to have their say, irrespective of whether they take the option to purchase their care. In one sense, the biggest element of self-directed support is not the purchase of care, but the need to ensure that we approach care in the right way.

The good news is that work is going on to prepare the sector in that regard. The hard task is that it involves a radical shift in culture with regard to how we deliver care, rather than simply looking at the technicalities of the way in which care is purchased.

**Dee Fraser:** We take a slightly different viewpoint in the third sector, which I suppose will make things more interesting this morning.

I run the providers and personalisation programme, which provides support around practice change ahead of the potential enactment of the legislation. Our providers see the change as a logical extension of what they have been doing for years. They see SDS as a heritage in a number of respects; we have heard about the significant heritage in the independent living movement. SDS has its roots in person-centred approaches, which—as many people around the table will know—have been core to our practice for many years.

We see opportunities in SDS for people to extend that control to the level of the market—to the financial level—if that is what they wish to do. It is a significant lever that allows us to think about how we can change the system for the better and make it work better for the individual.

We are worried not so much about cultural change as about systems change, if we are worried about anything with regard to SDS.

**Peter Brawley:** The whole culture of what we are trying to do goes back to the issue of direct payments, whereby the person who holds the money determines what they want. It will be interesting to see what happens down the line. How do we scope things at this point, when the system is culturally new? Traditionally, if an individual had an individual budget, as many people will have, they were steered towards certain services; that became custom and practice.

Now the person will have a choice and, when they have a social work review to see whether they will maintain their place in the day centre next season, rather than being scared, they can go into the review and say, “By the way, I know what you’re offering next year, but I’m afraid that there’s another day centre down the road that’s offering services that are more compatible with my way of thinking and what I want to buy. So, thanks very much for the offer inviting me to come back to your day service next year, but I’m not going to—I’m going to buy it from the one down the road”.

We know that some core services will need to be there, but the power will be with the person who will be buying the service. I hope that some scoping work will be done on what exactly people want.
Ranald Mair: I just want to come back in with one point. I do not want to dissent from that, but if I am 90 and suffering from dementia, the principles of self-directed support should still apply to me. I hope that I will have given advance notice of what I want and the styles of care that I would like. In so far as people can still discern my wishes, I would want them to form my care package. However, I might not be able to manage my own budget. By that stage, I might not be saying, “I’m holding the purse and calling the shots.”

We are covering a range of people. Part of the difficulty about having the discussion about self-directed support is that we are talking about children’s services, adult services, services for older people and so on, and we cannot generalise about the preferred options for all people. There will be people for whom the direct payment—which involves managing their own budget and commissioning their own care—will not be the appropriate vehicle, but that does not mean that they fall outside the scope of self-directed support; it just means that, given the way in which the legislation is set out, there must be more of a mix of options in terms of how care is commissioned and paid for.

Nanette Milne: I hope that that is covered in the four choices in the legislation, which go from self-directed care through to a mixture.

Ranald Mair: Yes. The danger is that we might be too focused on the direct payment and employment aspect and not on the principles of self-directed support. I believe that, where possible, empowering people by giving them control of their own budget and commissioning their own care is the correct thing to do, but I am conscious that there are a lot of people for whom that might not be the preferred option.

Richard Lyle (Central Scotland) (SNP): I know Peter Brawley well, as I am a neighbour of his—I stay about 30 yards from him and have known him for 30-odd years. I respect and agree with most of the points that he has made this morning.

The fact is that the person for whom an individual care plan is set up has a choice. In your situation, Mr Brawley, you have that choice. However, we spoke to a lady a couple of weeks ago in Glasgow who was the main carer for her son and had to make decisions for him, as he could not do so.

Do you agree that everyone will have a choice? Do you also agree that there may be people who employ family members to care for them, and that others will be in the same situation that you are in, and will employ an assistant or assistants? Do you agree that everyone involved can have a piece of the pie—I mean no disrespect—because, basically, the care organisation will provide assistance, young people will be employed by people such as yourself and people across the board can be involved?

The most important thing that we have to remember is that the choice is up to the individual and that that care plan will suit them. I loved the point that you just made that someone who does not want to go to one day centre will go to another. That is what the issue comes back to.

Do you agree that, across the board, there will be a choice for everyone—a choice that some people have never had before?

Peter Brawley: Definitely. The essence of policies such as self-directed support and its predecessor—direct payments—is that the arrangements operate with or without assistance. There has always been a recognition that the system is fine for a self-managing person but that other people will never be able to manage. As has been said—taking on board elderly people and so on—the system is for everybody. The mechanism and the foundation start with the assessment of care, which means that the provision, the structure and what I call the business plan is put into place at that point, so that the components of the business plan fully support the person, whatever their needs.

I always remember that, years ago, the learning disability consortium said that everybody can make a choice, even if that choice is what colour of socks to put on in the morning. Please believe me—I know that I am a bit of a zealot as far as independent living is concerned, but I am a zealot for a reason. I know that it can work, and I know the positive impact that it can have on families. I said that it is for everybody, and I meant it. The question is how we manage it.

Unfortunately, we came from a traditional system in which, if someone needed support, they were allocated it, and they were labelled because they had dementia, muscular dystrophy or a heart condition. There were services primarily to deal with such situations. That is not necessarily the best way in which to support people. Now, there is a bit more flexibility and choice, and the catalyst is how that flexibility and choice will meet the needs of people who need services. There are isolated people who need a wee bit of self-directed support and a wee bit of care, but they are not getting it because of the allocation of scarce resources.

We need to ensure that everybody who applies for self-directed support and qualifies for it gets it. I understand the complexities for people who care for people with dementia and suchlike.

Ranald Mair: I want to pick up on Peter Brawley’s point about the importance of helping people to manage their care, with that element potentially being costed into the care package.
Members will have noticed from the papers that there is a higher uptake of direct payments south of the border than in Scotland, but there is also a growth in the number of care brokers—people who say, "Give me a cut of your care budget and I’ll take on the complex business of being an employer, managing the checks, organising the care and so on." I am not sure that replacing the current role of local authorities with the work of unlicensed care brokers is a desirable step forward, especially if the cost comes from the budget that the person is given for their care.

We need to consider where people get support and assistance to manage their care. That should be built into the care package, and if there is a cost associated with that, that should be met from money that comes on top of the care budget rather than money that comes from the care budget.

We need to look closely at the associated developments. One might be tempted to say, "It’s great down south—there’s 30 per cent uptake of direct payments", but there have been some other developments alongside that and they might not be the ones that we want in Scotland.

Dee Fraser: I echo what Ranald Mair said. Core to people having a real choice is that they have effective, independent and independently resourced—that is, independent of their individual budgets—support to draw on to make that decision. Again, we come back to whether the choice is meaningful. Does the person have the information that they need to make the choice? Do they have an independent person to talk to about the choice? Is the market diverse enough for them to have a meaningful choice? The choice operates at those three levels.

Richard Lyle: Mr Mair’s comments relate to my next question. How do we safeguard against what I call the ambulance chasers, who will perhaps think that self-directed support is going to be like payment protection insurance and that they can make some bucks out of it?

Ranald Mair: As you know, I am not always an advocate on behalf of local authorities, but I think that there is a continued role for public bodies in supporting and overseeing support. If the role of local authorities is to be less about direct provision, they should be involved in the task of assessing need and developing packages with people under the principles of self-directed support—either that, or we, with the third sector and other parties, need to look at independent advocacy and support systems.

We have to look at exactly where the assistance will come from. It will preferably come from people who do not have an axe to grind in relation to financial gain from the individual. Of course, there are costs associated with providing a service, which have to be met, but an individual should not be in a situation in which they must negotiate the element of their care budget that will go to a person who provides support and assistance. We should avoid the privatisation of brokerage.

10:45

Peter Brawley: That is true. If I thought that some of my package was going to be sliced off to pay for brokerage, I would want to ensure that as little as possible was sliced off. In relation to administration, the best example that I have come across in recent years is the independent living fund, which supports disabled people throughout the country and is under threat of being shut down. The ILF’s administration costs are about 3 per cent; everything else goes into servicing the person.

We do not want to create another industry. That has happened in the past; a lot of people have made a lot of money out of disenfranchised, disempowered people, and we need to try to get away from that. People will need support, but there are organisations around the country that can help, such as the user-led centres for independent living and the impairment-specific organisations, whose motivation is not to make money but to support people.

One of the best things that I heard recently, at a meeting in Glasgow, was about the role of the advocate. The true advocate is there to support the person, not to see how much money they can make out of them. The people and the support are out there and a lot of good work is going on, but advocacy seems to have been laid to one side a bit and is underresourced. Investment to ensure that advocacy is high profile for the people who need it is good investment. People should be given advice without someone taking a whack off their package in percentage terms, for brokerage.

Jim Eadie (Edinburgh Southern) (SNP): I will ask about regulation of personal assistants before I explore the financial assumptions that underpin the bill.

I do not want to rehearse the arguments that we heard from the panel earlier, which will be useful in informing the committee’s view. However, Mr Mair, when you said that personal assistants should be brought within the scope of some element of regulation, to ensure safety and standards, what did you have in mind? Perhaps the other members of the panel will comment on Mr Mair’s response.

Ranald Mair: It is not about bringing personal assistants into the scope of the Regulation of Care (Scotland) Act 2001. If someone has a personal assistant I do not think that the care inspectorate should be out there visiting them and writing reports about them.
However, we have bodies that oversee occupations, such as the Scottish Social Services Council, the Royal College of Nursing and the Nursing and Midwifery Council. Such bodies ensure standards and safety, so if there is an issue about whether someone is a fit person, someone else is overseeing that.

We could look at whether PAs could fit into any of the current arrangements. That does not mean that they would have to be treated in exactly the same way as social workers, social care workers or nurses are treated. I took Peter Brawley’s point about overprofessionalising the system. It is about considering who would oversee and have some responsibility for that occupation group.

It is great that, in an ad hoc way, Peter and others have been involved in developing a course for PAs. If we scale that up across all the potential users of self-directed support, we can see that there might be a need for establishing some sort of national oversight, without creating a heavily bureaucratic or overprofessionalised system. It is about acknowledging that personal assistants may become a distinct occupational group and considering what qualifications, training, support and oversight might be necessary for them and ensuring that the role of personal assistant is recognised as valuable in its own right.  

Jim Eadie: How will national oversight—

The Convener: Was your first question just for Mr Mair, Jim? I think that other panel members want to respond.

Jim Eadie: Okay. When they respond, it would be helpful if they could give us ideas about how national oversight could be achieved.

Ranald Mair: Rather than invent another professional body, I would talk to existing bodies, such as the SSSC, to see whether it would be appropriate for them to take oversight under their wing. The Scottish Qualifications Authority might have an interest in a training and qualifications agenda. I would have an open mind on who took on the issue. However, if we view PAs as an important plank in the process—rather than somebody wanting to be a PA because they live down the road from a person who needs one, or because they are a member of that person’s extended family—we need to encourage people to consider the PA role as a career choice. In that case, we will need a body to oversee that career.

I am sorry that I am not being sufficiently helpful to Jim Eadie in saying which body should provide oversight of the PA role. We should consider whether that could be done by an existing public body or whether we need to create a specific body. However, there should be a framework in that regard.

Peter Brawley: Perhaps somewhere down the line the people who use the services, such as people in the independent living movement or those who live independently, could get involved in the regulation of personal assistants. However, at the individual level, if someone uses a hoist at home they must ensure that the person they employ to assist them has done a training course on that. At one time we all thought that the health and safety regulations did not apply in the home, but they do.

Under the regulations, the person must do a commonsense risk assessment of their home as a working environment and then work to that agenda. However, somewhere down the line, I would not like somebody to chap my door at half past seven in the morning, when I was hanging off my hoist in my nightgown, to come in to make sure that the PA was doing their job right. That would be intrusive and a return to the old institutional approach, in which the doctor comes round with his posse of students to talk about the dystrophic man on the bed.

To be practical, we are very conscious as an organisation and as people who use personal assistants of the value of PAs and the funding for that opportunity. The opportunity cost for us in having PAs is not having to be in places such as Broomhill hospital, the old Gogarburn hospital, Canniesburn hospital or other institutions.

I can assure you that we will want to ensure that our workers will be funded adequately. I hope that the Government will ensure that through the local authorities. With or without support, we will take responsibility for the PAs to ensure that our workforce within the home is regulated. Collectively, a network for good practice in personal assistance is automatically starting to be created. We are still at the dawn of the new age, but we are aware of the challenges in front of us and we are up for them. I think that we are not bad at regulating PAs just now.

Noni Cobban: I refer the committee to what I said earlier about the work that I have done in the past on the issue. I think that what is proposed is a useful, relatively simple model that could be implemented. If people registered under the PVG scheme, that would be an addition to a database of people who work in the care area, which would mean that they would be known about and would not need to be inspected as Peter Brawley described. He does not want people coming into his home to check how a PA is working. What is proposed would provide a route for sanctions if people were found to have breached the codes of practice for social care. That could be dealt with in a range of ways.

Most people around the table will have a driving licence. That system works quite well and swings
into place when I do bad and go too fast. The model and the concept could be developed for personal assistants—that would not be unachievable.

I return to what Ranald Mair said. I would tend to put such a system under the umbrella of the SSCSC, because it regulates the workforce.

Jim Eadie: I move on to funding. Ms Fraser asked whether people will have enough money to make a real choice and Mr Mair expressed concern that failure to resource individuals and providers could lead to cost cutting in some circumstances. I would like to understand the witnesses’ insight into the recurring costs that will be associated with the framework under the bill, whether recurring savings can be achieved and whether they agree that the bill’s impact will be cost neutral, as the study by the Scottish Government and the University of Stirling says.

Dee Fraser: First, we need to recognise that it is really difficult to predict the transition costs for the whole system and for providers. I am conscious that our submission included no figures for such costs. The “Counting the Cost of Choice and Control” study, which was an excellent piece of work, focused on the potential savings that were available from direct payments, simply because that was the only data from which the study had to work. Saying that the system will be cost neutral in the long term does not necessarily give an accurate picture.

For providers, costs will relate to having a more flexible and more skilled workforce, which is a more expensive workforce. High demand for out-of-hours care and flexible care could mean a more expensive workforce. A move to marketing to the individual could have costs for providers. I am thinking of smaller providers with one or two employees that work in rural areas and do not have the resource for such activity. A cost will relate to changing systems to move from dealing with large contracts to dealing with individual contracts.

The core anxiety for providers relates to core costs and how they carry an increased business risk—to be frank—when they are moving to a less assured funding stream. That will apply particularly in the three to five years of transition, when we will not have the data to tell us the trends until it is almost too late.

Ranald Mair: We are talking about two different elements. A cost is associated simply with implementing the scheme. I noted from the committee’s discussions with local authority representatives that they are increasing considerably their sense of how much that is likely to cost. Immediate implementation will not be cost neutral. We accept that readying the sectors will involve costs.

We do not have a level playing field on costs at the moment. People know my views about the cost of a local authority delivering care versus the money that is spent on purchasing care from the third sector or the independent sector.

I have a bit of a worry about how somebody’s budget will be set. If it is set at the level that applies to purchased care, people will never be able to afford to buy a service from their local authority. Alternatively, people could have a different size of budget that depended on whom they were to buy care from. There is a whole business about how we will set budgets and provide a level playing field of choices that people can afford. That is complex.

I noted that, in a previous evidence session, the local authority representatives argued for local discretion. I understand that the costs of delivering care in different parts of the country are not identical. On the other hand, I do not want some kind of postcode lottery in which, depending on the pressures on a particular local authority’s financial position, an individual in one part of the country has a more generous budget to meet a certain need compared with an individual in another part. As we move forward into the implementation phase of self-directed support, we will have to do a lot of work on various big issues including how the budget is set, how we create a level playing field to ensure that services are equally funded and how we ensure that we do not have a postcode lottery and that people, wherever they are in the country, have a sufficient budget to purchase the care that they need.

11:00

Peter Brawley: I do not think that I am qualified to say very much about budgets or the allocation of scarce resources. However, I am a wee bit of a historian. I notice that Mr Lyle has previously asked about the financial preparatory work that has been carried out for this; I remember that as a member of Glasgow City Council’s equality committee in 1997 when direct payments were being implemented I got a paper setting out the budget for social services and saw the word “WEB” beside direct payments. I did not know what that meant; in fact, no one else knew and when we asked we were told that it meant, “Within existing budgets.”

At that time, the catalyst for direct payments—which, to be quite honest, is what self-directed support is—was the need for a philosophical model and an ethical push to get local authorities to examine their services and change their philosophy. Over the decade since then, various
reports have been submitted to Government on the allocation of scarce resources, the funding of this measure, block booking and everything else and when I read the committee papers the other day I was quite concerned to find that people are still having that debate. Has no one learned anything? We were supposed to have prepared social services to implement direct payments—or what is now called self-directed support. I know that this is a big issue but it seems that, with this policy, we might well face the same barriers of not knowing what the real budgets will be and how they will be allocated.

As for individuals, all I can say is that under the resource allocation programme there seems to be a push to reassess and cut people’s packages. At a time when we are looking for money to implement this new system, the resource allocation to people—those who, I would argue, are the most important because with individualisation they will hold the purse strings—is being cut. That is sad.

I have nothing more to say, convener. That was a bit of rant, but as a punter I think that we are just going round in circles about budgets and what not.

The Convener: Do you have anything to say, Ms Cobban? Do not feel pressured to do so.

Noni Cobban: I have nothing to add, except to say that I support the points made by Ranald Mair and Dee Fraser.

Ranald Mair: The committee has previously discussed the question whether we are actually in danger of putting the cart before the horse with the timing of self-directed support and the introduction of health and social care integration. If we had health and social care integration and pooled budgets, it would be more meaningful to relate self-directed support to the totality of spend on service users. However, at the moment, we are talking about self-directed support largely in relation to local authority spend, not health spend, and at some point over the next few years we will have to bring those things together.

If the goal is to integrate health and social care with pooled budgets and joint commissioning as informed by the principles of self-directed support, we will have to introduce self-directed support and then discuss its implications for health. At the moment, we are talking about part of the spend on older people, not the whole picture. The problem with the financial assumptions is that they are one-sided.

The Convener: Bob Doris has a supplementary question.

Bob Doris: I am interested in Mr Mair’s comment about the need for a level playing field on choices and support—I think that that was the expression that he used. This might interest Mr Brawley, too.

When we talked to Glasgow City Council social workers, they talked about an equalisation agenda. They acknowledged that the level of direct payments or support that an individual receives is based on the resources that are available to local authorities when that person enters the system. That means that, from one year to the next, the level of care and support for two individuals with similar care needs varies, which is not equitable. There is an issue about how to level that out to ensure that, irrespective of the resource that is put in, two individuals with similar support needs receive similar levels of support. That is a challenge for those social workers.

I will mention another challenge for them, which is the essence of my supplementary question. Local authority services such as traditional day centres are cost intensive. Is there an expectation in the third and independent sectors that, when people have greater choice, the disaggregation that will be necessary should be based on a general unit cost? Should we disaggregate the cost of a place at a traditional day centre in crude financial terms and then give the money to the individual? Of course, there comes a tipping point of provision. I would be persuaded if, in realising the budget that is to be self-directed by individuals who choose to go elsewhere, local authorities felt that they should not disaggregate on the basis of the full costs of individual day centre places. I hope that you are following the logic here. That is just one of the challenges that local authorities will have.

Ranald Mair: One high-cost element of any local authority service is the central service charge. The cost of a day centre place includes not just the cost of delivering the care in the centre, but part of the cost of that local authority being there delivering the care. I would expect the disaggregation of the cost of care, although there might be some saving because the council will no longer be running the service.

At present, the costs of home care are hugely disparate. An hour of care that is delivered by a local authority costs £20 to £25, whereas care that is commissioned from the third sector often costs £15 to £18 an hour, and costs associated with the independent sector are £13 to £15 an hour. There are big disparities. The cost of a council delivering an hour of care can be almost twice as much as the cost of purchasing care in the independent sector.

I hope and expect that SDS will lead to equalisation that does not deprive people of choice but which ensures that we have some sort of level playing field. We need to ensure that the costs reflect the quality of care that we want and
the additional elements that we have talked about of training and support functions. We have an opportunity to think again about how to get best value for the public purse, how to deliver quality care and what the cost of that is. The cost should not vary enormously according to who provides the care.

Bob Doris: Just for clarity, if a local authority home care worker notionally costs the local authority £20 an hour, disaggregating that would not be as simple as saying that, if someone receives 10 hours of care a week, they should get £200 a week and then decide how best to use that money, because, obviously, that would be disaggregating other costs. Therefore, we would expect the money that follows the individual to be less than that. There must be a recognition of the local authorities’ core costs.

Ranald Mair: Yes—in other ways I am probably one of the advocates for greater outsourcing, but outsourcing is not cost neutral. In the short term, either there are costs associated with the Transfer of Undertakings (Protection of Employment) Regulations and the transfer of staff from the local authority sector to the third sector or independent sector, or there are redundancy costs. We do not want to lose the workforce—we will need everyone who works in social care. The issue is not about downsizing the social care sector: against the demography, we will need more people to undertake caring work in the future. We do not want to lose people, whoever they are employed by. We want to maintain the workforce, even if people work in different contexts or under different employment arrangements. Outsourcing and transition are not cost neutral in those terms.

The Convener: We have 10 minutes, at most, left with this panel. Do member have further questions?

Gil Paterson (Clydebank and Milngavie) (SNP): Mr Mair referred to different costs. I expect that the three different institutions may have different employment costs in terms of salaries. Do you have any evidence that councils may in fact be paying a higher rate to individuals? I understand that big organisations tend to build empires—they are good at that—but there is another factor that comes into play.

Ranald Mair: Clearly, one factor—not necessarily the largest factor—in cost differences is to do with staff terms and conditions. In general, I would probably favour us moving towards more of a level playing field of terms and conditions. I do not necessarily mean that everybody should level up to local authority terms and conditions, but we want to create greater mobility of people across the sectors.

In effect, third sector and independent sector organisations have been forced into a position of offering less good terms and conditions because of the price that local authorities have been prepared to pay for care. To keep the costs down, there are poorer terms and conditions in the third sector and independent sector. It is not a matter of the organisations wanting to offer poorer terms and conditions—their recruitment and retention of staff would be that much easier if they were able to improve that—but improving terms and conditions would push up the cost of care, and the price that local authorities had to afford. We should therefore be looking at how we create greater equalisation on terms and conditions, and how to reduce some of the cost variation within the framework of self-directed support.

Variation in cost is not the only factor. The bigger factors are probably to do with overheads and central service charges, but terms and conditions are obviously an issue, too.

Dee Fraser: We did a piece of research about the workforce and terms and conditions in the third sector, which was published in 2011 in conjunction with the University of Strathclyde. That research very much showed that there are no elements of public sector pay and conditions that are universally available to the third sector. As Ranald Mair eloquently described, the downward pressure on the resource for care has led to employers handing on costs to their staff. I refer you back to that report if you are looking for more detail on exactly what the differentials were.

Gil Paterson: That would be extremely useful.

In other parts of our evidence taking, we have found that there is a complaints procedure in place, and that that seems to substitute for someone having the ability to appeal. What is the panel’s view on that? With the changes that are taking place, is there a need for an appeals system?

Ranald Mair: In reading the papers for today’s meeting, I noted that that issue had come up for discussion. A basic right of appeal in relation to how a person’s personalised budget has been arrived at is important, but that is different from someone making a complaint about the process by which their care is being managed.

Complaints should involve concerns about the way in which someone has been treated, but there should be a right of appeal around the setting of a budget, so that a person can say, “Actually, I haven’t been given enough to meet my needs adequately.” That is an appeal, in the same way that people can make an appeal in relation to being denied benefits. There is a difference between an appeal and a complaint. I favour a basic right of appeal in relation to the package that
has been allocated, which is separate from complaining about the process.

11:15

Peter Brawley: There needs to be a right of appeal. In some respects that goes back to the issue of advocacy, but, more important, for many years those in the independent living movement and community care users in general have not had redress through the law at times. People use those services because they need them; they do not want them because their next-door neighbour has them. They are part of a person’s core services for living.

Too often people accept the unacceptable, for two reasons. First and foremost, that happens because of the appeals procedure. Although that exists through social work departments across the country, the process of going through it and having to fight your corner when you are struggling to keep yourself together a wee bit can be difficult, and there is no redress through the law in that respect. The other reason is the lack of proper advocacy at times.

An appeals system that is not hazardous to people’s wellbeing would be great.

Gil Paterson: Related to that is the thorny question of costs. We have heard it explained that there are complaints procedures that double up as an appeals system, in which there are three stages. To bring into effect some form of appeals process would cost money—that is the reality.

It has been suggested that the money for that would not be new money and that it would have to come from front-line services. I know that that is very provocative, but nevertheless it is what we have been hearing. I would be grateful for any comments on that.

Peter Brawley: I will be dead quick on that point.

A lot of disabled people who use community care services are paying charges, and they also pay poll tax—sorry, it is council tax; that shows my age. If you are a disabled person who needs any specialised equipment or support, you pay more in our society. For example, some people need a cup so that they will not spill anything. If you go into Tesco and say that you want a Tommee Tippee cup, you can buy one for a baby and it costs £1, but if you buy one for a disabled person, it costs £6.

We already pay through the nose in tax and national insurance, and some of us pay community care charges and other types of charges. We are putting enough money into the coffers for us not to worry about the cost. An appeals process would be fair and equitable, and due process of law should mean that we should have a good opportunity to take our appeals right to the very top if need be.

Ranald Mair: I endorse that point. I understand why local authorities might feel that appeals procedures would ratchet up costs, but they may be more inclined to mediate if they know that there is a right of appeal, so in that sense people would not have to go to appeal.

Having an ultimate right of appeal that enables people to go as high as they need to—that right should exist, as Peter Brawley has said—might focus people’s minds on mediation and finding solutions without incurring the high cost of appeals. I understand local authorities’ thinking in that regard, but I do not entirely accept their rationale.

Gil Paterson: There are three stages to the appeals process. I know that, in running a private business, the last thing that anyone wants is any form of complaint, as the process tends to ratchet up and cost more money.

Do you have any view on whether a meaningful appeals system would stop the drive in that direction? I will say no more, as I am putting words in your mouth.

The Convener: Please be brief.

Gil Paterson: Is there a saving to be made in having an appeals system?

Ranald Mair: What we are trying to establish is rights. Part of having rights is that people should be able to assert them and have some recourse if they feel that their rights have been denied. Self-directed support involves being clear about the rights of service users to all the things that we have talked about with regard to personalised care packages.

I do not know whether an appeals process would be cost neutral, cost saving or cost incurring, but I think that it would be a price worth paying to make it clear that people have rights and that they can assert them, so I will stick with that view.

The Convener: Does anyone dissent from that point of view? For the record, I see that no one does.

I know that some members would have wished to follow up on some of those themes. However, we were unavoidably delayed at the start of our session, and I want to be fair to the next panel, which is a round table. We also have an engagement scheduled with young carers after the meeting.

If panel members believe that there are areas of importance that we did not cover this morning, we would appreciate and welcome any further written
submissions by e-mail or whatever; it does not have to be a formal communication.

As convener of the committee, I thank you all for the time and evidence that you have given us. The session has been entertaining and challenging at times, and we thank you very much for your attendance.

11:22

Meeting suspended.

11:30

On resuming—

The Convener: We move on to our second evidence session, which will be in a round-table format, as will be obvious to everyone by now.

I welcome Angela Henderson, national local area co-ordination development and policy manager at the Scottish Consortium for Learning Disability.

Angela Henderson (Scottish Consortium for Learning Disability): It is a long title. Thank you.

The Convener: I also welcome Pam Duncan, policy officer at the independent living in Scotland project; Brian Houston, associate director of children’s services at Barnardo’s Scotland; Florence Burke, director for Scotland at the Princess Royal Trust for Carers; Callum Chomczuk, senior policy and parliamentary officer at Age Scotland; Aidan Collins, policy officer at the Scottish Association for Mental Health; and Jim Pearson, deputy director of policy at Alzheimer Scotland.

Welcome to you all. I am going to contradict myself in a moment by asking Richard Simpson to open the discussion, but in this session the challenge for the politicians is to have a conversation with our witnesses and to listen to dialogue between them rather than listening to other politicians. We will give marks out of 10 at the end.

Richard, will you open up the discussion?

Dr Richard Simpson (Mid Scotland and Fife) (Lab): Fortunately, I have a long memory and I remember what has happened in this area of work. The Community Care and Health (Scotland) Bill was considered in the first session of the Scottish Parliament and the concern that I raised then was that local authorities would be, in effect, monopoly purchasers, because they would do both the assessment and the purchasing. I had concerns about how that would play out in relation to care homes, which is what the bill was about. Those concerns have partly been borne out, as there are still considerable difficulties in that area.

How can we ensure that local authorities maintain a level of neutrality in a system in which they will be the enablers, the commissioners, the providers and the assessors? They will also operate such appeal mechanisms as will exist—we will move on to discuss that. Local authorities will have a huge role. How will that sit with the work of the organisations that are represented here today?

That is just a question to get the conversation going. Take it where you like, subject to the convener’s approval.

The Convener: Who would like to start?

Aidan Collins (Scottish Association for Mental Health): I listened to the evidence from the first panel, and something jumped out for me about how self-directed support is being driven forward. In our discussions, we are focusing on citizenship, in that we are looking at human and civil rights and seeing them as underpinning self-directed support. If local authorities take a citizenship approach, they are likely to see self-directed support as fulfilling their moral obligation to meet people’s needs. However, another element is coming in around consumerism, whereby the focus is on providing services and ensuring that they are flexible. If local authorities take a consumerist approach to self-directed support, they will look at efficiencies and the cost of services.

As a starting point, it would be good to have a clear direction from central Government about what is driving the move to self-directed support. Is it about citizenship, genuinely putting the person at the centre and promoting human rights, or is it about consumerism and the cost of services? That is an important distinction, and clear direction would help to ensure that local authorities approach self-directed support in the right way and are impartial.

Angela Henderson: I agree that it is important to focus on the citizenship element. The strong focus on choice and control in the general principles of the bill would be enhanced by a more explicit connection to the outcomes for individual citizens that we are looking for and a more explicit connection with human rights and the goal of independent living for people who access community care services.

Callum Chomczuk (Age Scotland): That takes us back to appeals and advocacy. I am probably echoing what I heard at the tail-end of the previous session. One problem that many older and disabled people have is that, although issues may be raised with local authorities, they resist facilitating people’s access to self-directed support. People are determined to say, “You won’t be able to control the budgets. It’s too much work.”
We need to change such attitudes, and that can be done only by having independent advocates for older and disabled people to represent their needs. An independent appeals system can help to change the culture. I heard what was said in the session last week. That is probably the biggest obstacle or barrier to overcome. If the culture in local authorities can be changed—I think that those two processes would help to do that—there will be greater uptake of direct payments and other forms of self-directed support.

Pam Duncan (Independent Living in Scotland Project): I thank Dr Simpson for the first question, which is an important one. We would, of course, highlight what has already been said about citizenship and human rights. We believe that SDS is an opportunity for Scotland almost to set what happens on the international stage in relation to independent living being the outcome of community care and disabled people enjoying their human rights on an equal basis with non-disabled people—everyone else in society, basically. I talk about disabled people quite regularly, but obviously I also mean other care and support users.

We think that a statement of intent at the head of the bill might help. We spoke about that in our session with users and the committee last week. I will not go over the exact wording of it, as it is included in our written evidence, but we have suggested that “SDS is one type of provision society makes, among several, which underpins disabled people’s right to independent living”

and that the act could “enable local authorities to provide support to disabled people, other community care users and carers”

to make that happen. Once we change the view of what SDS is so that it is seen not just as being about having choice in and control over a process, but as a key element of supporting disabled people to live their lives in the way they choose, that will begin to get the culture change that is needed in local authorities.

People will sometimes say, “I’m interested in direct payments,” and then the first person they see—I was going to say the first gatekeeper, but that is quite provocative language—will say, “That’s a lot of hard work. Are you sure that you want to do that? We have a waiting list and nobody else will be able to help you.”

In order to empower the professional to be able to do what they are in the business of doing—to deliver choice and control for service users—it is important to change the culture and to address bluntly the vested interests in the status quo, which will be difficult. Again, it is about showing the potential of self-directed support and what it can do for disabled people. One way of doing that—there is no stronger way of doing it—is to showcase what has already happened. There are many examples of disabled people and other service users who have made the best out of direct payments and who can show local authorities and, indeed, the wider public the benefits of self-directed support and how it can genuinely change the lives of disabled people.

I hope that today and throughout the Parliament’s consideration of the bill, we in Scotland will take the opportunity to set what happens on the international stage.

The Convener: We have had evidence that the bill does not offer control or independent living. It offers choice and flexibility in and around the care package, but it does not offer the control that many advocates of independent living have suggested is needed. The hope is that that will be an outcome, but the bill will not change the law to ensure that people have the right to be supported in independent living.

Pam Duncan: That is an interesting observation. You are absolutely right that it does not, which is why we think that there needs to be a statement of intent; otherwise, SDS becomes just about process. We do want to make the process better, but this is not just about the process; it must also be about the outcomes, which I know are the focus of social care in the future. This is about addressing what sort of self-directed support we get and what provision people have. In our written evidence, we make the point that, in order for the policy to fulfil its potential, we must address eligibility for services and the sort of support that people get. As the eligibility criteria change, the life-and-limb provision that we see across the board at the minute will not deliver independent living for disabled people. There is a wider—and very public—agenda on the elephant-in-the-room issue of funding for social care in general.

Florence Burke (Princess Royal Trust for Carers): It is important not to lose sight of the carers or families in these situations. I support what colleagues have said about the citizenship and human rights elements. In our written evidence, we talk about respecting the human rights of unpaid carers and family carers. When we look at self-directed support, there is often a need for family assessment so that we do not lose sight of the young carers or the needs of the unpaid family carers. We must look at the outcomes for the family as a household rather than for particular individuals. We are then looking at positive outcomes for our communities and people as citizens. We would advocate a whole-family approach to the assessment of needs under self-directed support to ensure that no one is lost.
Jim Pearson (Alzheimer Scotland): I agree with that. Underpinning self-directed support is people’s right to choose how they receive that support and treatment, which is a fundamental human right. We were involved in the development of the charter of rights for people with dementia and their carers in Scotland, which was underpinned by a United Nations approach to human rights called PANEL, which stands for: participation—the right of individuals to participate in decisions that impact on their lives and human rights; accountability of those responsible for upholding those human rights; non-discrimination; empowerment of the individual; and legality in all decisions.

The area of legality is where the right of appeal sits, as legality includes the need for people to have effective remedy when they disagree with a decision. The current internal complaints procedure does not deliver that, but an independent appeals process supported by advocacy would not only give people the right to appeal against decisions that they disagree with when the law has perhaps not been applied correctly but, ultimately, make decision makers in local authorities who are responsible for developing individual budgets and assessing individuals much more accountable for how they do that, how they explain how decisions are reached and how they explain someone’s ultimate settlement and the individual budget. In a previous life, I worked in welfare rights, and that worked well within that system. People being able to challenge decisions made by the Department for Work and Pensions did, over time, improve accountability in decision making. We would be keen to see that approach developed further.

Brian Houston (Barnardo’s Scotland): Pam Duncan’s point about vested interests is important. We probably need to accept that the way in which services are currently constructed is quite a hard starting point to move away from. It is less about vested interests than about an investment that has been made. The third sector has developed into quite a robust sector based on a commissioning culture in which lead commissioners within local authorities commission organisations to do things. A significant amount of change is required for all the stakeholders involved, which is why it is an ambitious project and the benefits may be longer term. It is hard even to try to imagine what it would look like in the longer term. That is why the challenges that we face are for everyone who is involved in the current system. The system requires change, which requires certain stakeholders to let go and, within that, there is threat.

Angela Henderson: The point that Pam Duncan made earlier about the empowerment of front-line staff relates to the issue that has been raised. It comes back to the radical culture change that needs to happen in all parts of the community care service delivery sector, whether it is the local authority or the third sector.

Pam Duncan referred to gatekeepers of social care services. There is still a strong role for care managers in the provision of self-directed support. To come back to the emphasis on the human rights approach and the changes in the value base of staff, it is essential that we emphasise people’s rights and the outcomes of self-directed support at the start of the bill through the general principles.

Pam Duncan: I agree with those comments, but I want to say something more about vested interests. The same applies for service users and disabled people who are used to the current system. It is a bit of a culture change for some people, so this is not just about the professionals involved in the system. Some work will have to be done and peer support will have to be provided to make people comfortable with their new role.

Self-directed support is not only, depending on which option you choose, a different way to receive your services, but it has the potential to change people’s lives—that creates a link with independent living although, as you point out, it is not explicit. That is not something that people who, for a variety of reasons, have been disempowered for a number of years can take lightly or will necessarily find easy. That is why the bill must be underpinned by a right to advocacy. The role played by disabled people’s organisations and peer support is also essential so that people are able to see what they can be in a way that they could not have seen previously.

The Convener: We have discussed the general principles of the bill and I think that we all agree that they could be better and that there could be a greater focus on human rights and so on. Perhaps a discussion of the barriers that might prevent achievement of the potential of the bill’s proposals is the natural way to go.

Callum Chomczuk: I echo Pam Duncan’s comments. Our consultation with older people reveals that there is enthusiasm. People recognise that there might be potential to access services that they have not previously had and that they could have a tailor-made package that might be better. However, there is fear about the responsibility that that would entail. To come back to what I said initially, when there is a lack of full co-operation and support from local authorities and when there is any suggestion that a burden will be placed on older people or disabled people,
they pull back from self-directed support. Those principles must be at the front of the bill.

We must ensure that advocacy and support are available throughout the country. If somebody lives in Edinburgh or Glasgow, a market might have developed there for the provision of support, but such a market will be very limited in rural parts of the country, particularly if you are looking, for example, for a carer centre that provides black and minority ethnic support. Such provision might be sparse, so we must ensure that a landscape is developed that enables people to take the opportunity to be empowered and to benefit from the bill.

**The Convener:** I do not know whether anyone has interesting examples, but we have heard of some good examples in rural communities of a village approach to the provision of care, so there is a contradiction in that there has been innovation in some rural communities.

**Aidan Collins:** Mental health is recognised as being an area in which the take-up of self-directed support, especially direct payments, has not been as high as it could have been. That is partly about fear. People are afraid that self-directed support means that they will be left unsupported and will have to take on a great deal of responsibility. Therefore, advocacy and independent advice become crucial. It is necessary to be clear to people about exactly what self-directed support means and to focus on providing clarity not only about the direct payment option but about all the options that are available to people. Another barrier is the assumptions and attitudes of staff about what someone with a mental health problem might be able to achieve. There is risk aversion and fear of leaving people open to abuse and exploitation.

In addition, there are other things that we might not have considered as much as we could have. I am thinking back to the discussion on the integration of health and social care. In England, where services were well integrated and health and social care services had pooled budgets, when people who were experiencing mental health difficulties came to ask for a direct payment, the fact that the resources were pooled meant that it was extremely difficult to disentangle them and to separate out how much money was available for social care needs and how much of the pooled budget was for the health service. That became quite a barrier.

I do not think that integration is necessarily incompatible with self-directed support, but we need to start thinking about how the two agendas go together, especially as such massive changes are being progressed at the same time. We need to think about mental health and take-up in that context.

**The Convener:** My colleagues are getting itchy, but other panel members are keen to participate, so I will allow this to continue.

**Brian Houston:** I have a point about something that is less of a barrier and more of a hurdle, which some organisations are almost clambering over. It relates to my earlier point about the current construct and what services look like now.

The commissioning culture required certain things of organisations. The third sector organisations really matched up to that challenge by calibrating and orientating themselves so that they could meet requests to demonstrate that they were financially competent, that they had policies and procedures that they could show, and that they could respond to questions such as, “How do you develop your staff?” Over the past number of years, third sector organisations have had a strong focus on that in delivering high-quality services that are regulated by the care inspectorate and which are provided by workers who are regulated by the SSSC.

In moving away from that position and entering a different marketplace, a lot of larger organisations are having to recalibrate their whole organisation, because that is where all their work could be in the future. That is more of a hurdle than a barrier, but organisations need time and support to get into that new marketplace.

**The Convener:** Can you give us some examples of that?

**Brian Houston:** A basic example relates to how financial assumptions are made. Earlier, Ranald Mair made some points about contracted pieces of work and the fact that the commissioning approach puts providers against each other in a competitive process in which cost and quality are balanced and providers try to deliver a cost-efficient service to win the tender. Once the tender has been won, the contract must be delivered in a prescribed way, in the sense that a commission is a response to what the local authority has set down in relation to what it wants to procure. With more outcomes-focused services, commissioners may say, “These are the outcomes that we want—tell us how you would do it,” which is much more liberating for an organisation, because it can co-produce some of that.

The vision that Pam Duncan is outlining involves a more self-directed approach. That is a completely different marketplace. Third sector organisations would probably want to be in that marketplace, but they will look different. They need time to look different and to put in offers so that they are still engaged in such provision. As Ranald Mair said earlier, we do not want to lose organisations and people through this process.
Florence Burke: I will finish that point by focusing on what is an opportunity rather than a barrier. I will try to lift the discussion a little bit.

Ranald Mair may have mentioned earlier that the downsizing of the social care sector was not an option. Given the increasing number of carers and the support that they provide, we know that downsizing the unpaid social care sector will never be an option. Ranald Mair also said that there was a need for greater equalisation of terms and conditions of the workforce across Scotland.

There is a real opportunity in the bill, because if it were to make it a duty rather than a power to give carers access to self-directed support in their own right, a massive saving could be made to the public purse, at a time when we keep hearing about financial difficulties and the need for additional resources. Potentially, a small investment for carers in Scotland who want to take up self-directed support in their own right could help to maintain the £10 billion savings to the public purse that carers provide by giving unpaid support. Making it a duty to offer carers access to SDS is certainly something that carers and carers organisations want to push.

Jim Pearson: Alzheimer Scotland got funding from the Scottish Government to run a pilot project in Ayrshire. We found that many people who took up the option of self-directed support had been assessed as needing care in a care home setting. Their packages to enable them to stay at home used less money than the local authority would have used if it had had to fund a care home place. People used their packages in creative and innovative ways to secure the outcomes that they wanted. The report of the pilot indicated that the number of admissions to hospital in crisis interventions had reduced to some extent, and that admission to a care home had been delayed for some people.

We had to overcome a lot of barriers in working through the process. People in our team, who were working with three Ayrshire authorities, found a lack of understanding and knowledge among the professionals. However, over time and by working with individuals, we were able to show that barriers could be overcome. Towards the end of the pilot we were working together much more effectively.

That experience has been mirrored in other areas in which we help people to access self-directed support. Initially there are significant barriers, but when we start to work with professionals and one or two cases come through, people start to see the benefits and the outcomes and the culture starts to be challenged.

There are multifaceted issues to do with barriers. The strategy for self-directed support in Scotland is a 10-year strategy, in recognition of the barriers that we face in delivering the cultural and transformational change that is required if self-directed support is to work. There are many ways of doing that. Training is one way, and working in partnership is key.

Angela Henderson: For people with learning disabilities, one of the biggest challenges in the early stages of implementation of self-directed support has been the rapid timescales in certain local authorities. In the evaluation of the policy framework, “The same as you?”, we found that people with learning disabilities have a low level of awareness of the right to direct payments. There is a significant information gap and people in Scotland do not know about their right to direct payments.

That means that if we are to support people on their journey towards building a self-directed support package, we need to put a lot of time and effort into building people’s capacity to construct a vision for their lives. We need to work with people to develop a personal outcomes plan that is about not just the support that they receive but the wider outcomes that they would like in their lives.

The breakaway project, which has been piloted by City of Edinburgh Council through the local area co-ordination team, is about providing short breaks for people. An SDS approach was piloted, whereby people with learning disabilities and family carers from—I think—four families were brought together to plan short breaks. In the first stage of the programme, a lot of time was spent working with people on building their vision and their capacity to think differently about the short breaks that they wanted. That led to people going on some exciting trips. The carers and the people who went through the project reported very positive outcomes and the council has responded very well by expanding the programme to 40 families. The programme itself uses option 2 of the four options in the bill, with the local area co-ordination team managing the individual service fund and the use of pooled budgets. Such examples can show people how the different options can work to achieve positive outcomes for carers and individuals.

12:00

Pam Duncan: Angela Henderson makes a very important point about the capacity of individuals to understand fully what their life can be; indeed, I mentioned the same point earlier.

As for other barriers that exist, I will try to cover the four that I have written down as briefly as possible. In introducing self-directed support in Scotland, we need to bear it in mind that a huge barrier for some disabled people and other service
users is support for their capacity to consider any option other than the status quo. As Jim Pearson has pointed out, the strategy covers a lot of that, and work on communication and training, and other work with disabled people’s organisations and other user-led organisations on supporting disabled people is on-going. That work will be key, because such support is necessary. Some people think that the question is whether people have the capacity to manage, but with me, for example, the issue was not so much capacity as competence. I did not wake up able to manage a direct payment and be an employer and I think that most citizens in this country, even the learned people around the table, would need help with that at the outset. Such support is essential and the provision in the bill could be stronger.

I have already talked about culture change and the need to change our view of the current system of support and devolve a lot more power to the individual—although I suppose it might be better to talk about sharing power between the individual and the professional. Both elements are quite difficult and we will need to empower individuals and professionals to find the best possible way of doing that.

Two other huge issues for service users, particularly disabled people, that I have lumped together as a barrier even before we get to self-directed support, are the eligibility criteria and social care charging. The Joint Committee on Human Rights has highlighted eligibility criteria as a huge concern with regard to disabled people’s human rights, particularly those outlined in article 19 of the United Nations Convention on the Rights of Persons with Disabilities relating to the right to live in the community. As eligibility criteria rise, disabled people are finding that they are getting support only to get up, go to bed and be fed; in fact, we have heard horrific stories of people celebrating the discovery of 12-hour incontinence pads, because it means they do not have to send someone in every six hours to change those being cared for. This massive issue is a result of the fiscal challenges that we face. I realise that that sounds quite provocative, but some people are having to live with this reality and until we address the wider public issue of the funding of social care and examine the current resources, self-directed support will have only limited potential. I feel as though we have been banging this drum a lot, but if we do not discuss the general funding of social care it will simply become the elephant in the room.

Local authorities seem to be looking at charging as a way of increasing their funding to meet demand. One can understand why they are doing so, because they have a limited number of tools in their box—although I think that there are others that they could use. However, although charges amount to only 4 per cent of the total cost of community care, that 4 per cent can account for 100 per cent of the disposable income of disabled people or their carers. That is a huge issue, particularly given that 47.5 per cent of disabled people live in poverty. Charging for community care, particularly self-directed support, can act as a huge barrier to accessing it in the first place and, as we suggest in our submission, our society needs to examine how it values and funds social care in order to get to the nub of some of these issues and ensure that such support delivers on its potential.

The Convener: The politicians would like to speak.

Gil Paterson: Jim Pearson has spoken about what I wanted to ask about, which is the definition of an outcome. I would like to ask the other members of the panel whether they think that, in itself, the right to self direct is an outcome, given that many people will not do that?

It is good to hear the evidence from Alzheimer Scotland about people who are not entering hospital care, which is a big saving. We should not really think about it as a saving, of course; we should plough that money back into the service.

Fiona McLeod: Before I move on to the issue of personal assistants, I want to ask two specific questions about issues that have arisen so far.

Section 1(2)(a) says:

“A person must be provided with any assistance that is reasonably required to enable the person ... to express any wishes in relation to ... the assessment of the person’s needs for support or services”.

Why is that not sufficient? Some folk have said that we need to make the rights clearer than that.

On advocacy, section 1(3) says:

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

People talk about the need to have advocacy in the bill. Why is that section not sufficient?

The Convener: Those are useful questions, which continue the dialogue.

Pam Duncan: I will pick up on the point about section 1(3) and the provision of assistance that is “reasonably required” to enable a person to express views and make informed choices about self-directed support. I know that it might sound like semantics, but the use of the word “reasonably” is a big deal. If I were to present to a local authority tomorrow for an assessment for self-directed support—I have already got it, so I would not, obviously—whether I needed support to manage that would be open to question and,
obviously, there is a resource implication attached to the support that I would need.

There is a loaded assumption about what people will and will not need support with. We need to bear it in mind that the issue is not only about how a person manages arrangements, how they pay staff, how they choose their agency or how they manage the money in their bank account; it is about the person and how they want to live. Past experience of the way in which direct payments were rolled out shows that that element of support has not been as prevalent in the system as it should be, and people have not always had the sort of support that they could have in order to realise how they want to live their lives. That means that the term “reasonably” is particularly problematic.

A later section of the bill—section 4, I think—talks about capacity in relation to assistance. When we relate support and assistance only to capacity, we are in danger of missing out competency issues and the wider issues that we have outlined in our submission about frustrated ambition and disabled people being disempowered and not necessarily realising their potential. When that is coupled with confusion around capacity and the term “reasonably”, it makes the bill a little weak.

We support the submission from the Scottish Independent Advocacy Alliance, which is clear that the provisions in the bill should be as strong as those in the Mental Health (Care and Treatment) (Scotland) Act 2003 that give a right to independent advocacy. That is our view not just because the default position is choice, and, therefore, people must have support in order to make that choice, but because of the intricate situations that disabled people and other care service users experience. It is important that we make the bill strong on those aspects.

The Convener: Anyone else? Is there any more to be said on that?

Angela Henderson: We would reiterate exactly what Pam Duncan said in relation to independent advocacy.

Jim Pearson: The issue of capacity is particularly important. The draft bill included a provision for a local authority to name an appropriate person to help to manage a self-directed support package for someone who does not have the capacity to do that and who does not have a power of attorney or relevant guardian in place. Alzheimer Scotland was disappointed that that provision was dropped. I understand the arguments that were made about the need to protect individuals and the protection in the Adults with Incapacity (Scotland) Act 2000. However, it can take a long time for people to obtain guardianship. We have experience of several cases in which individuals waited a significant period to access self-directed support. Many of those individuals were in hospital and were deemed to be unable to go home or to move on to access self-directed support without a guardianship order being in place. There are major delays for some people in accessing the type of support that they want.

We were disappointed with that change and we urge the committee to consider the issue again. The Department for Work and Pensions has in place an appointee scheme. There is probably a lot of money floating around in Scotland being paid directly to appointees for people in respect of benefits. I understand that there are issues to do with the protection of individuals but, currently, through the appointee system, the state pays a range of social security benefits to appointees on behalf of people who cannot manage their money. An appointee scheme for self-directed support would not be very different from that.

I understand that there are issues to do with making welfare decisions. However, section 13ZA of the Social Work (Scotland) Act 1968, which was introduced by an amendment in the Adult Support and Protection (Scotland) Act 2007 and which relates to people, particularly in hospital, who move on either to go back home or into a care home, allows a local authority to treat an individual who does not have the capacity to avail themselves of a service, provided that certain conditions are met. Those conditions are that there is no existing guardian, or application for a guardian, or power of attorney and that everyone in the process, including the individual who is involved, agrees that it is the right thing to do. Anecdotally, section 13ZA is only ever used to move someone from a hospital to a care home and it is rarely used to provide a support package to help someone to return home. A combination of the appointee scheme that is no longer in the bill and section 13ZA might have alleviated some of the issues.

Aidan Collins: We took a slightly different position on that issue, because we have concerns that the guardianship and power of attorney landscape is already cluttered and confusing and we felt that the provision in the draft bill could add more complexity. It is true that it takes a long time to achieve guardianship and that the process is frustrating but, if that is the issue, we should tackle that directly rather than seek to circumvent the problem. Therefore, we were pleased when the draft bill was amended. The current bill is more in line with the original policy context of assisting people to make decisions rather than risking a situation whereby someone makes decisions on behalf of a person who lacks capacity.
We need to consider how to address the broader guardianship issues so that guardianship can work better. We had concerns about the point that, because guardianship takes a long time and there are a lot of difficulties, we should just invent something else to run alongside it. However, I understand Jim Pearson’s points.

**Brian Houston:** I have a general point. As a children’s services provider, we sometimes struggle when the detail of the discussion moves on to look at other aspects of self-directed support. In the test sites, not a lot of testing was done for children’s services. Young people were identified who were probably young adults moving into that transitional age. We have a concern that there has been no testing that would build collective confidence in the changes to the system among children’s services and families with children.

Certainly there are mentions of children’s services in some of the evidence that has been given to the committee, and children’s services are in the bill. The actual detail of how that will look and how far self-directed support will go in children’s services is a big question for us.

12:15

**Pam Duncan:** I have two pieces of information that might be useful to the committee and others around the table. Within the last year, Glasgow Disability Alliance ran a project called rights to reality, which was about young disabled people accessing self-directed support. It was not about children’s services—they started at age 16. There are obvious issues there, although that age is a bit closer to ages covered in some of the other work. That project is due to be evaluated shortly and could provide some learning for the committee. The project took the approach of capacity building for the young people, working with the parents who had previously provided most of the care and support that was needed, and also working with the young people on opening opportunities to try out personal assistants or local agencies and get support from a system that they were not used to, as opposed to from their family.

Glasgow Disability Alliance is doing a second piece of work, which has just started in this financial year—only in the past month—and is called self-directed support road testers. That is work with young people and older people—both ends of the spectrum—which looks at testing outcomes of self-directed support. Gil Paterson might be interested in that. The project has not found out much yet, as it is new, but it is certainly looking at outcomes and capacity building in SDS and so might be one to watch.

**Brian Houston:** The issue is that adult services are going through significant change. A child receiving services now is moving, year after year, towards that changed situation. There is no preparation for children who are, for example, three, six, or nine years old, or families who have children of those ages, to test out and exhaust the possibilities before they get to what is always a challenging transition. That transition has just become more challenging.

**The Convener:** We picked up some of that during the committee’s visit to Glasgow last week. The education system is not mentioned in the bill and neither is health, although we presume that there will be savings made as a result of people not going into hospital, or people getting out of hospital. The bill focuses on local government responsibilities, but we picked up on the point that children are at school for long periods of the day, and that, once they leave school, there is a challenge for the carer. It is a difficult transition that is challenging all round. We have a similar issue, to an extent, as a result of changes to college budgets—that is a concern. The college in my community provides significant amounts of learning for children with special needs that continues for some years.

**Florence Burke:** I will pick up on some of the points and return to the process. The issue is about the timing of when people get information. When is it appropriate to get information? What sort of information is appropriate, at that time, so that best use can be made of it? We have all probably been on an Excel spreadsheet training course, after which we have never had to use Excel because the time was not right, and then we ended up using something else. We have to make sure that the information and training that we provide to people is not just a one-off, and that we do not say, “You have had your training and information. That’s it—you should remember it.” It should be regular, frequent and delivered at the right time, before children are moving on to adult services. We should ask when it is best for the carer and the service user. That would have a big hit on how we could progress things.

**Dr Simpson:** Could I make one point about the guardianship process?

**The Convener:** Very briefly, as a supplementary question.

**Dr Simpson:** It is not the first time that we have heard that the guardianship process is slow, which is worrying. The costs of that to the health service are enormous.

I had a case as a consultant in which a patient was in an acute unit for six months waiting for a guardianship order, which situation cost £60,000.

I do not know the number of those with complex needs—our team might find out—and who are therefore removed from the delayed discharge list.
and await a guardianship order. A serious point was raised in the interplay between Aidan Collins and Jim Pearson about having or not having appointees. If we could substantially improve the guardianship process and make it quicker, we might not need appointees. However, unless we resolve the problem of the guardianship order, the argument for appointees will become much stronger.

Fiona McLeod: I will move on to the issue of personal assistants, the skills that they may need and their regulation if they become a large employee group. It was interesting to hear earlier from the representative from SPAEN, who was categorical that there should be no regulation of personal assistants. I thought that the Scottish Care representative summed up the issue quite well by saying that having the safeguards of regulation and an expected skills level for personal assistants would maximise choice for the individual who decided to employ a personal assistant.

Do the panellists think that we need to set a skills level for personal assistants? Do we need to regulate them? If so, how could that be done? Many of you will know that underlying my consideration of the issue and the theory behind it is my belief that having a regulated and trained personal assistant workforce would maximise choice. Those with self-directed support who wished to employ family members as their carer would be empowered to do so because as a carer they would be part of a proper, regulated, skilled workforce and there would be no need to consider the exceptional circumstances that local authorities, in the evidence that they have given us, seem to think should still pertain for family carers.

The Convener: Does anyone have any views on that?

Aidan Collins: It is a fine balance. We definitely need safeguards to ensure that people are safe, but we do not want to regulate self-directed support to death by paying lip service to it while destroying all the choice and control.

SAMH is stopping short of calling for a register of personal assistants, but we think that consideration of risk and safeguards must be carefully embedded in self-directed support. We think that there could be a service-user agreement between a local authority and a person receiving a direct payment about safe employment and safe practices, and carrying out PVG checks. The local authority would have a responsibility to ensure that the person understood what that meant, the risks that they would be taking and how to get the checks done. That is an example of the beginning of a safeguard.

We could build in considerations of risk at the stage of reviewing the person’s needs. For example, a person might have experienced a mental health difficulty that made them more vulnerable, and the question would be how that translated to building contingencies into the person’s care plan, such as what the person would do if they felt that they were being exploited, whether people would be trained to recognise that and who the person would call on. It would also have to be decided whether it would be okay, for example, to leave people for a year before reviewing the care plan and checking whether everything was going okay with the personal assistant, whether they were meeting the person’s needs and whether the person felt safe.

It is about having something proportionate. Some people might require a bit less regulation and review, but some people might be a bit more vulnerable and require more in that regard. It is about taking a balanced approach rather than a blanket one.

There is also an issue in self-directed support about people being out in their communities, being visible and making connections. That would be a safeguarding element in itself in that there would be more people who would be able to spot whether something was wrong and to pick up on signals and more people to whom the person could talk.

We think that such safeguards need to be built into self-directed support, but we must consider carefully how to do that without overregulating.

Pam Duncan: I echo much of what Aidan Collins said, particularly about the proportionality of regulation. I will share a personal story. I have used various forms of self-directed support and I currently employ my own staff. The skills that I want from them would not necessarily be on the tick list that a college might provide for registered PAs. For example, it is important to me that my staff learn how to blow-dry and straighten hair. That might sound flippant, but that is much more important to me than whether they have been through a food hygiene safety course. How many people around this table learned about food hygiene before they learned to cook? Most people do not do that.

From my point of view, the issue is balancing risk. That relates to Aidan Collins’s point about proportionality. Some people will need a little more guidance and support, and a bit of regulation will be required to ensure that services are going as they should, but other people will not require that.

I have another, similar story. When I used care agencies, I had a really good experience with a lot of them, but I was often asked questions such as, “What’s your favourite food?” I would say,
“Chicken—but why is that relevant?” The response would be that that was what the PA would cook for me, but I want people to cook what I ask them to cook or whatever is in the kitchen. I might have a Domino’s pizza, because I might not have anything in the kitchen. I was asked that question because people were trained to follow a list of things that it was important to recognise and regulate. I would also be asked, “Who will we phone if you’re upset or sad?” I would say, “Nobody—I will phone people myself.”

Proportionality is really important. I echo what Peter Brawley said about the danger of overprofessionalising and—I hate to say it—almost overmedicalising the care system in some cases. The system is unique, because of how the relationship with personal assistants works. It is important to remember proportionality, but it is also important to remember the skills that the wider care force might need. The skills that might be ticked off as needed might not be what a person required from tailored support. We need to get the balance right.

For the retention of personal assistants and other staff, it is important that they see the job as a career, so personal development is important. Overregulation needs to be balanced with opportunities for PAs to develop personally and to have a bit of a curriculum vitae. When my staff move on to somewhere else, I want to know that they have had a half decent crack of the whip. Most of the time, they will get a decent reference, because they are good, and they should be able to move on to somewhere else, I want to know that they have had a half decent crack of the whip. Most of the time, they will get a decent reference, because they are good, and they should be able to build up a CV.

That comes down to the money that is behind the system of support. The bill talks about an appropriate amount for direct payments. That appropriate amount must be enough to allow people to be good employers. To attract and retain a workforce, people need to be good employers and to offer in some cases opportunities for personal development that might involve not just care and support but other things. In my professional career, I do not have to do training only on policy; I am also offered other training opportunities, which recognise that I am a woman who has a career ahead of her. Such opportunities are important for PAs as well.

I have made a few points and I have probably not been very clear about what we would say is the right thing to do. What is important is proportionality, remembering that the skills that are important to people are not always the tick-box ones and remembering that PAs need to have an opportunity to develop personally.

Brian Houston: One challenge is to recognise the spectrum of arrangements that might be in place. From a children’s services perspective, we support a number of children who have complex needs, for whom even communication is a significant barrier.

We must always be mindful of how we got to the point of having a regulated workforce. We know why we are here in children’s services and adult services. Regulation was the national response to difficult things that happened. Even with regulation, difficult things can still happen.

In regulation, what provides standards and security for us all? That relates to the sense that Pam Duncan articulated of the quality of what is happening. Some service users will not have the competence or capability to judge that, so that will need to be done on their behalf. We need to have a standard and to ensure through regulation that care is at the right level. If we do not establish that, we will be waiting until the first incident, and then we will act.

12:30

Angela Henderson: There are standards out there, through the SSSC, which is about to publish revised national occupational standards in health and social care. The standards have been revised to capture the choice and control agenda and to change the language of the care and support framework, moving the focus away from the worker and towards the empowerment of the individual by emphasising co-production in relations between the worker and the person whom they support.

The existing frameworks will be translated into education and training opportunities not just for personal assistants, but throughout the workforce, so the standards will help to ensure practice improvement and development for PAs.

Florence Burke: Fiona McLeod talked about family carers; the vast majority of family carers who have given us feedback have been in favour of a payment that would be greater than the carers allowance that they currently get. However, they are surprised that when they cross the boundary between being an unpaid carer, who is given no training and no opportunity for personal development, and being paid a wage, there is regulation. They understand the sensitivities and the need to tailor the care package in the context of the assessment, but they do not want a heavy-handed approach suddenly to kick in as the workforce goes from being unpaid to being paid, which brings a certain level of regulation.

I add two caveats. Carers still want to be in a position to be able to say no and not feel guilty about doing so. Likewise, the service user should not be in a position in which they feel guilty about saying no to having that care. There should not be an expectation about how the family will move on and how the caring role will develop.
We are concerned about that in relation to young carers, in particular—we might talk more about that later. A young carer who is in a vulnerable situation looking after a parent or grandparent should not feel that looking after the person must become their career, and should be given the same opportunities as everyone else has. That does not apply just to young carers; all carers should have the opportunity to have a life outside caring.

**The Convener:** We are into our final 15 minutes, because we are going to spend time with young carers later today. Bob Doris and Drew Smith will introduce new areas for discussion.

**Bob Doris:** I will be brief, because I am enjoying listening to the conversation. We talked about local authorities’ central role as gatekeeper to wider services, even if they do not directly control the budget but continue to direct the resource. Are there local authorities that are good at working with a diverse third sector, in relation not just to block and spot contracts but to signposting carers and cared-for people towards trustworthy agencies? Are some local authorities acting incorrectly as gatekeepers and offering only their preferred options? If that is not a problem, I am happy for us to move on, but the issue came up during our earlier discussion.

**Callum Chomczuk:** We have only anecdotal evidence from people who have called our helpline. We know of a couple of cases in the Highlands in which there have been blockages in relation to people accessing support. They were isolated cases and I have no evidence that the problem is endemic in the Highlands. In some cases, social workers are telling older people about access to self-directed support because they think that they must do so, while they are, in essence, trying to deter them from taking up SDS by suggesting that there are too many problems and the person will not be capable of managing an individual budget. The evidence is anecdotal, however, and does not necessarily reflect a wider problem.

**Brian Houston:** We deliver a service with North Lanarkshire Council. There is a traditional approach, in that we are paid to deliver the support, but the council made it clear to us what we should be doing. It is almost a question of building the foundations for self-directed support, so we work with parents to get them to think about the support that they want. They know that they are getting our service, but we need to know when they want it and what they want us to do, so that we can change a children’s service from being preoccupied with personal care to being more preoccupied with looking at what a better life for that young person would look like. We want to look at the opportunities that we could broker for them—for example, the short breaks and activities that they could be involved in. That does not sound like a significant shift, but it has been interesting.

Pam Duncan talked earlier about service users being supported to manage that change although they have not even been given the budget. They are just being asked to change their thought processes, but some families still want the same support at the same time on the same day every week. That is their choice and that is what is important. That kind of service is more person-centred than it is properly personalised, but within children’s services, it is the start of a pathway towards what self-directed support might be in the future. If we are confident, things will start to change.

**Pam Duncan:** That is a really interesting point and I will pick up on it. Ed Roberts, one of the founding fathers of the independent living movement, talked about raising the consciousness of disabled people, and Brian Houston has been talking about what can happen when a person believes that they can be something that they did not previously realise they could be, perhaps because of societal discrimination or the experiences of oppression that disabled people face. Raising the consciousness of disabled people has underpinned the independent living movement’s view on how to ensure that disabled people can be equal citizens with equal rights within society, and that is important.

On Bob Doris’s question, we also have anecdotal evidence of people being put off self-directed support because it is hard work; because not very many people in the area do it; because there is no one to employ; because it has not been done in the area before; or because they will not be able to manage SDS. A host of reasons have been given, but we hope that the culture change that will be underpinned by the strategy that Jim Pearson talked about earlier will be able to address some of them. Again, it is about understanding what SDS is and showcasing positive examples of the people who use it and the professionals who have put it into place. That is a good opportunity.

In our experience, the gatekeeper to people choosing what local authority services or voluntary or independent sector services they use is very much money. People are given a pot of money, they pick a particular service in a particular area because it meets their needs—perhaps they know the people or have used the service in the past—and it has ticked a lot of the boxes in terms of what they want to purchase, but the budget holder tells them that they are getting £15 an hour and the service that they have chosen will cost then £17. Where do they go to fill that £2 an hour gap?
I am concerned that, in that situation, people are paying lip service to choice, so I come back to the point about the appropriate amount for a direct payment. If choice is to be the default option, choice of provider or the way in which the support is provided are really important. In the example that I mentioned, individuals would often be asked to find the extra £2 an hour. They might be able to live with that if they are getting one hour of support a week, but not if they are getting 25 hours of support: that is a lot of money for people who are being asked to contribute to the cost of their care. Earlier, Peter Brawley eloquently described the costs that disabled people already have to pay over and above the normal activities of daily living. People are not saying, “That provider is no use; don’t touch them”, but are saying that the money tends to be the gatekeeper.

Jim Pearson: Pam Duncan made an important point about local government control often being about where it sets its direct payment rate and hourly rate, and how it does not reflect the existing market of providers, whether they be personal assistants or other organisations. It also does not reflect the individual needs of the person.

Being from Alzheimer Scotland, I will use the example of someone who has dementia. We have advocated strongly that people who have dementia and their carers need support services from individuals or organisations that understand how dementia impacts on an individual and on their family members and carers. It might be necessary to pay slightly more in order to get that skilled workforce to provide services. However, the way in which local authorities set direct payments does not reflect that—it often reflects the bottom line within the providers in a particular area. It does not reflect the market or give people true choice. On Bob Doris’s question about central control, a key aspect that needs to be addressed is how individual budgets—or appropriate amounts—are set in order to give people true choice so that their particular eligible needs are met within that particular market.

The related issue of what a “relevant amount” is was discussed at one of the recent bill steering group meetings. The term “relevant amount” is in section 3(2) of the bill. There is a definition of it, but only in relation to one of the options—the direct payment option. There is a view that that could fundamentally undermine the principles of the bill, because everybody should be entitled to know exactly what amount, or pot of money, is available to them for purchase and arrangement of the care that will meet their needs. It may be a drafting issue or it may be an error—I do not know. However, it could be interpreted to mean that the duty on the local authority to provide a “relevant amount” applies only in the case of somebody who chooses option 1—the direct payment route—and not the other options.

Florence Burke: On Pam Duncan’s point about the difference between the £15-an-hour and the £17-an-hour service, a person could opt to remain with the £17-an-hour service that they have been using and in which they had built up trust and confidence, and to pay the difference themselves. However, the reduction in the hours of paid care that they could then afford—that potential element of extra work—is likely to be picked up by an unpaid carer, which creates stress for the unpaid carer who will need to deliver that extra care.

Brian Houston: Many of the hourly rates are historical because they were built for something else through a commissioning process—a competitive process. The organisations that engaged in that and which built that process need time to unlearn and to put a different service out there if they are going to be part of this. That is one of the main transitional challenges for the voluntary sector—we matched up to one market, but a new market is being developed. The question is how to move large and small organisations over to that new market without destabilising those organisations. Some need to rethink radically their whole structure: finance, human resources—everything.

The Convener: The contention is that the effects of the bill will be cost neutral.

Brian Houston: The effect on organisations will not be cost neutral, because they are already having to recalibrate how they work in order to fit a new marketplace in which there is less reassurance. It is a question of risk management, because it is a business risk. An organisation might decide to rely on more as-and-when workers, or sessional workers, which would bring its own challenges in terms of quality and delivery.

Drew Smith (Glasgow) (Lab): I wanted to raise a whole pile of things that I am not going to raise at just before quarter to one, you will be glad to know, convener.

I have what is perhaps a slightly provocative question about the cost-neutral issue. Is it not the case that the bill would be cost neutral only by decreasing the workforce cost substantially by moving from the public sector into the independent and voluntary sectors, or through a much bigger expansion of direct employment? That would result in a predominantly low-paid workforce being paid even less and their terms and conditions would be substantially reduced. They would have less protection in what is essentially an employment relationship, which is potentially exploitative regardless of whether it is in someone’s private home or with an organisation. It
seems that that is the only big cost that people have identified that we might save.

12:45

Jim Pearson: There is an issue around the potential of self-directed support—not just on cost but on how it supports people within the community. As Pam Duncan said, the eligibility criteria are a major issue. If we address only the people who have the most urgent and substantial needs, there will be a gap in provision. Again, I will relate that to people with dementia.

When someone has been diagnosed with dementia, support and help to allow them to continue to connect with the natural support in their family and community—in order to reduce the need for hospital admission and push back the point at which they may need more substantial care at home or in a care home—must happen early on. Self-directed support has the potential to deliver that by giving people small individual budgets early as a preventative spend measure that will help them to keep their connections going. However, that potential is hindered by the fact that the eligibility criteria are set so high. We already know that we cannot continue to deliver services as we do, given the demographics in society; the expectation is that the number of people with dementia will double by 2030.

There is therefore an issue around the big elephant in the room that Pam Duncan talked about. How do we fund and provide social care in Scotland and how do we tie that in to the reshaping care agenda and the integration of health and social care so that people can access individual budgets that help them to connect with things in their lives that mean that the funding acts as preventative spend? Perhaps in that way—I do not have evidence for this—SDS could be cost neutral. However, there is a risk that it will not be cost neutral if we continue to provide care and support only for those who have the most substantial and critical needs.

Pam Duncan: The preventative spend agenda is important. If we continue to meet people's needs only at crisis points, they will reappear later in the system, which costs more in hospital treatment and in services that they would not otherwise have needed. I agree that there is a funding crisis and that there is a bigger question that we need to address, which is the reason why we believe that we need a commission on funding of social care in Scotland. That is a political agenda, which requires the public's buy-in. We believe that we need to focus on the value of social care and how we spend public money, but—of course—people need to understand that value.

Before that happens, there are things that we can do. Preventative spending is a way of avoiding top-end costs, but we need to address the eligibility criteria. There is also a danger in reducing workforce costs, particularly if the reduction impacts on people's working conditions. If that were to happen, people would have to consider whether they want to do the job in the first place, and a smaller workforce would limit choice and availability for people with SDS, which would be a concern.

I believe that we will, as a society, need to be innovative not only about how we use public money generally but specifically about how we fund and value social care in our society. That is the burning question that needs to be addressed.

The Convener: That might be a good point at which to end. We have run out of time—we never have enough time. We value your written submissions and your oral evidence. We encourage you to continue to engage with our ongoing work on the bill. If you want to build on your written evidence or comment on evidence that you have heard, there is no barrier to your doing that, particularly if you enthusiastically support something—I will try to be positive for a change. However, if there are views that you do not agree with, we encourage you to view our evidence taking as a live process and to let us know. We would welcome your input in that regard, which would better inform our work.

I thank you for coming along this morning.

Meeting closed at 12:50.
Further to the evidence session on Tuesday 22\textsuperscript{nd} May 2012, I am writing to flag the need for further dialogue around the application of SDS to Residential Care for Older People

1. The proposed legislation brings Residential Care fully within the scope of SDS and Direct Payment. At present, Direct Payment applies only to Short Break stays in Residential Care. Long Term Care for Older People currently comes under the National Care Home Contract, for those who are publicly funded. Self-Funders, in the main, have part of their care costs offset by the Free Personal and Nursing Care Allowance.

2. Whilst we are in absolute agreement that the principles of SDS, allowing people to have control over their care package, should apply equally to all groups of service users, including those requiring Care Home provision, we have some reservations about the use of Direct Payments.

3. Existing legislation and regulation already gives the right to the choice of Care Home to all service users. Giving someone Direct Payment would not add to this. Nor, if someone is assessed as specifically requiring a full-time Residential Care package, can they really use Direct Payment to make alternative arrangements of their own.

4. Because Councils purchase Residential Care for Older People at a heavily discounted rate under the National Care Home Contract, and for the most part Self-Funder Rates are higher, use of Direct Payment might well end up costing people more.

5. The majority of people currently receiving publicly funded care home provision have high levels of need and are mainly in their last 2 years of life. Correctly, the care they receive should reflect their choices and wishes as far as these can be determined, but this may not be a point at which most people would want the added burden of making their own care arrangements.

6. In the context of greater Health and Social Care Integration, and the emphasis on Shifting the Balance of Care, more use may be made of Care Homes as an alternative to hospital for Intermediate Care, Specialist Dementia Care and Palliative and End of Life Care. The inclusion of Health purchased/funded care as part of SDS will also need to be clarified.

7. As with other care provision, the cost of Council run care home provision is significantly higher than corresponding purchased care. We need to create a level playing field so that anyone having a care budget, real or virtual, has equal purchasing power.
Are you generally in favour of the Bill and its provisions?

Yes. However we are very surprised that independent advocacy is not referred to at all in the Bill.

**General principles underlying the Bill**

**What are your views on the principles proposed?**

We agree with these principles. We think the Bill also needs to include the principles of Equality and Independent living.

**Equality:** SDS should be based on the principle that disabled people of all ages have the same freedom, choice, dignity and control as other citizens.

**Independent Living:** the legislation should be implemented in a way that works toward the aims of independent living as defined by the Independent Living Movement.

We are aware that self-directed support started in the independent living and disability movement and we think it is very important that any new law keeps these principles.

**Options for self-directed support**

**What are your views on the four options for self-directed support proposed in the Bill?**

OK

**Do you have any comment on the proposal that the self-directed support options should be made available to children and their families, together with the proposal that the degree of control a child may have over the process should vary with age**

We agree with these proposals.

It will also be important to consider the possible support needs of parents with learning disabilities and disabilities in making these choices.

**Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?**

We think that local authorities should have a duty to make sure that individuals have accessible information about independent advocacy to support them to make a decision about the different options (s.5(4)) and to
support them to access the right sort of support to manage their self-directed support.

Independent advocacy is important as it can help someone to work out which option is best for them free from the conflict of interest which may arise with a family member or support worker. It also ensures that people who do not have contact with family members get access to good independent support to make these choices.

If we ensure that people have good access to independent advocacy they are also likely to have a better understanding of the implications of each of the options and would be less likely to rush into it and then need to change option.

We know that not all support organisations provide the right sort of support for people with learning difficulties and that advocacy can be helpful in enabling them to fully understand the sort of support that someone may need to manage SDS.

We also think that information about support is not enough. Local authorities should also have a duty to ensure that the right sort of support to manage SDS is available in their area. This should include ongoing support that meets the needs of people with learning difficulties. Without funding for this support we do not think that all disabled people will have equal access to direct payments.

**Direct payments**

*Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?*

Yes

**Adult carers**

*Do you have any views on the provisions relating to adult carers?*

OK

**Individuals’ responsibilities and risk enablement**

*Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?*

We are worried that this will leave people with learning difficulties very vulnerable to exploitation. Unless there are guarantees that the right level of ongoing support is provided in each area we think that the Scottish Government should require individuals to carry out disclosure checks. People with learning difficulties will need support to adopt safe recruitment practices, not just information.
**Financial Memorandum**

Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

We know that current support service agencies are very stretched. We also know that they do not meet the needs of all client groups. We therefore think that if SDS is to be extended there will be some ongoing costs. We think that support agencies will require additional ongoing funding to meet the costs of providing ongoing support to meet the needs of people with learning difficulties, and that independent advocacy organisations will require additional ongoing funding to ensure that all individuals access good support to make meaningful choices in relation to SDS options.

**Effects on equal opportunities, human rights, island communities and sustainable development**

Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?

We are very aware that unless the right sort of support is provided for people with learning difficulties to manage direct payments they will not have equal access to this option.

**Other matters**

Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

No

People First (Scotland)
24 April 2012
Scottish Parliament

Health and Sport Committee

Tuesday 29 May 2012

[The Convener opened the meeting at 10:06]

Social Care (Self-directed Support) (Scotland) Bill: Stage 1

The Convener (Duncan McNeil): Good morning and welcome to the 18th meeting of the Health and Sport Committee in 2012. I remind everyone present that mobile phones and BlackBerrys should be turned off as they can interfere with the sound system.

No apologies have been received, although Margaret Cassidy has had some travel difficulties. We hope that she will be here, but in the meantime we intend to proceed with Omar Haq. Welcome, Omar. It is pretty daunting for a witness to sit there on their own, but I can see that you are pretty relaxed about that, which is great. We are pleased to have you along for the first item on our agenda, which is our final oral evidence session on the Social Care (Self-directed Support) (Scotland) Bill.

Before we move on to questions, I give Omar the opportunity to say a few words.

Omar Haq: Thank you. It is a pleasure to be here. I am a local Edinburgh resident. I am 27 and I graduated a couple of years ago from Edinburgh Napier University with a master’s degree in human resource management. I am currently unemployed and looking for work. I have been on direct payments, which I believe is one of the elements that you are looking at, for the past six years. I am here to give you, as best I can, an indication of what the system has worked for me, what is good about it and what is bad about it. I am happy to help in any way that I can.

The Convener: Thank you. We move on to questions, beginning with Fiona McLeod.

Fiona McLeod (Strathkelvin and Bearsden) (SNP): Good morning, Omar. I start by saying that I understand direct payments personally as I went down that route for my mum. I want to ask you and Margaret, when she arrives, to outline the process of getting direct payments. What did you have before? What made you choose direct payments? What was the process like?

Omar Haq: I was not made aware of direct payments until I was in my second year at university, in around 2006. I needed someone to help by scribing and taking notes at my lectures, and I was made aware of an organisation called the Lothian Centre for Inclusive Living, which helps to recruit personal assistants for disabled people to do things such as scribing and personal care. One of the elements within that was direct payments, to be used for things such as personal care within the home. That was separate from the university funding from the Student Awards Agency for Scotland.

I had to go through an assessment by the social work department, which assessed my needs and told me, based on that, what funding I would receive. There are three levels of payment—£7.95, £8.55 and £9.85—depending on the seriousness of the disability or illness. As a result of the assessment process I became aware of direct payments. That was in 2004 or 2005.

When I left university a year or so ago I felt that I had to be reassessed because I needed to increase my hours. After all, I was leaving university and wanted to keep on my personal assistant to help me with additional activities such as looking for employment. I realise, however, that direct payments are not used specifically for such purposes.

When I was reassessed this time last year, because I had asked for an extra 10 hours on top of what I was getting, the reablement team, who help people who are able to look after themselves but who might have been hospitalised for a period of time, were asked to have a look and see whether I actually needed them. The team came into the house for about two weeks and basically carried out all my personal care before my rate—which was the middle rate—was approved for the second lot of hours. At the moment, I receive just shy of 24 hours’ funding.

Fiona McLeod: When you left university and decided that you wanted a reassessment because you knew that your needs were going to change, did you ask the council to be reassessed? How was your request viewed?

Omar Haq: First of all, I told my independent living team representative at the LCIL, which does all the payroll work for this activity, what I wanted to do and asked what the process was. I knew that there were other funds out there; for example, a year and a half ago, I heard about the independent living fund, which apparently had been closed. The LCIL team told me what the process was and said that I needed to be reassessed. Basically, an occupational therapist comes out to your house and assesses everything that you need. However, they want a breakdown of every element of your life, which is very difficult to provide. Although certain elements might not seem trivial, they are quite trivial because they are just part of everyday life and I found it difficult to think through what it was I actually needed. However, as a result of that assessment and evidence from the reablement
team’s two-week stay in my house, I was able to get an increase in hours. While I was at university, I got 14 hours, which was enough because they were being supplemented by extra hours paid for through the Student Awards Agency for Scotland. Last August or September, my hours were increased by 10 to 24, at a new rate, which was the middle rate of £8.55.

Fiona McLeod: I need to let other members in, but I have to say that you sound as if you had quite a positive experience once you knew what was available. Was the experience made positive by the support that you received from the LCIL?

Omar Haq: Definitely. If I had not had the centre’s backing, I would not have known how to approach the matter. It deals with all the nitty-gritty, technical stuff and makes it easy to understand what is going to happen. As they are part of the council, OT’s work to strict guidelines and can be too rigid in their stance, whereas, if someone from the LCIL is present, they can be a bit more flexible and open to new ideas about what people need—which is an issue that I hope we will discuss later.

Fiona McLeod: I have loads more questions, but I realise that other members want to come in.

The Convener: Indeed. Gil Paterson has indicated that he wishes to ask a question.

10:15

Gil Paterson (Clydebank and Milngavie) (SNP): What was your situation before you received self-directed support?

Omar Haq: As I have said, I am 27. I live at home with my parents, who have provided all my personal care including showering me, dressing me and helping me into my wheelchair. I can walk about the house with the aid of a stick, but someone else needs to be there, and I do not feel comfortable walking around the house if no one else is in or if I have no support around me. Basically, my parents have done everything for me. In fact, they still do a great deal but when I heard about direct payments I thought that I might be able to keep on the PA I had at university, who knows where you will end up?" Without the money to have that daily physiotherapy, the process would have been much slower but the fact that I have a PA and can get maybe an hour or an hour and a half’s physiotherapy each day I have managed to reach a level of fitness and health that no one could have imagined for me four or five years ago.

Dr Richard Simpson (Mid Scotland and Fife) (Lab): You have obviously found physiotherapy to be very beneficial. However, it tends to be related to health matters. Do you have a specialist doctor or someone like that?

Omar Haq: I pay privately for a physiotherapist, who now sees me about once a month. When I recruited her back in September 2008, my condition had worsened to the extent that I needed assistance with everything. I still require assistance but at the time I found doing things a lot harder. The physiotherapist knew that I had a PA and told me, “Look, the process might be a slow one but if you do my regime every day, who who knows where you will end up?” Without the money to have that daily physiotherapy, the process would have been much slower but the fact that I have a PA and can get maybe an hour or an hour and a half’s physiotherapy each day I have managed to reach a level of fitness and health that no one could have imagined for me four or five years ago.

Dr Simpson: I am slightly concerned as to why the health service, through the primary care unit or hospital, did not offer you such treatment to allow you to manage your own condition.

Omar Haq: I left school back in 2003, when I was 18. While you are at school, you can get regular physiotherapy at the Royal hospital for sick children. Actually, it is not all that regular; it probably happens every six weeks.

Once you leave, you are out of the system completely. I went to see my general practitioner, who is an excellent guy—his name is Dr McMillan—and he said to me, “We can offer you physiotherapy only if there’s something wrong with you for a sustained period.” If you get injured, for example, and it affects your mobility, you can be offered physiotherapy for that period but, once the injury or the problem is sorted out, the physio has to stop.
My health steadily deteriorated for a number of years until 2008-09. In 2008, I thought that I really needed to do something about it because I was having other health problems that were unrelated to my physical condition, but which were probably caused by sitting about too much and not being able to move about even with assistance. That is what eventually drove me to recruit my own physiotherapist privately. She has been with me for four years and she has been very good at setting me targets and giving me a platform to build on. The physio from the national health service completely stopped when I left school in 2003.

Dr Simpson: We are interested in the boundary that exists between what is described as social care and what is described as health care. You have given us an excellent example of how, with self-directed care, you were able to do something through physiotherapy that should have been provided by the NHS, which should have been protecting and supporting your health.

Omar Haq: Yes, absolutely.

Dr Simpson: Thank you for that.

Richard Lyle (Central Scotland) (SNP): Good morning, Omar. You have taken control of your life, but you said earlier that there have been some pitfalls and downsides to what you have done. Can you explain that?

Omar Haq: In terms of direct payments?

Richard Lyle: Yes.

Omar Haq: When I was assessed for direct payments, on both occasions the assessment was based just on my need for personal care. That is all well and good—I am not saying that I do not need personal care. I need everything done for me—I need assistance with showering and dressing, and I need my meals prepared for me—because I cannot lift anything. Even when I am standing, there is no way that I can lift or hold anything. I need help with going to the bathroom, and I need somebody with me all the time even if I am walking about, just in case I fall.

I have been told that the assessment for direct payments is made only on the basis of the need for personal care, but that does not allow for true independence because I am independent only when I have somebody with me. My PA allows me to be independent, but the direct payment does not cover things such as domestic tasks. It is not meant to cover somebody helping you to clean the house, do the vacuuming or do the gardening. There is no money available to help me to get out and about—for example, if I want to meet my friends or go to the cinema. Also, taxi fares are really expensive but I have a free bus pass and having my PA with me allows me to use the bus. I need somebody there to help me to get on the bus, because buses are quite cramped; I can make full use of the facilities only if I have somebody with me.

Although a direct payment might provide financial independence—you are given money and you decide how to use it—it does not allow true independence because it does not take a holistic approach. It looks at one element, which is personal care. I am only 27—I am not yet an elderly person who is happy to receive just personal care and does not need to go out and about. I would like to go out and about, and I hope to get a job as well, but I need support around the clock. I have been told that, because my condition is not severe enough to merit 24-hour support, this is as far as it will go for now, but the direct payment does not really suffice in a lot of ways. The main problem with the direct payment is that it is not holistic but focuses on only one element.

Richard Lyle: You said earlier that you have 24 hours of personal care per week, when your PA comes in.

Omar Haq: That is correct.

Richard Lyle: Do you decide when your PA comes?

Omar Haq: Yes. Because I have only 24 hours to play with, I have to be quite canny. I know people—and I have heard of others—who use the hours to suit their own needs, even though they need personal care. I am lucky because I still live at home with my parents, who provide personal care such as getting me up in the mornings and showering me. My PA then comes at around 10 o'clock. Twenty-four hours works out at about four or five hours a day. We do some physiotherapy and if I want to go out and about or if I have some errands to run, he helps me to do that. He also helps me to look for work. He used to help me by scribbling for me at university, and he helps me to fill out application forms and things when I apply for jobs. That is how our day is spent. It is not strictly personal care according to the definition of personal care, but I see it as fulfilling a personal need to have somebody there who enables me to do what I need to do on a daily basis.

Without a PA, I would not be able to get out and about on the buses or look for jobs as freely as I can. I would not necessarily have been able to come here today—my PA brought me here on the bus. My parents would not have as much freedom to go out and about as they have when they know that my PA is with me. For example, between the hours of 10 am and 3 pm, my mum knows that I have company, so she can go out and about and do what she needs to do. There needs to be a much more holistic approach. I am sorry to keep banging on about it, but that is what is needed.
Richard Lyle: That is why we asked you here today. Thank you very much. I could certainly recommend you highly for work—you have an excellent attitude.

The Convener: Somebody asked about your mobility, which is just one element. Are other state benefits available to you to deal with issues such as mobility?

Omar Haq: Yes. I am on the higher rate of disability living allowance, which is about £500 a month, part of which is for a car. I cannot drive, so my parents drive for me. I get money for living expenses that equates to just under £300 a month. I have been made aware that I may have to be reassessed for the personal independence payment, and I am obviously apprehensive about that. I do not feel that I should be scrutinised in that way, as I need the money. I am not a scrounger, so to speak. I have a disability and I do not understand why I should have to go through the assessment again in 2013-14. Apart from that and the direct payment, I do not receive any other form of funding.

I would have liked to hear more about the independent living fund. Apparently, it provided not only more of the personal care element, but help in getting out and about, support for work and things like that—before it closed its doors in 2010. As soon as the current Government came into power, the fund decided to close its doors and deal just with the people whom it had on its books.

I am not aware that any other funding is available.

The Convener: The bill seeks to deal with different groups of people in different areas of need. Indeed, it explores the question of the different groups and cultures who may not access support.

Having listened to your story, I understand that you discovered what you could receive only well into your university days; we also heard about the role that your mum and dad have played and still play. Was that part of why you did not get access? It is important that the committee brings out that there are groups—

10:30

Omar Haq: Do you mean in terms of my ethnic background?

The Convener: I mean in terms of whether your parents did not look for that sort of support because of a cultural thing.

Omar Haq: I am obviously British, but my parents are from a Pakistani background. They have been here for 30 years. Culturally, you look after your own, but we always knew that we were going to get to a stage at which I needed to find some assistance. It was just luck that I discovered that assistance when I was at university. I did not realise that it was available. That is not necessarily a cultural thing. It might be a cultural thing that it happened a wee bit later than usual, but it was always going to happen.

The Convener: I just wonder whether, when we roll out the legislation, we need to reach out to ethnic groups to ensure that they are not encountering any cultural or language barriers that prevent access to self-directed support.

Omar Haq: Somebody might be apprehensive because of their cultural background, but the beauty of the direct payment is that you can choose who you recruit. If you have somebody in mind—a friend or whatever—and you know what they are like and that they are willing to help you, the direct payment solves the problem on a cultural level. Do you know what I mean? Culturally, I certainly do not see the direct payment as a major issue. I just feel that it is underresourced for what is needed at the moment.

The Convener: Omar, I will give you a well-deserved break, because we also have Margaret Cassidy with us. She is accompanied by Neil McCarthy, the national development worker for People First Scotland—welcome to you, Margaret and Neil.

Omar has been answering some questions for us very ably indeed. We would like to offer you, Margaret, the opportunity to make a short statement for the committee, if you wish. Is that okay?

Margaret Cassidy: Aye.

The Convener: Thanks for that.

Neil McCarthy (People First Scotland): Sorry, can I just check whether you received Margaret’s written statement?

The Convener: We have. Margaret, do you want to say anything further?

Margaret Cassidy: I needed to fight for a direct payment. It is good. It helps me to get out and do things for myself and be my own boss.

Neil McCarthy: Margaret is saying that she got her direct payment, although she needed to fight for it. It has been great, because it helps her to get out and do things for herself. She is now her own boss.

The Convener: Do you want some questions, Margaret? We have your statement, but Fiona McLeod would like to ask a couple of questions. Is that okay?

Margaret Cassidy: Aye.
Fiona McLeod: Thank you very much for coming today, Margaret. I have read your statement and heard what you have said about how you enjoy being your own boss. You fought to get your direct payments. How did you find out about direct payments, and who helped you to get them?

Margaret Cassidy: The Glasgow Centre for Inclusive Living and Morag Mackay helped me to get them.

Fiona McLeod: If you had not had Morag at the Glasgow Centre for Inclusive Living to help you, would you be your own boss today?

Margaret Cassidy: No.

Fiona McLeod: So that help was very important.

Margaret Cassidy: Aye.

Fiona McLeod: Morag was very helpful once you got her. How did you find out about Morag?

Margaret Cassidy: Morag was a pal of mine.

Fiona McLeod: Who would say no to being their own boss?

Margaret Cassidy: That is right.

Fiona McLeod: I have one last question, Margaret. If Morag had not been your pal, would the social work department have told you about direct payments?

Margaret Cassidy: They told me to do things when they wanted.

Bob Doris (Glasgow) (SNP): Thanks for coming along, Margaret. Your prepared statement mentions that you now do things like go dancing and go swimming, not when you are told to go swimming, but at a time of your choosing when you are in the mood to do it. The situation seems to be that you now tell social work what you would like to do with your life and they try their best to make it happen. Before that happened and you got that kind of choice, what was your experience of how the council supported you?

Margaret Cassidy: They told me to do things when they wanted.

Bob Doris: I suppose that I am trying to give you the opportunity to put on the record whether you thought that enough choice was previously offered to you by your social worker. Were you given things that you were happy with?

Margaret Cassidy: It was so-so. I will tell you a wee thing. One time I wanted milk and the woman who was helping me said that that was not her job. I was only asking for a pint of milk, but she said, “By the way, that’s not my job.” I said to her, “What is your job?” We had a falling out and I told her, “There’s the door. Don’t come back.”

Bob Doris: Quite right, Margaret. It seems that you are properly in control now, rather than having other people trying to tell you what to do. I will take this opportunity to thank Margaret Cassidy and Omar Haq. The bill can get a bit dry, boring and dull when we are looking at it, but you have brought to life what it really means. Thank you very much for taking the time to do that.

Drew Smith (Glasgow) (Lab): We have your prepared statement in front of us, in which you speak a little about your experience of assessments. Can you say a word or two about how you found assessments to be, how they have made you feel, and whether you think that they have been fair?

Margaret Cassidy: No, they have not been fair. I am sorry. I feel awfully nervous because you are all looking at me, and so the words do not come out right.

Bob Doris: Quite right, Margaret. It seems that you are properly in control now, rather than having other people trying to tell you what to do. I will take this opportunity to thank Margaret Cassidy and Omar Haq. The bill can get a bit dry, boring and dull when we are looking at it, but you have brought to life what it really means. Thank you very much for taking the time to do that.

Drew Smith (Glasgow) (Lab): We have your prepared statement in front of us, in which you speak a little about your experience of assessments. Can you say a word or two about how you found assessments to be, how they have made you feel, and whether you think that they have been fair?

Margaret Cassidy: I can do things that I have never done before.

Gil Paterson: Is the real big one being your own boss? Is that what makes the difference?

Margaret Cassidy: Aye. I can go everywhere I like—to the pub or the dancing or anything.
Margaret Cassidy: They wanted to save money.

10:45

Neil McCarthy: The assessments did not seem to take account of a lot of the things that Margaret was choosing to do in her life that were important to her and were not the basics of cleaning and shopping. Margaret’s chosen activities were not given the same value, which was very frightening because she would no longer be able to do a lot of the things that she had developed and become involved in if there was no support there to help her to do them.

Drew Smith: Thank you, Margaret. That was very helpful.

Richard Lyle: Good morning, Margaret. If you were not nervous telling the lady where to go because she would not get your milk, I am sure that you will not be nervous talking to MSPs.

You say in your statement that you are worried about your further assessment. You say: “I am waiting for the assessment to be rearranged”—the same as Omar Haq was saying earlier—“and I am really worried about my hours being cut again and being stuck in my house like I was before.”

What would you say to the people who are coming to reassess you? Should they be giving you more hours?

Margaret Cassidy: If someone came to me and asked whether I wanted more hours, I would say yes. I would then go on holidays and go to this and that.

Richard Lyle: You feel that you being in control—your being the boss—has made your life better.

Margaret Cassidy: Aye.

Jim Eadie (Edinburgh Southern) (SNP): Good morning, Margaret. Thank you for coming to the committee. I have a question for you—

Margaret Cassidy: I hope that it is a good one.

Jim Eadie: It will be a good one, and I am sure that the answer will be even better.

How important is it for you to know that, rather than a lot of different people coming in, your personal assistant, who provides you with the support that you need, is the same person?

Margaret Cassidy: I do not like a lot of people coming in and out. I like my own two people coming in.

Jim Eadie: You do not want a lot of people coming and going—you want the same people.

Margaret Cassidy: Aye.

Jim Eadie: You know them and they know you. Has it made a big difference to your life, that you know who is coming in to look after you?

Margaret Cassidy: Oh, aye. I do not like new faces all the time—I want the same face every day.

Jim Eadie: That is excellent—you have made that point very well. How did you choose your own two people?

Margaret Cassidy: I went on a panel to pick them. I did not like some of them.

Jim Eadie: Could you choose the people that you liked and that you wanted?

Margaret Cassidy: Aye.

Lianne came to my door one time and she said that she was going to work with me. I said to her that no one had told me that she was coming, and no one asked her to telephone the office and ask them to send someone to introduce her to me. I got the boss to come and introduce her to me.

Do you know what I am saying?

Members: Yes.

Margaret Cassidy: Good.

The Convener: That same question is an interesting one to put to Omar Haq. Omar, you have selected people and you have been satisfied with them. Was there ever a time when you have recruited someone and it has not worked out?

Omar Haq: No. I have had the same PA for the past five or six years. I recruited him, from a number of candidates that I had shortlisted, through the LCIL, which provides help, including with the recruitment process and payroll.

I was really desperate to increase the support hours when I left university. Some people have a distant relationship with their PA. However, I have had the same PA since university, and we are the same age, we get on really well, and he is more like a mate than an employee. One of the main reasons why I wanted to increase my hours was because, without him, I would not be able to do half the things that I do. He is an extra pair of hands and he allows me to be as independent as I possibly can be. I have had only the one PA.

Eventually—I do not know when and I do not know how—I would like to move into my own place. I understand that you can recruit again to have a team of three or four people who work on a rota system—you can choose who you want. To be honest, I do not know how soon that will happen, given how resources are going, but that is my ultimate aim.
Fiona McLeod: I will follow up on that with Omar. I am interested in hearing about your experience, especially as you have an HR background, and Margaret Cassidy’s experience, too. When you employ your personal assistants, what safeguards should be in place to ensure that the right people end up as personal assistants?

Omar Haq: They have to go through a disclosure check, obviously. The LCIL recommends that you hold an interview at its premises, if you can go there. It is based at the bottom of Easter Road. I went there to interview my PA. The LCIL sets out the job description and hours of work and all that, and it recommends that we agree among ourselves a trial period of three weeks or six weeks or whatever and review it after that period.

I am thankful that I never needed to do that, because we got on straight away. Some people like to be more formal, but with me and my PA it is a bit more informal, if you see what I mean, and it always has been. Perhaps that is because we are the same age and have the same interests and we are both very easy going. I am lucky because I have support at home, so if my PA cannot get in because he is busy or because something has happened, we are flexible. I am also conscious, however, that if I was to move into my own place, I would be reliant on other people. As I said, I feel as though I need someone to be around 24 hours a day, even though I do not qualify for that according to the criteria.

If there are good people such as the LCIL at the start of the process, they can help with adequate safeguards.

Fiona McLeod: Is that true for both of you? You both found your assistants through the centres for inclusive living. Did those organisations do the disclosure checks? What would have happened if they had not done that? At the moment, an individual cannot do a disclosure check. In future, should an individual such as you be able to check that a person is safe to be looking after you?

Omar Haq: Yes. The LCIL does all the recruitment, including drawing up the job description and person specification. It has a team that helps with payroll, doing all the wage calculations and dealing with HM Revenue and Customs. Because I have been unemployed for the past year, I have recently been going in on a Thursday afternoon just to get some work experience, so I have seen how the operation works. There is a team of about 15 people and they all have a role to play in operations, payroll and so on.

In my case, although I use the direct payment money, it is a private arrangement. I draw up a contract between me and my employee that we both have to sign and we review it on a yearly basis, as with any other employment contract.

Dr Simpson: Margaret, is that the case for you as well? Does Mochridhe look after payroll and the job description, and do you then flesh the arrangement out into how you want it to be?
Margaret Cassidy: Yes. Mochridhe knows what I need. We have a meeting to discuss my support, and if I do not like somebody, I do not take them. One time, a lassie came in, and her dress and her hair were not right. It looked like she never washed her hair or combed it. I phoned up the office and told them that I did not like her.

Dr Simpson: So the arrangement gives you control.

Margaret Cassidy: I know inside me, from somebody’s body language, whether I like them or not.

Dr Simpson: That is good.

What about the question of holidays, sickness, maternity leave or even redundancy? We heard in Glasgow that somebody had to make a worker redundant because their hours were cut, and they were really quite worried about whether the direct payment would provide for things such as holidays, sick leave, maternity leave, redundancy and so on. Do you have views on that?

Omar Haq: My PA recently went on paternity leave, which was provided for. Sick leave is provided for to a certain extent. However, that causes problems—people obviously have to reorganise their day, for example. Having an extra person would be beneficial, but the problem is building trust again, which takes time. It is more of a personal choice for me. I could recruit somebody for holidays if I wanted to, but doing that is not satisfactory for everybody, because the position will not be permanent. That is an issue for people. The person would be there only if my PA was off.

Dr Simpson: Do the hours and the money that you are given under your contract allow for such a contingency?

Omar Haq: To an extent. I must be honest: I have had to pay my PA out of my own pocket at times if I have needed to. Nobody else knows that—my parents do not even know it—but that is a personal choice that I have made. Although I have only 24 hours of support a week from my PA, I have agreed with him that, if I give him a wee bit extra, he will stick around for a wee bit longer. Obviously, there are people who cannot afford to do that.

I keep banging on about the fact that there is underresourcing. I know that we are in tough times, but the vulnerable get hit hardest. Funding should not be taken away just because times are tough. That needs to be looked at. It is about getting the right people in place.

I am going a wee bit off track, but I mentioned at the start that, over the past four or five years, I have spent a lot of time trying to improve my physical fitness. I live right beside the university campus where I studied. I used to go in my wheelchair and get a taxi in. When I started to feel a wee bit fitter, my mum used to drop me off in the car and my PA would be with me. I used to walk from the car park into the university campus, into the lift, and to wherever I was going. One day, my PA was holding on to me, and the disability adviser from the university saw me. She said, “Oh, you’re walking about now. Does that mean you need less support?” It is not just a matter of money; it is also about attitudes. The right people must be in place. That shocked and horrified us both, and we regularly tell people that story. It is about having the right people in place with the right attitude and the correct understanding. People have to put up with such things on a daily basis.

The Convener: Are there any other questions? We need to be brief, as we are around 20 minutes over time, and the next session is with the minister. Fiona McLeod can ask the final question.

Fiona McLeod: I have a brief question for Omar Haq about carers, as we have not talked about them. You have said that your parents are very much your carers. How much information have they received over the years about their right to a carers assessment, for example?

Omar Haq: I am sure that my mum must have got information. When I left school, I worked for Aegon for a year as a customer service adviser. I vaguely remember that we looked into that then, but there were no direct payments then, so we would have had to get somebody in from the council to get us up and ready. The problem is that those people do not usually come on time, so we halted there. It was only when I got into university about three years later that I became fully aware of direct payments and things like that.

Fiona McLeod: Did your mum, as your carer, ever have an assessment done of her support needs?

Omar Haq: She did, because she used to have all my allowance.

Fiona McLeod: So she had help with that.

Omar Haq: Until I was 18 or 19, all my allowance went to her. Recently that shifted and the allowance now comes to me. She was aware, but as I said, it all comes down to having the correct support. Maybe people thought that the correct support was not available.

I am in a different phase of life now. I need to try and work out how to improve things going forward, because my parents are not going to be around for ever. That is why I keep banging on about how there needs to be a holistic approach—a joined-up approach, if you will. I hope that this meeting will move things towards that.
The Convener: Do you want to add anything, Margaret?

Margaret Cassidy: I do not like direct payments going to mum and dad.

Neil McCarthy: If mum and dad are the boss, that is not right. The person should have the choice; it should not be the mum and dad who decide.

Margaret Cassidy: Because if the parents are the boss they earn the money, and I do not approve of that.

Fiona McLeod: So once you are an adult, you are an adult.

Margaret Cassidy: Oh, aye.

The Convener: I thank Omar Haq and Margaret Cassidy for coming, and I thank Neil McCarthy for his assistance. Omar and Margaret have given valuable evidence. As someone else said, you have brought insight and knowledge to the very dry subject of the legislation. Thank you very much for the time that you have given us. We wish you well in the future—Omar, I hope you get that job; you certainly deserve it.

11:12

Meeting suspended.

11:16

On resuming—

The Convener: I now welcome to the meeting Michael Matheson, Minister for Public Health, and his officials from the Scottish Government, who are Jean Maclellan, head of adult care and support division; Craig Flunkert, bill team leader; and Chris Birt, from the Scottish Government legal directorate. I understand that the minister wishes to make a short introductory statement, and we will be happy to listen to his comments before we move to questions.

The Minister for Public Health (Michael Matheson): Thank you, convener, and thank you for the opportunity to give evidence to the committee and to make this short opening statement.

I have followed the stage 1 consideration of the bill with interest and look forward to the discussion that we are about to have. In reviewing the evidence so far, I think that it is clear that there is broad support for the bill’s principles and a strong consensus among the vast majority of local authorities, support organisations, users and carers groups that this is the right time for this bill. I believe that that support is genuine and firmly held for a variety of reasons, including, in particular, the fact that in 21st century Scotland it is no longer appropriate for the state to slot individuals into a particular service simply for its own convenience. It is time for the state to trust individuals to make their own choices and to determine what they want, and it is that very right to choose that the bill seeks to enshrine in social care law.

Some have asked why, if this is all about choice, control and culture shift, the bill’s title refers to social care. In addition to looking forward, the bill is about returning to the values and principles of the original Social Work (Scotland) Act 1968 and going back to the flexibility and greater wellbeing that should be at the heart of social care. That is why the term “social care” is used.

Although some people—individuals who have a very firm grasp of the principles of independent living to which the bill aspires—will, quite rightly, wish to take maximum possible control, we should also remember that there will be others who might have come to expect care to be delivered but who still wish to live as well and as independently as possible for as long as they can. I believe that people should have as much flexibility and choice as they wish over the support that they receive, whether they call it support or whether they call it care, and the choices that are laid out in the bill should apply to all those who are eligible for care and support.

I have noted the committee’s reflection on the evidence provided thus far, particularly its view that the devil is in the detail, and I look forward to exploring some of that detail this morning.

The bill is quite short but, as committee members will have noted, the change in culture and approach that it seeks to underpin is significant. It is therefore vital that Parliament collectively ensures that the bill is as good as possible, and that it is designed to enable choice, creativity and collaboration, which are three things that are crucial to making self-directed support work.

I look forward to answering the committee’s questions.

The Convener: Thank you. Our first question is from Gil Paterson.

Gil Paterson: Good morning. The bill certainly has a fair wind behind it, as people think well of it. The committee will agree with me that the bill has good will behind it from right across the sector.

We need to explore the financial impact of the bill further, for instance by looking in detail at the discrepancies between the estimates. As the clerk’s note says, the Convention of Scottish Local Authorities
“has explained that it has not provided a breakdown of the quantitative analysis because it does not have permission to share this information from its member councils.”

That is a disadvantage to the committee. Do you have information that you could provide to the committee on how COSLA’s sums come together?

Michael Matheson: It is worth explaining what I think at times is a misunderstanding about cost neutrality. We have provided a significant package of money to go alongside the bill, to address some of the short to medium-term issues that we recognise must be addressed. That is set out in the financial memorandum and is about helping to expand the provision of advice and information and deal with some of the local authorities’ transitional costs. The lion’s share of that money will go to local authorities, to assist them in transitional costs. The lion’s share of that money and deal with some of the local authorities’ transitional costs. The lion’s share of that money will go to local authorities, to assist them in preparing staff and in making some of the necessary transitional arrangements.

To arrive at the figures that we have provided alongside the bill, we looked at the financial figures that Glasgow City Council published on its work on moving towards more individualised budgets. Alongside that, we looked at much of the published data on direct payments as they stand. We have used those two sets of published data to evaluate what we believe are the costs that are likely to be associated with the bill. As you have seen from the evidence from the University of Stirling and the pilot studies in England, in the long term the cost of someone having more control over their care arrangements—be it through direct payments or whatever—is broadly the same as the cost of someone having a traditional care package. From that point of view, our belief is that the overall cost of social care will be roughly the same. However, we have provided resource to assist local authorities and other partners with some of the short to medium-term costs, to help to prepare for the introduction of the bill and to make some of the arrangements that are necessary to help support people to make informed decisions.

Gil Paterson: I note that the Government is providing £23 million for the transition. COSLA’s low estimate of the cost is 100 per cent more—£50 million. However, COSLA has a high estimate of £90 million, which is almost another 100 per cent. There are discrepancies, or differences—I should not say discrepancies because I do not think that we can quantify them at this stage—which we need to address in some way, for the bill to go forward. COSLA has been asked for but has not given us the quantitative analysis that it undertook to come up with these figures. Can you give us some information to help us understand why there is such a vast difference?

Michael Matheson: All in, we are providing £43 million for short to medium-term work on the bill, £23 million of which will go to local authorities for assistance with transition.

In evidence, the Association of Directors of Social Work and COSLA both recognised that they found it difficult to arrive at figures for costs. Although we have asked COSLA for details of how it arrived at its figures and although we have indicated that we are more than happy to explore the issue, it has been unable to provide that information. We are providing resources based on hard and publicly available information which, if it helps members, we can forward to the committee to give it a clearer understanding of the data that we used to arrive at what we believe are reasonable figures for the short to medium-term costs of introducing the bill. It is obviously for COSLA to explain where its figures came from; we have asked it for that information but, as I have said, it has been unable to provide it.

Gil Paterson: Are you still waiting for that information, or is it simply not forthcoming? If you still expect to receive it, can we see it?

Michael Matheson: That is down to COSLA. We have asked it for information on how it arrived at its figures and it has given us a rough idea of the process that has been used. Basically, local authorities have provided estimates of what they think it might cost; COSLA has simply gathered all that together and concluded that implementing the bill could cost anything between this figure and that figure. We have asked for the modelling and information that it used to reach those figures but, as yet, it has not provided those things. I hope that it will do so but, in the meantime, I am more than happy to provide the committee with detail about the published data that we have used to arrive at what we believe is a reasonable estimate for some of the costs associated with the bill.

Gil Paterson: That would be extremely useful.

The Convener: When did you request that information from COSLA?

Jean Maclellan (Scottish Government): I think that Craig Flunkert is better placed to answer the question about the timeframe.

Craig Flunkert (Scottish Government): We were fairly—

The Convener: It is probably my hearing but, when two of you speak together, I cannot hear you clearly.

Jean Maclellan: I was simply suggesting that Craig Flunkert might be in a better position to answer your query about the last time we asked COSLA for this information. There have been a number of such occasions.

Craig Flunkert: We worked quite closely with COSLA officials on developing their survey, but I
understand that, when the survey was issued, it had not been agreed with councils that the details provided by each would be published and shared more widely. Instead, it was assumed that COSLA would pull together the general analysis that you see in the low, medium and high estimates.

Perhaps I should add some background detail on this matter. The transformation costs are not direct costs associated with specific provisions in the bill but are very much to do with the general change in culture and approach that might need to take place. As the minister has indicated, COSLA has suggested that there are real uncertainties in predicting these figures but, as far as the sharing of information is concerned, that was part of COSLA’s agreement with councils when it issued the survey.

The Convener: I am somewhat concerned about COSLA’s refusal to provide relevant information to substantiate its case to the Government. Given that I spent four years as convener of the Local Government and Communities Committee—indeed, Bob Doris was deputy convener—I have to wonder about the substance of this issue. We know, for example, that COSLA regularly meets Cabinet ministers. I want to get to the heart of the matter, so I wonder whether we can see the correspondence that has been exchanged between the Government and COSLA on this issue. I know that COSLA does not like to play out such disputes, because there is a recognised mechanism for holding such discussions. Is that mechanism still in place? Is COSLA dealing appropriately with the Government to substantiate its case about the money that it believes will be needed to make the transition to self-directed support?

Michael Matheson: We have asked COSLA for that detail. We can provide the committee with as much information as we have if it would assist the committee in understanding how we have arrived at our figures. We can also provide the points that we have raised with COSLA in trying to find out how it arrived at its figures.

The Convener: Do you have a meeting with COSLA scheduled to discuss the issue? When will that take place?

Michael Matheson: We continue to be involved with COSLA. COSLA is represented on the working group on implementation of the bill. It is not a case of our not being in discussion with COSLA; it is about getting information from COSLA that we would find helpful. We are in constant dialogue with COSLA and it is still our partner in implementation of the legislation should Parliament agree to pass the bill.

The Convener: So there is an on-going dialogue with COSLA.

Michael Matheson: There is an on-going dialogue with COSLA and it is involved with the bill.

The Convener: Thank you.

Bob Doris: I will be very brief because I think that the minister’s last answer might have covered my point.

The convener rightly mentioned his and my experience on the Local Government and Communities Committee. Back then, COSLA would not share with the committee details of discussions with the Government, but I understand that, when it was in discussion with the Government, it would put numbers on what it believed the additional pressures would be and then explain how those numbers were derived. It might not have shared that information with the committee in the previous parliamentary session, but at least it let us know that the Government and COSLA were having detailed conversations. Has COSLA said that it is willing to break down its cost of implementing the bill and what modelling it has used.

The Convener: The context that has been represented to us is that you have repeatedly asked COSLA for that information and it has failed to provide it. I had four years on the Local Government and Communities Committee and I know that COSLA would not play out such disputes, because there is a recognised mechanism for holding such discussions. Is that mechanism still in place? Is COSLA dealing appropriately with the Government to substantiate its case about the money that it believes will be needed to make the transition to self-directed support?
figures in detail, or has it just said what each local authority has decided the cost will be under each heading? I am trying to tease out whether it has said that that is as far as it will go, or whether it has said that it will go back and look at the figures again. In the previous session, COSLA would have had far more detailed conversations with the Government, even if it did not share that information with the Local Government and Communities Committee. I understand that there is a degree of confidentiality around such issues.

Michael Matheson: As you have probably heard in the evidence given by some of the local authorities, COSLA and ADSW, it can be quite difficult to quantify the costs. We have asked for information about the factors that local authorities have taken into account in arriving at their figures. Part of the challenge that COSLA faces in trying to explain the detail to us may be that different local authorities have taken different approaches.

We can try to provide the committee with whatever information we have and, as I say, we have a continuing dialogue with COSLA. If we can provide the committee with more information if COSLA gives it to us, and it is happy with that, we will be more than happy to forward that information.

Bob Doris: I appreciate that, because you have an on-going positive relationship with COSLA, you are being quite measured and diplomatic. However, as a committee member, I am frustrated that COSLA has not given us a more detailed breakdown of its figures. The Finance Committee’s report shows that that committee, too, is concerned about that. We have a fairly detailed breakdown of the figures from the Government, and we have to set that beside COSLA’s assertions, which is a worry to me.

I will ask a final question on the financial memorandum, because I think that we should move on to the positive aspects of the bill fairly soon, and other committee members want to come in.

Are there valid budget headings for everything that COSLA has listed as a potential cost? For example, on the talk about running dual services, apparently there will still be costs for maintaining traditional services in old buildings that are hard to heat and maintain, while disaggregating moneys to direct payments. Do you think that every budget line that COSLA has for the financial memorandum is valid, or is COSLA trying to add costs that are for on-going responsibilities, irrespective of the bill?

Michael Matheson: I think that they are valid to some degree. The reality is that, should the bill be enacted, there will not be a big-bang approach so that everybody automatically moves to a direct payment. Some will continue to use services in the way in which they are provided at the moment.

The argument about having to run dual services is not entirely accurate, although there may be an element of truth in it. Some of our work on transition is to assist local authorities in developing capacity to allow work to be taken forward. However, COSLA may be overemphasising some points.

The bill will allow what I see as a progressive move that will let local authorities remodel how they provide care and services. That will happen over time, rather than everything happening at a particular point, after which councils have to run dual services for a longer period. I think that there will be a progressive movement that will allow local authorities to direct their resources in a much more managed way, rather than always having to run dual services in the way that some may present.

Bob Doris: Thank you.

The Convener: I think that some of what Professor Bell outlined supports your position. He said that moving to greater self-directed support is an uncertain process and that costs for local authorities could vary widely depending on demand, whether there is decent advocacy and whether duties are placed on local government.

You mentioned costs over the longer term. When reorganising any public service, we all aspire to gaining on costs over the longer term and delivering services effectively. However, what do you mean by costs over the longer term? Will the costs be roughly the same for five years or 10 years? There will be a transition period when local authorities could be running dual services. I presume that there will come a tipping point when people will opt for the services and they will become more equal. If the bill’s aim is realised, there will be a gradual process so that we will come to a point when local authorities will be running dual services. However, the people who have been missed in this—we have taken some evidence on this point—are of course those in the third and independent sectors who run services. The question is how the transition costs will impact on them.

Michael Matheson: Your question is about the timeframe.

The Convener: My question is what you consider the longer term to be. When do you see all this taking off to a level where—I presume that the calculation has been made—you will have local authorities running dual services? They will have to have a system in place to give flexibility and options to a number of individuals, but they will still need to maintain some services for people opting back into public sector delivery and they will
need to keep the community halls and resources open for those who stick with that service delivery. When does that happen and how do we deal with that?

Michael Matheson: We are certainly nowhere near a tipping point, as you described it. I would see the longer term being around the 10-year strategy on self-directed support that we launched in 2010 with COSLA and the move towards much greater self-directed support.

It is worth keeping in mind that the experience will be different in different local authority areas. Some authorities have more resource tied up in capital infrastructure, while others have less resource tied up and are much more into spot purchasing and using the independent and voluntary sectors to provide services rather than providing council-led facilities. It is not possible for me to tell you that, at a certain point—year X—we will be at a tipping point, because that will be different for each local authority, depending on the way in which they deliver services.

The progression will involve people using a mixture of services. They will choose to use elements of the statutory services that are provided by the local authority, and elements of the services that are provided by voluntary sector or independent organisations, as different parts of their care package in a way that best suits them.

The challenge for some local authorities concerns the point at which they feel that some of the services that they currently provide or have traditionally provided are no longer sustainable because people are using them in limited numbers. Each local authority will have to look at the model that is uses to deliver services. If people are voting with their feet because they do not wish to use a service, the challenge for local authorities will lie in ensuring that they redirect the resource towards the services that people wish to use and in how they manage that process. That will happen over a number of years, as people gradually take more control of the way in which their care is organised. I think that the reality in 10 years’ time will be that people will use a variety of services. Some of those will be provided by local authorities, some by the voluntary sector and some by the independent sector.

The Convener: Do you expect that councils will use the transitional money to plan for and anticipate the changes, rather than waiting until they happen?

Michael Matheson: Some of our local authorities are already moving down that route. They are looking at how they will redesign and provide services for people in the future.

We have a strategy, and that has been the direction of travel for some years, even—to a limited degree—with regard to direct payments, of which we want more. Self-directed support is not new to councils.

It is important that local authorities continue to make the necessary progress to provide a range of services that are flexible and that reflect the choices that people make. Nothing has stood still in social care over the past 40 years. Even in the mid-1990s, local authorities were having to remodel the way in which they provided services because there was a much greater focus on supporting people in the community. They had to design and develop services that people could use if they stayed in the community rather than in an institutional setting.

The way in which social care is delivered and local authorities employ the process has constantly evolved. Self-directed support is a further phase in that process, and local authorities must manage the process of change as people take more control and are more discerning about their choices. The challenge for councils is to ensure that they provide people with flexibility and choice in the decisions that they make.

The Convener: If no one else wants to come in, that moves us neatly to Richard Lyle’s questions on need and how it is assessed.

Richard Lyle: Good morning, minister. The bill gives people excellent choice and, as you said, covers the four elements of self-directed support: direct payments, directly available resource, local authority-arranged support and a mixture of those options.

This morning, we heard two excellent presentations from two service users, who said that they had a choice and were in control. Margaret Cassidy said in her written statement, “I am the boss.” The challenge involves taking control away from the councils and giving it directly to the person. In her statement, Margaret said:

“I am waiting for the assessment to be rearranged and I am really worried about my hours being cut again and being stuck in my house like I was before. I hope this doesn’t happen.”

We want the bill to enable people such as Margaret Cassidy and Omar Haq to take control of their lives, but what if the council says, “No. We are cutting this and we are doing that. We are taking back control”? What appeals process will there be for the individual who is concerned that what you want to give them will be taken away by—dare I say it—a council?
Michael Matheson: It is worth keeping in mind the bill’s purpose, which is to put the choices that people must be provided with on a statutory footing. Local authorities will be legally obliged to provide people with the options that are set out in the bill when taking forward their care. The bill also sets out that information and advice should be provided to people and that they should be signposted to those who can provide them with that advice and information.

The bill’s provisions are anchored in the Social Work (Scotland) Act 1968, which sets out local authorities’ responsibilities under their duty of care to individuals. The bill does not change that duty of care in any shape or fashion; it remains, to ensure that, if a council has identified someone with a need, appropriate care is provided to meet that individual’s need.

A further, bigger piece of legislation was the National Health Service and Community Care Act 1990, which came into effect in 1991. I started in social work at that time—I know that you are thinking that I am far too young to have started back then—and that act set out the assessment process that is used for deciding and identifying someone’s need. The assessment process, as established through that 20-year-old act, will probably change. The process will still identify need, but the outcomes will be agreed with the individual. The individual will then have four options to choose from on how their care is taken forward, rather than, as is often the case, local authorities organising the individual’s care forward, rather than, as is often the case, local authorities being proactive in encouraging people to take up direct payments. The stats bear out the situation, given that advice and information.

One of the concerns that I have heard relates to the assessment process and individuals who may have chosen a direct payment. Local authorities have not been as up front about direct payments as they should have been, or they have not been proactive in encouraging people to take up direct payments. The stats bear out the situation, given the low numbers. In that regard, some local authorities are better than others, and the bill places all local authorities on an equal statutory footing. It is not a case of them turning round and saying that they do or do not provide a service. Local authorities cannot decide that they will not provide one of the four options because they do not offer that option—people have a legal entitlement to all the options.

On the bigger question of the appeals process, are you asking about an appeal against the outcome of an individual’s assessment, or an appeal in relation to the options provided under the bill?

Richard Lyle: We have met several organisations that believe—although I do not believe—that there should be a separate appeals panel process. What is your view?

Michael Matheson: Do you mean in relation to the outcome of the assessment rather than the four options?

Richard Lyle: Yes.

Michael Matheson: That goes beyond the bill’s purpose. There has never been a formal appeals process in social work for the outcome of a social care assessment. However, a review of the outcome of an assessment can be requested to reconsider the situation if a person feels that the agreed outcomes from their assessment are not appropriate or do not necessarily meet their needs. That review would be undertaken by the local authority, if we introduced an appeals process for the outcome of social care assessments, we would need to consider carefully the wider implications.

Bearing in mind that more than 200,000 people in Scotland receive some form of social care as a result of a social care assessment, and given that such a move would be a departure from the previous situation in social work, we would need to consider certain fundamental questions such as who would hear the appeal, how the appeal mechanism would be constructed and what the wider implications would be. We would need to consult much more widely. Looking at the figures, I think that we would also have to consider the costs of introducing an appeals process. Although I understand where certain individuals are coming from on this matter, I think that we need a much wider-ranging consultation, as I have suggested, on what the appeals process would look like, how it would be managed and what it would cost.

I point out that an individual can already request a review of an assessment. The bill also provides for those who are refused one of the four options to request a review of that decision.

Dr Simpson: I want to raise two issues. First, I will not ask the minister to go through the Subordinate Legislation Committee’s full report but simply seek an undertaking that he will respond in detail to it, particularly with regard to paragraphs 27, 28, 70 to 75, 83 and 92. I think that the report itself is very interesting and comprehensive, and I hope that the minister will return to it.

My second—and main—question is, if, as witnesses themselves have wondered, the bill’s ultimate objective is to maximise the independence of people with disability, why does the bill make no mention of independent living? The minister has highlighted the partly historical reasons for that with regard to links to the Social Work (Scotland) Act 1968; unlike the minister, I
am old enough to remember its introduction and the separation of social work and health.

**Michael Matheson:** On the first question, we will consider and respond to each of the Subordinate Legislation Committee’s points and if we agree with any of the committee’s concerns we will seek to address them at stage 2.

Dr Simpson makes a fair point about independent living. The bill’s underlying principle is to give people choice and flexibility, to allow them to make the choices that suit them best and best meet their needs and to have a system that is flexible enough in that regard. Of course, all that fits very well with the concept of promoting independent living and, given that the principle behind the bill is to deliver just that, I see no particular reason to say anything specific about it in the bill. That said, in light of the evidence received, I am more than happy to explore with the committee how that might be expressed more explicitly and in a way that members might find useful. Any such move will, of course, need to fit in with necessary technical drafting requirements if the bill itself is to work.

**Dr Simpson:** Looking at the matter from the Government’s side, I think that there is a danger that the bill will raise considerable aspirations. Raising aspirations is a good thing and, indeed, one of the bill’s fundamental tenets is that people should take control of their own lives. However, the provision of independent living will be limited by resources. I do not know whether you heard Omar Haq’s earlier evidence, but he described very graphically not only his desire to move into a flat on his own away from his parents but his recognition that having further independence will require him to get more than 24 hours a week of support.

On the one hand, having independent living in the bill would be important; on the other, we have to be realistic about the fact that the general trend, on which Audit Scotland reported, has been for care to be provided less and less to people with less serious needs and more and more to people with more serious needs. There has been a retrenchment in relation to the people to whom care is given. However, the whole of the Christie report—and everything that we have talked about since—is about trying to broaden the approach into one that is about prevention of deterioration. It will be difficult to get that right. How does the bill fit with the current, perverse approach?

**Michael Matheson:** The bill is a key part of the independent living agenda. It cannot deliver independent living on its own, but it is an important part of the agenda, in that it will provide choice and flexibility around care arrangements.

A challenge that local authorities have faced during the past decade or so is that individuals who have much more complex care needs are being supported in the community, in a way that did not necessarily happen in previous decades. There has been a marked shift in the complexity of the care that is provided in the community setting. I expect that direction of travel—the principle that people should be supported at home for as long as they want to remain there—to continue, because we know that there are much better outcomes for individuals who are provided with care at home.

The Christie commission said that the draft self-directed support bill was progressive and represented the right direction of travel. The bill gives us an opportunity—some of the pilots have teased this out—in that when individuals have much greater control over their care arrangements, they can identify what meets their needs and will better support them to live in the community. The flexibility around how to manage their care gives people a choice about how to utilise the resource in a way that continues to meet their needs, so that they can not just fit in with what the local authority provides but move the resource around at different times, in the way that suits them best. That in itself can help to prevent issues that might present if people are not getting the services that local authorities do not traditionally provide.

Experience from the health pilots that we ran demonstrated that self-directed support can help to prevent issues from developing, because people have much greater control over how they use the resource to meet their needs and achieve the outcomes that they are trying to achieve. In general, the existing system has not been as good at addressing the issue as it could have been, but much greater control under self-directed support will help us to move in the right direction.

That will happen progressively; it will not happen overnight. I suspect that in 20 years’ time we will look back and say, “That was clearly the right direction of travel. People are using resources in a way that meets their needs much more meaningfully, which helps to prevent complications along the line.”

**Dr Simpson:** Thank you for that useful response. This morning, Omar Haq talked about how physiotherapy has made him much fitter—

**The Convener:** I am sorry to stop you, but Nanette Milne will ask about health and social care. I was under the misapprehension that you were going to follow up Richard Lyle’s question about assessments. Perhaps another member will do so.
We have heard a lot from user groups and others about the management of assessments. There are issues to do with eligibility, which are contributing to our concern about the need for a right of appeal. I think that that is what we have heard from people who have been through the process. Indeed, in Glasgow people felt that the process was all about cuts.

We have also had evidence from people who speak well of direct payments and self-directed support, but even they told us that they were not as well equipped as they should have been when they were undergoing assessment because their carers play down their role. Only afterwards were they told that they could have damaged their case and that they might lose up to 20 per cent of their package. A husband who was looking after his wife and son played down his role, with the result that what he did was not included in the assessment.

The assessment varies from place to place. It is a big issue for those people who have been through the process; Bob Doris wants to say some more about that. How do we ensure that, wherever someone is, the assessments will be similar? Assessments might be different in different areas, but how can we know that the system will be fair? How will we know that people will be advised prior to the assessment what is expected?

12:00

**Bob Doris:** The committee’s visit to Glasgow was interesting. It was acknowledged that an individual’s care package in Glasgow depends on the resource that is available at any given time. If someone was given care support in Glasgow in 2005, their needs were assessed, but the extent to which the local authority could meet their needs depended on the resources that were available at that time. That person would continue to get that level of support. However, if someone with similar needs entered the system in 2008, they might have received a significantly lower standard of care package because the financial situation had changed.

Glasgow City Council now calls the reassessment process an equalisation process, which means that, irrespective of when someone entered the care support system, they should get an equitable supply of support from that local authority, based on the resources that are now available. Some people will see that as a cuts agenda, because they will see the level of their support being reduced, but others—a smaller number, I suspect—will see an increase in the level of support that they get. The issue is the extent to which we can get across the narrative to those who are getting support from local authorities that they are going through a natural part of the process. Should safeguards be put in to soften the blow or to provide a parachute for individuals? People need to know that it is not that their needs have reduced, but that they have been reassessed vis-à-vis other people who have similar support needs and that that is why their level of support has gone down. I hope that you are able to follow this, minister.

Can we put in guidance or in regulations how local authorities should deal with the situation and soften the blow? If someone is receiving a high level of support and the equalisation agenda means that their level of support will be reduced, even though their care needs remain the same, should that happen overnight or should it be gradual? What is the Government’s view on that? We have found that the issue is very real for people.

**Michael Matheson:** It is important to realise from the outset that a local authority’s duty of care will not change as a result of the implementation of the bill’s measures. There will be no change to the local authority’s duty to perform an assessment and meet an individual’s needs. I understand that local authorities can sometimes find that challenging.

I will address the issues that the convener and Bob Doris raised as effectively as I can. One of the issues is the various ways in which local authorities apply eligibility criteria for certain services that they provide, which can have a bearing on the outcome of someone’s assessment. That can leave us with a situation in which two people with very similar needs, in two local authority areas, can end up with two different care plans because of different eligibility criteria.

We are engaged in a work stream with local authorities on eligibility criteria. Is there a way of addressing those issues so that we can get greater consistency in local authority service provision? We need to respect the fact that local authorities, as corporate bodies, have a level of flexibility in deciding how to deliver services locally. We need to find a way of addressing that.

As part of the self-directed support strategy, we have been addressing issues around eligibility. Going forward with the integration of health and social care and the national outcome framework that we intend to take along with that, which we are consulting on at present, gives us an opportunity to achieve greater consistency in the way in which local authorities and health boards are addressing the issues. There is an opportunity for us to address some of that through the integration of health and social care. I have no doubt that the committee will consider that in detail when it considers the legislation.
I understand the issue that individuals are raising around the idea of an appeals process on the outcome of an assessment. One of the challenges that always presents itself in social work lies in drawing a line between assessed need and perceived need. Some people expect or think that they require something but then someone carries out an assessment for the local authority and says that, on the basis of their eligibility assessment, the person does not require that service. It is a challenge for anybody in social work to square that off and to work with people collaboratively to allow them to understand the local authority’s process, how their need has been assessed and how that might differ from their expectations of what would come from that. That is always difficult and challenging.

Most cases will work out and people will be satisfied with the outcome of their assessment, but there will be cases in which that does not happen. That is why there is a review mechanism. If I recall correctly, Glasgow City Council introduced risk panels to which cases could be referred when there was an issue of dispute to be considered. Some of the resource that we are using in connection with the bill, in working with local authorities, is being used to identify areas of good practice in local authority areas and to encourage other local authorities to consider doing those things. We will also consider whether there are ways in which we can encourage such good practice through the guidance that is associated with the bill. It is important that we work with local authorities on areas of good practice that can assist us in addressing issues around appeals and eligibility. We must also ensure that people feel that there is a robust process in place and that, should there be a dispute, they have an opportunity to have any decisions reconsidered in a meaningful way.

It will always be challenging to strike a balance between those different areas but, through the integration of health and social care and through some of the work that we are doing with COSLA on the introduction of the bill, we can make progress in them all.

**Bob Doris:** I think that, somewhere in your answer, you said that you might consider writing best practice into the guidance. Part of the guidance might be suggestions for how local authorities should deal with individuals who have been reassessed as having lesser care needs than before. Some of that might be written into guidance concerning what would be recommended.

**Michael Matheson:** As part of the monitoring of the way in which the bill is introduced, local authorities will review care plans and care packages regularly. That is extremely important.

One of the difficulties that some individuals have experienced is that their care packages have been assessed and provided three or four years ago but there has been no review of their needs since then. Someone then comes along and carries out a review of their needs, and their needs may have changed. We are seeking to introduce a system of much more individualised care planning and budgets. If the person is told that their needs have changed and they do not require the same level of care that they received four or five years ago, the association is that that is because of the individualised budgets. However, as I said at the outset, a local authority’s duty of care in assessing and identifying need and ensuring that that need is appropriately met remains the same at any given point, no matter what.

We must see whether there are ways in which we can ensure that local authorities use the best practice and experience from other local authority areas to assist them with their processes around managing the transition. Some of the transition resource that we are providing is to assist local authorities in looking at best practice from other local authorities in order to help them to manage the process.

Communication with the individuals concerned is a big part of that. An issue that individuals who had concerns about changes in their care packages raised with me was the lack of communication from the local authority or social worker in discussing that matter with them. Communication should be a key part of managing any transition in how a care package will be managed. That is extremely important.

**The Convener:** I am sure that COSLA has listened carefully to what has been said about all the structures that will have to be put in place and their associated costs.

**Nanette Milne (North East Scotland) (Con):** Good morning, minister.

I am picking up that there is almost a chicken-and-egg situation with the legislation on self-directed support and that on the integration of health and social care. A number of witnesses have thought that perhaps it would have been better if the legislation on the integration of health and social care came before the Social Care (Self-directed Support) (Scotland) Bill in order to get everything tied up. It is clear that there is a significant relationship between the two.

I think that you mentioned a culture change and the need for people to change their way of thinking. That might be very much the case with health and social services. When SDS is talked about, some local authorities think that it makes...
sense to integrate health and social care, but users have said to us that they do not like the medicalisation of social care. Omar Haq gave a good example this morning. He used his direct payments to employ a private physiotherapist, who would not have been available to him in the health service. That has significantly improved his level of fitness over recent years and made a huge difference to his quality of life. There is a complicated series of issues within the relationship between SDS and health services. On the other side of the coin, I think that the Royal College of Nursing was worried about “scope creep” in respect of the nursing service, health services and social care services. How can greater interaction between the health service and self-directed support be achieved?

Michael Matheson: Many of the challenges around health services supporting people in the community tend to relate to areas in which there are fairly complex care packages and people have both health and social care needs. The bill is founded on the social care assessment that is required.

Given your background, you will probably be aware that people with complex health needs often require health provision alongside social care provision. At present, a health board can provide resources to a local authority so that the money can be utilised as a direct payment if that is how the person wishes to utilise it. There can often be a bit of creative tension between the different budget headings and I think that one of the benefits that we will get from the integration of health and social care is that the different budgets will become a single budget. It will not be a case of whether a person can get a direct payment under the health service; a budget will be available to help to support people through social care assessments that have health elements as a result of both the bill and the integration of health and social care. I hope that that will give greater clarity and certainty about the process and reduce the tension that can often exist between those two areas.

12:15

It is important that we recognise that the bill will build on a mechanism that currently exists, and that the integration of health and social care will cause less tension and allow us to get greater clarity from budgets that are responsible for different elements.

The example that you give of Omar Haq using some of the resource for physiotherapy goes back to the point that I made to Richard Simpson about one of the benefits that can come from self-directed support, which is that individuals will be able to use their resource in a way that best suits their needs. They may wish to use it for a service such as physiotherapy that they think would be appropriate to address their needs. That is a good example of how self-directed support gives people greater flexibility and choice in making such decisions.

For some individuals, there may be periods when they do not require that type of support, and there will be other times when their condition might change and they feel that such support would be appropriate for them. Self-directed support gives the individual the opportunity and flexibility to make that type of decision for themselves at a time that is most appropriate for them.

Nanette Milne: Presumably, the assessment is all-important. The other witness, Margaret Cassidy, said that the social work staff who initially assessed her were looking at housework and laundry, for example. They did not take into consideration that she wanted to be able to go to a party and return late at night or go dancing if she so wished. That did not seem to be part of the initial assessment, although she managed to overcome that issue through advocacy.

If we are considering the outcome for the person who is using the services, such things must be taken into consideration at the outset in any assessment that is made.

Michael Matheson: Social care assessments are holistic, in that they look at a whole range of issues relating to an individual. At the end of the assessment, one or two particular services may be identified as being appropriate, but it is a holistic process that should cover a range of different issues.

You mentioned the issue of culture change. Margaret Cassidy gave the example that, through advice and support, she was able to challenge some of the assumptions that the assessment was only about X, Y or Z—cleaning, washing and so on. Social work needed to take into account the wider agenda, and it was possible to address the issue.

We are providing resource to assist organisations that provide information, support and advice to help people make informed decisions and to enable them to question local authorities about some of the assumptions that might be made during the assessment process.

There is an opportunity to ensure that the holistic nature of the assessment is more widely recognised, and to create the necessary culture change to ensure that staff understand that in assessing the needs of individuals.

Nanette Milne: Presumably, training must be part and parcel of a successful outcome for the legislation.
Michael Matheson: Yes. Some of the transition funding that we are providing for local authorities is for the training of staff, but that will not involve a one-day workshop type of approach. It will cover the principles of self-directed support, and the choice and flexibility to which people are entitled.

Many of the social work staff who currently carry out assessments do so under the National Health Service and Community Care Act 1990. We acknowledge as a challenge—which is why it is part of the wider package of measures—the need to change that focus, so that social work staff recognise that people have a range of choices to make at the end of the assessment process.

Staff training will be on-going rather than a one-off, and will focus on the principle of giving people choice and flexibility and ensuring that staff are aware of that.

Nanette Milne: I look forward very much to the legislation on the integration of health and social care, because that will be extremely important if the SDS bill is to be a success.

Michael Matheson: We are consulting on that just now.

The Convener: The committee has carried out inquiries into elderly care and the integration of health and social care, and we are all convinced that the culture needs to change. However, the bill places a duty only on local authorities to create and confirm that change in culture with regard to giving people choice.

From users and carers, we have heard examples of situations in which there is an interchange with the health service that does not empower them. One man requires a medical procedure to enable him to see his family off to school in the morning. The health service does not provide community care outwith those arrangements, and the man has had to use his care package to have that medical procedure done. This morning, Omar Haq told us that he has had to use his care package to access physiotherapy— and, in other cases, the responsibilities pass to carers, who are trained to carry out medical procedures. We heard from one person who requires a medical procedure at around 7 in the morning to allow him to go to the toilet and then see his children off to school. He tells us that there is no empowerment in that process and no transfer of budget—the health service opted out in that situation. It seems that there is something missing. Surely the ambition of the bill is not to transfer those health responsibilities to individuals and carers.

Michael Matheson: Some of those examples are good examples of why we need greater integration of health and social care. At times, local authorities provide particular services in particular ways in order to meet an individual's needs and, in some cases, the health service might not take such issues into consideration in relation to the way in which it delivers services or allows people to use services. Greater integration will enable us to ensure that local authorities and the health service are much more effectively aligned with one another and that the health service is much more focused on helping to support people in the community and giving them the advice that they require.

At the moment, resource for the provision of some of that care can be transferred from the health service to the local authorities. I recognise that that arrangement operates differently in different areas and that it is not always as consistent as we would like it to be. The integration agenda will enable us to address some of those important areas of care, which can be quite confusing for people.

The Convener: In the interim, is there anything in the guidelines that can encourage better working now between the health service and local authorities with regard to the wishes of the people who are in receipt of care?

Michael Matheson: One of the things that we are looking to do in the guidance that will accompany the bill is to give some clear illustrations of where it is appropriate for services to be provided. If there are ways in which we can demonstrate that around some of the health areas, we will do that.
Some of the pilots that we ran were on health provision, to help to inform us as we took forward the guidance. Although there is willingness on our part, we recognise that the area can be quite complex. There is interplay between different factors. We have to ensure that the systems are much more effectively aligned and that their approach is much more person centred. There is no doubt on our part that we need to make more progress in that area.

**Fiona McLeod:** You will know that I have been pursuing the personal assistants agenda. We heard this morning from Omar Haq and Margaret Cassidy about their employment of personal assistants. They both said that the minimum safeguard that should apply is that all personal assistants should have a disclosure check. Such checks are always obtained for personal assistants who are employed through an agency but it is more problematic if someone employs a personal assistant themselves. How can that issue be overcome?

I have been considering the regulation of personal assistants for a number of reasons. One is so that we can overcome local authorities’ reluctance to allow family members to be employed as personal assistants except in exceptional circumstances. I note from the policy memorandum to the bill that you want local authorities to move away from that position. Will you talk us through that?

**Michael Matheson:** First, I will deal with the regulation issue, which I know has been raised by some of the committee’s witnesses. When we consulted on the bill, it was clear that there was considerable anxiety among some stakeholders about the potential overprofessionalisation of personal assistants or medicalisation of the care they provide and the challenges and difficulties that that could create for individuals. We have to weigh that against having flexibility in the system to allow people to make informed choices on the best provision of care to meet their needs. Because of the concerns expressed in the course of the consultation on the bill, we decided that we did not wish to regulate personal assistants.

That is not to say that we do not recognise that there are some risks; the issue is how those risks can be managed. We are working with local authorities and stakeholders on ensuring that individuals who are making an informed choice about care options are aware of the associated risk factors and the measures that they can take to address them. We are looking at good practice among local authorities. Some local authorities have user agreements with individuals who use direct payments for the provision of their care. Part of the user agreement is about the individual’s awareness of the protecting vulnerable groups scheme and the benefits that they can get from it. That is a way of helping to reduce some of the risks associated with being an employer.

We would encourage someone who is going to employ a personal assistant to ensure that they are a member of the protecting vulnerable groups scheme. We should ensure that local authorities have systems in place to encourage people to be aware of the scheme and the benefits that can come from it. That would allow a potential employer of a personal assistant to ask them for sight of their disclosure certificate. In addition, because of the changes under the protecting vulnerable groups scheme, checks are no longer just snapshots in time but can be updated at any point if a person’s circumstances change. Information goes to Disclosure Scotland and then to the police, and the police may consider it important that the information is passed on. It is a much more dynamic system than it was previously, when the information was just a snapshot in time.

We need to encourage good practice while acknowledging that people might well want to have choice and flexibility in making decisions about those they employ.

**12:30**

On your second question, some local authorities have been inconsistent in how they have applied the threshold for direct payments with regard to individuals who might wish to employ family members. Under the existing threshold for direct payments, such a move is possible in exceptional circumstances. However, I feel that the threshold is too high and is not being applied consistently and we intend, through regulations, to provide guidance on the circumstances in which the employment of a family member as a personal assistant would be appropriate. That will make the system clearer, give people more of an opportunity to take a family member on as a PA and help to address some stakeholders’ concerns about difficulties in that respect.

**Fiona McLeod:** I was interested in your comment about checks being made through the PVG scheme rather than through Disclosure Scotland because you seem to be saying, with regard to the safeguards surrounding the employment of personal assistants, that the onus will be on the PA to be registered with the PVG scheme rather than on the user to undertake a Disclosure Scotland check. After all, people on the PVG scheme will have already been checked by Disclosure Scotland. It sounds like a very useful way of turning all this round.

**Michael Matheson:** The approach is partly to ensure that, instead of those who seek to employ
PAs being responsible for carrying out checks, those who want to be employed as PAs will have to demonstrate that those checks have been carried out. Rather than being a snapshot in time, the system will now be much more dynamic, which will provide additional security. For individuals who wish to be employed as PAs, the message will be clear: they will be expected to be part of the scheme. Moreover, if Disclosure Scotland’s system has something on a personal assistant that would prevent them from applying for a job, the person will be committing a criminal offence if they try to do so. It is important that we maintain flexibility and choice by ensuring that individuals are aware not only of the risks, but of mechanisms to reduce the potential of such risks and by placing the onus on the person applying for the post of personal assistant rather than the cared-for person to ensure that all the checks have been done.

The Convener: Might there be any risks in such an approach? Obviously the capacity of the PA network will have to be developed if people are going to have a choice, but what if in some areas there simply are not PAs? How much does it cost to get a Disclosure Scotland check in the first place?

Michael Matheson: I do not know, off the top of my head.

Chris Birt (Scottish Government): I think that it costs £89.

Michael Matheson: I can provide the committee with the actual cost of a check, but I should point out that the system now is more dynamic. There is a one-off cost, but if a report comes in or information becomes available that requires the police to inform an individual—

The Convener: That is not the only barrier. As we have discovered in previous inquiries, there are other barriers to encouraging people into and developing that workforce. For a start, the work does not pay a lot of money and has a low status, and the scheme will simply put another burden on people who might be currently unemployed.

Michael Matheson: The important thing is to ensure that the cared-for person is aware of the risks of choosing to employ someone. We are working with local authorities on that. Some local authorities encourage individuals who use direct payments to ensure that the individual whom they employ becomes a member of the scheme, so that a check can be carried out.

Under the old system, every time someone applied for a job a new disclosure check had to be carried out. A friend of mine who worked as a freelancer in outdoor education worked for nine local authorities and had to pay for disclosure checks nine times. Currently, when a person has paid for a check to be carried out they are registered under the scheme, and if information becomes available that the police think is appropriate to pass on to the employer, that can happen. People no longer have to have repeated disclosure checks.

The Convener: Will money be available to develop the workforce during the transitional period? The workforce needs to develop. What plans are in place to ensure that people will have the qualifications and training that they need if they are to provide care?

Michael Matheson: Part of the resource that we are providing under the transitional arrangements will assist third sector and independent sector organisations in developing capacity and the systems that will be necessary to support the workforce. I think that about £6 million is going towards helping the independent sector to gear up for the change and to ensure that it is better aligned with a system in which people will make much more informed choices about how their care is provided.

In addition, as part of the self-directed support strategy there is a work stream that is developing a workforce plan and is considering measures to support and develop the PA profession.

Jim Eadie: Earlier, we heard powerful testimony from Omar Haq and Margaret Cassidy about the benefits of direct payments and employing personal assistants; they talked about flexibility, choice, continuity and so on. The greater independence that the arrangement has brought to their lives was eloquently expressed.

The bill says in section 3(2):

“‘direct payment’ means a payment of the relevant amount by a local authority”.

The term “relevant amount” is defined as

"the amount that the local authority considers is a reasonable estimate of the cost of securing the provision of the support to which a direct payment relates during the period to which the payment relates.”

You made the important point that people will be able to use the resource in the way that best meets their needs. However, in the context of other care arrangements, the Learning Disability Alliance Scotland said that there is inconsistency around the country in respect of the charges that people pay. Is it inevitable that local authorities will set different levels of direct payments? If that is an issue, how might it be addressed or avoided? Could that be done through guidance to local authorities?

Michael Matheson: The cost of providing services will always vary in different parts of the country and among local authorities. Some forms of direct care are more expensive in rural areas than they are in urban areas. We are working with
local authorities to identify core factors that should be taken into account in the resource allocation system when they decide what the cost will be for a service.

It is intended that the section of the bill that Jim Eadie referred to will ensure that, although the relevant amount will not be consistent throughout the country, it will be reasonable for provision of the service. We do not want individuals to have been offered direct payments that are entirely unreasonable in the context of the cost of a service.

We are also encouraging local authorities to examine resource allocation systems that are in use in Scotland and England and some of the key factors that can be used to ensure that the system is aligned with the costs of the provision of a service. That is what we are doing with local authorities just now, and that work will also form part of the on-going work with local authorities in preparing for the bill by looking at the issues and sharing practice so that they can use existing resource allocation systems. The bill does not set out what a resource allocation system should be, but we are working around the bill to assist local authorities to develop their systems, to make sure that they are sensitive to changing developments in the sector, and to make sure that there is consistency in the core factors that they take into account in arriving at what they believe would be the cost for a particular service.

Jim Eadie: Can you make sure that you engage with the learning disability community so that officials take on board and address any concerns that it might have about inconsistent provision as we work through the bill process?

Michael Matheson: I am more than happy to do that. During the development of the bill, we engaged with a range of organisations that work with individuals who have learning disabilities and we will continue that work and dialogue in the future.

Jim Eadie: Has the Government considered placing a duty on local authorities to ensure that independent advocacy is provided for service users who are making their way through the SDS process? Are you willing to consider it? I am talking about something that would be analogous to the provision that I believe already exists under the Mental Health (Care and Treatment) (Scotland) Act 2003.

Michael Matheson: We have looked at how the bill can ensure that individuals are provided with the information and advice that will help them to make informed decisions. For example, we have already provided resource to some advocacy organisations to assist us with implementation of self-directed support. In my constituency, Central Advocacy Partners has been provided with resource to allow it to develop materials and programmes for its work on helping people who have learning disabilities.

Section 8 of the bill sets out the duty that will be placed on local authorities to ensure that individuals are provided with information about decisions and the implications that those decisions can have for them, as well as making sure that those individuals are given information about the services outwith the local authority area, which will help them to make decisions.

Jim Eadie: Am I correct that the bill does not place a duty on local authorities to provide independent advocacy?

Michael Matheson: That is correct.

Jim Eadie: I ask again, on behalf of the organisations that have given evidence, whether the Government has considered independent advocacy and decided—for whatever reason—that it is not appropriate.

Michael Matheson: We have considered it, and one of the reasons why it is not in the bill is because not everyone will want or require independent advocacy to help them to make their choice. We have put section 8 in the bill to place a duty on local authorities to provide information and advice on the implications of the decisions that they make, and to direct people towards services that can provide such advocacy support. Some of the financial support that we have provided around the bill is to support organisations that can provide that advocacy role.

Jim Eadie: There is an on-going discussion and a debate to be had, but I welcome that clarification.

12:45

Fiona McLeod: I seek clarification that sections 1(3)(a) and 1(3)(b) and section 8(2)(c)(i) almost guarantee that the local authority has to provide the support, advice and information that advocacy would be. That is my reading.

Michael Matheson: Under section 8,

“The authority must give the person ... information about how to manage support, and ... information about persons (including persons who are not employed by the authority) who can provide ... assistance or information ... to assist the person in making decisions about the options”.

Although the duty that Jim Eadie talked about is not in the bill, the bill places a requirement on the local authority to provide the person with information on whom they can go to to get advice and information. As I said, we are providing resources to organisations to allow them to provide that type of support and advice.
The Convener: Members have no further questions. However, last week, we took fairly important evidence from the Office of the Public Guardian and the Mental Welfare Commission for Scotland, which have raised concerns. I know that the Government is aware of those concerns. I ask the minister to give us an update on that in writing, as I am aware of pressures on his time and on members’ time.

I thank the minister and his officials for attending and for their evidence. We look forward to working with you on the bill as it progresses.
I have had a Direct Payment (DP) for a few years and I am very happy that I do. It has changed my life, now I feel that I am the Boss, I have control and that feels good.

I had to fight to get my DP.

I used to get my support from Checkpoint, who were a support provider in Glasgow. I had always got my support from organizations and Checkpoint was one of the better ones. Checkpoint had their funding from Glasgow Council stopped and my support stopped very suddenly.

This was a very upsetting time. I had no say in the matter, my support just stopped. I was left at home, relying on my friends and family. This went on for weeks and was horrible. I felt run down and very low, very sad.

I had a friend who was involved in Glasgow Centre for Inclusive Living (GCIL). She told me about Direct Payments and helped me to get information about them. What they were and how to get one.

I was told it was my right to get a direct payment if I wanted one.

When I understood what they were and how they worked I decided that I definitely wanted one, it would give me a say in how my support would be provided. My support would not be stopped without my say.

I thought it would be easy because it was my right.

It turned out to very hard, I had to fight to get it.

I had great support from my Advocate, GCIL and People First. If I was on my own, up against Social Work, I would not have got very far.

It took a very long time, but I did get a DP in the end.

I used my DP to make a contract with Mochridhe, who are a service provider. They were able to offer me what I wanted in my support.

I wanted it to fit in with me, at times that I wanted. Not the other way round. I did not want a lot of people coming to my house, I wanted to know who was coming and when.
I feel like I am in control of my support. I can go swimming, which I love, when I want now. I don’t have to hope the support worker who turns up will agree to go swimming with me.

I am able to go to parties now and not have to leave early because the support worker is at the end of their shift. I can now leave when I want to leave.

When Glasgow started Self Directed Support (SDS) I had to have an assessment.

The Social Worker who came to see me was only interested in the support hours that were spent in my house, doing things like laundry or cleaning. They did not count the hours I had support to do things outside of my house, some of the most important things in my life. The assessment cut my hours in half.

This was very upsetting. It would have left me stuck in my house like I was before I got my DP. I was very frightened of what was happening.

I was glad to have the support of my Advocate, GCIL and People First.

I was able to explain to Social Work, all the different things I did outside of my house and how important they were to me. In the end, they agreed to leave my hours alone. This was good to hear, I can tell you.

I was told I would be getting another assessment around the end of last year. This was very worrying, I was thinking that it would be like the last time. They would cut my hours.

Unfortunately I fell out of my chair and had to go to hospital for a while, the assessment was postponed.

I am waiting for the assessment to be rearranged and I am really worried about my hours being cut again and being stuck in my house like I was before. I hope this doesn’t happen.

Margaret Cassidy
29 May 2012
I write in relation to my appearance before the Committee on 29 May to provide evidence on the SDS Bill. I was grateful for the opportunity to explore the detail of this Bill with you and I thought that the questions the Committee raised were well-considered and insightful. I trust that our discussion was helpful to you in your ongoing consideration of the Bill and the drafting of your report. As a follow-up, I agreed to provide some further information on a range of topics.

Transformation funding

We discussed the additional investment that the Government is providing to support the change in culture associated with the strategy on self-directed support (a total of £39.5m over the current Spending Review Period). The Financial Memorandum sets out how we determined the resource required, including that for local authorities, over that period.

My officials have met with COSLA throughout the development of the Bill, and have discussed the financial requirements on a number of occasions. Officials provided views during the development of the COSLA survey, and around its completion there were 3 specific meetings to discuss the survey. Throughout those meetings, and in contacts since, COSLA were unable to share the detailed financial estimates they received from the survey for the reasons that they gave in their evidence to you. However, they shared their broad analysis of the results and discussed the range of transformation activity which should accompany the legislation.

It is clear that there is ongoing discussion around the additional investment required to engender a significant change in culture and approach surrounding this legislation. To address this, I have asked my officials to convene a regular Self-directed Support
Programme Board. One of the main tasks for this Board is to monitor and manage implementation, and this will include a remit to keep a close eye on the ongoing costs of implementation. The Board will involve COSLA and ADSW, along with a range of support organisations, user and carer groups. In addition, my officials will meet with senior COSLA and ADSW officials on a two-monthly basis up to any Bill commencement date and beyond into the first year of implementation. The first of these meetings is set for 12 June. Finally, my officials will progress a series of meetings over the next 6 months with individual local authorities. They will use this programme of engagement to discuss a range of implementation matters, including the question of how and in what ways local authorities will make use of the transformation funding provided by Scottish Government.

The Committee expressed an interest in being kept informed, and I would be happy to provide further updates to you on this activity.

Delegated powers

As indicated, I intend to respond to the range of points made in the Subordinate Legislation Committee’s report and, where appropriate, to consider their recommendations further at Stage 2. I will be writing to the Convenor of the Committee before the Stage 1 debate and I will ensure that you are copied to that more detailed correspondence.

Protecting Vulnerable Groups scheme

Fiona McLeod asked about the cost of joining the Protecting Vulnerable Groups Scheme. An application to join the PVG Scheme costs £59. The full range of fees is available on the Disclosure Scotland website - [http://www.disclosurescotland.co.uk/guidance/index.html](http://www.disclosurescotland.co.uk/guidance/index.html)

Section 5 and 15 within the Bill

Towards the close of the panel you referred to previous evidence panel 4 which involved the Mental Welfare Commission (MWC), Office of the Public Guardian (OPG), the Care Inspectorate and the Law Society of Scotland. You asked for an update in writing in order to respond to specific concerns raised regarding the technical definitions used in Sections 5 and 15.

I note that the MWC, OPG and the Law Society of Scotland welcomed the extent to which their previous concerns were taken on board before the Bill was introduced. Their main remaining concern was that some practitioners might assume that Sections 5 and 15 extend into powers to make formal appointments of proxies, and to allow for substitute decision-making on behalf of the individual.

I can reassure the panel members and the Committee that the purpose of Sections 5 and 15 of the Bill are to require local authorities to involve people able to assist the individual to make decisions about their care and support plan. They are not intended to provide a power to local authorities to appoint proxies in order to make decisions as substitutes for the individual.

A further concern related to the similarity between the definitions used at Section 5(1)(b) and 15(1)(b) of the Bill – which are intended to lead to assistance – and the definition deployed in Section 1(6) of the Adults with Incapacity (Scotland) Act 2000 – which leads to substitute decision-making. This is a complex and challenging area of the Bill’s drafting, not least because people with either a mental disorder or a difficulty in communicating can fall into both “groups” with respect to capacity. They can fall into the category of those who lack
capacity under the AWI legislation or they can fall into the category of those who have capacity, and who might benefit from assistance under Sections 5 and 15 of this Bill. As indicated where a person has capacity the local authority should involve persons who can help that individual to make the relevant choices. There is no specific power provided to the local authority in order to appoint an individual as a proxy decision-maker, and so no such decision-making power would be created under this Bill.

I would expect statutory guidance to elaborate on these points in detail and to make it clear that Sections 5 and 15 do not contain any power to appoint substitutes. Nevertheless I am also happy to explore this drafting issue with the Committee at Stage 2. In addition, I have asked my officials to engage with the MWC, OPG and the Law Society of Scotland in advance of Stage 2.

I hope that the Committee finds this information helpful in its consideration of the Bill.

I am copying this correspondence to the Convenor of the Subordinate Legislation Committee and to the Clerks to both Committees.

Michael Matheson
ANNEXE C: LIST OF OTHER WRITTEN EVIDENCE

Aberdeen City Council
Aberdeenshire Council
Action on Hearing Loss
AIMS Advocacy
Angus Council Social Work and Health
Buchanan R (individual)
Camphill Scotland
Capability Scotland
Carers Scotland
Children in Scotland
City of Edinburgh Council
Coalition of Carers in Scotland
Consumer Focus Scotland
CrossReach
Deafblind Scotland
Dundee City Council
East Ayrshire Council
East Renfrewshire CHCP
Enable Scotland
Equality and Human Rights Commission
Falkirk Council
Fife Council
Getting There
Glasgow Centre of Inclusive Living
Glasgow Personalisation Network
Hayfield Support Services
HUG Action for Mental Health
In Control Scotland
Inclusion Scotland
Independent Advocacy Perth & Kinross
Independent Age
Inverclyde Council
Johnston R (individual)
Joint Submission - National Carers Organisations
Learning Disability Alliance Scotland Ltd
Legislation Governance group of NHS Greater Glasgow and Clyde
Long Term Conditions Alliance Scotland (LTCAS)
Loretto Care
Macmillan Cancer Support
McCarthy & Stone
Moray Council
Multiple Sclerosis Society
NHS Ayrshire & Arran
NHS Education for Scotland
NHS Fife
NHS Greater Glasgow and Clyde
NHS Lothian
Outside the Box
PAMIS
Penumbra
Perth and Kinross Council
Quarriers Adult Disability
Renfrewshire Council Social Work
Royal College of Psychiatrists
Scotland's Commissioner for Children and Young People
Scottish Care
Scottish Council on Deafness
Scottish Disability Equality Forum
Scottish Human Rights Commission
Scottish Independent Advocacy Alliance
Scottish Social Services Council
Self Directed Support Scotland
Sense Scotland
Shetland Islands Council and NHS Shetland
Slasberg C (individual)
South Ayrshire Council
South Lanarkshire Self-Direct Network
Steven C (individual)
Stirlingshire and Clackmannanshire Joint Social Services
Stobart A (individual)
The National Deaf Children's Society
The Richmond Fellowship Scotland
The Stroke Association
Turning Point Scotland
UNISON
VOCAL Voice of Carers Across Lothian
West Dunbartonshire CHCP
West Lothian Council
Social Care (Self-directed Support) (Scotland) Bill

Aberdeen City Council

1. Are you generally in favour of the Bill and its provisions?

Yes, Aberdeen City Council welcomes the introduction of legislation for Self-Directed Support. It will add legitimacy and enshrine legislative powers/duties, which are in line with the council’s position of Self-Directed Support.

2. What are your views on the principles proposed?

The principles proposed are very much reflective of the ethos of Self-Directed Support. Local Authorities, in a collaborative and contribution based approach, should actively promote the principles of SDS naturally, however through legislation it provides a legal framework in order that this is no longer just classed as best practice. The extent to which Local Authorities must encourage the principles is unclear though, especially in cases where individual capacity must be considered as well as other risks surrounding a person. Also where we have a culturally diverse popularity as well as specific needs related to understanding of information (its presentation and content), will Local Authorities have the resources (not just in monetary terms) to promote these principles.

3. What are your views on the four options for self-directed support proposed in the Bill?

Aberdeen City Council welcomes the 4 options for SDS as proposed in the Bill however guidance/best practice notes will be necessary to ensure that this legislation is more productive than that of Direct Payments in the past. Clarity will be required to ensure a ‘postcode lottery’ does not continue to exist in terms of information, resources and service provision. Some legal/contractual guidance may also be required in terms of the 2nd option, particularly with regard to tender and procurement regulations. Also clarity on the provision of any regulation for workers employed as Person Assistants would be welcome. As currently PVG legislation is very wide of the mark in terms of assisting with Risk Enablement.

4. Do you have any comment on the proposal that the self-directed support options should be made available to children and their families, together with the proposal that the degree of control a child may have over the process should vary with age?

In general, Aberdeen City Council is in agreement that children and their families can make good use of the SDS options, and these may be more responsive to individual/family needs and outcomes. Clarity may be required in terms of the duty or power to be place on Local Authorities, particularly in times of budget restriction. It will also be necessary to consider where certain SDS Options can not be utilised, perhaps due to the LA accommodating a child. We are also in favour of extending control and choice directly to children, with various support mechanisms in place for informed choice, and
that the process of exerting control would naturally vary with age. Aberdeen City Council would welcome the role of the professional in this, as staff judgement, experience and discretion is critical to ensuring children are well supported and safe.

5. Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

As detailed in response to Question 2 the council would seek clarity on the extent to which provision of information and advice is required. Aberdeen City Council wishes to give as much support as necessary to individuals and families to assist them to make informed choices, however this is a resource pull. Some guidance as to the role of the Local Authority would be welcomed, particularly where we may seek to utilise other organisations in the provision of this advice or information.

6. Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?

Take up of Direct Payments has been notoriously low across the country, even though it can produce very positive results for individuals and families. Regulations and guidance are required to ensure that option 1 is fully utilised by individuals and that bureaucracy is kept to a minimum. Aberdeen City Council would welcome the chance to have an input to regulations for Direct Payments, as it is an option for SDS that we feel has been neglected in the past.

7. Do you have any views on the provisions relating to adult carers?

Aberdeen City Council welcomes the proposal to have a power to make provision of SDS options to adult carers; however we are wary about the uptake of this given budgetary pressures. However the benefits of this power will give better outcomes in a more holistic sense to families.

8. Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?

Safe recruitment and employment practices are crucial for individuals using Direct Payments. Aberdeen City Council actively uses its discretionary powers in terms of exceptional circumstances for employing relatives at the moment, and would welcome the retention of this. In addition where a person to be employed through a Direct Payment constitutes a significant risk to the individual, again it is important for profession judgement and discretion to be utilised.

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?
As Local Authorities are system orientated, the majority of transitional costs will arise in this area. It is very hard to predict the extent of these costs at the moment. Investment will be required in various areas to ensure the success of SDS. One key area will be social work training (in terms of cultural change). Aberdeen City Council has started to work with our current staff to raise awareness and change practice with regard to SDS. To role this out wider requires resources, but again the extent of these is difficult to predict at the moment (particularly with uncertainty regarding the enactment date of legislation).

10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?

In our view insufficient work by COSLA and Scottish Government has been undertaken in addressing risk and contingency strategies in relation to potential market failure. Specifically if some current service providers fail to adequately prepare for SDS the service provider could fail with the consequence local authorities have to find alternative service provision at additional cost, organisational failure most recently exampled by the situation in relation to care provider Southern Cross. As earlier response from COSLA indicated following a survey of council’s additional implementation costs could be between £50M -£90M across Scotland. ACC welcomed £878K Scottish Government has announced for this council over the next 3 years as part of £23M going directly to Local Government across Scotland. However £23M falls well short of the above lowest estimate for SDS implementation. Using the Government distribution formula if we take the lowest estimate of £50M for implementation that would correlate to £1.935M to ACC – therefore the shortfall for ACC is a minimum of £1.057M for additional implementation costs.

11. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

Aberdeen City Council welcomes the opportunity to provide feedback on the SDS Bill, and looks forward to engaging further with Scottish Government and its partners to ensure the Bill’s success.

Aberdeen City Council
24 April 2012
Social Care (Self-directed Support) (Scotland) Bill

Aberdeenshire Council Response

1. Are you generally in favour of the Bill and its provisions?

Aberdeenshire Council endorses the values and principles enshrined in the Bill.

2. What are your views on the principles proposed?

The Bill reinforces fundamental principles which underpin good social work practice. The language of the Bill could, in places, be more progressive and it does not fully grasp the opportunity to put the individual and the principle of reciprocity at the heart of the process. We would like to see a greater emphasis placed on individuals with regard to personal responsibility, including the use of informal support networks, in line with the principles of co-production.

3. What are your views on the four options for self-directed support proposed in the Bill?

We support the four options, and believe this is essential to provide a broad spectrum of choice for people, however sections 3 (1) and 3 (2) are contradictory. Section 3 (1) clearly identifies the four options in which individuals can exercise choice and control over an individual budget. Section 3 (2) uses the term “relevant amount” only in the context of a Direct Payment. It is our view that an indicative budget should be identifiable for all individuals at an early stage in the process, whether they choose to receive this in the form of a Direct Payment or one of the other alternative options. We strongly believe that Section 3 (2) of the Bill undermines its overall ethos and would suggest it is reworded to support the identification of an indicative budget for all individuals.

4. Do you have any comment on the proposal that the self-directed support options should be made available to children and their families, together with the proposal that the degree of control a child may have over the process should vary with age?

We need clearly acknowledge that children have different requirements from adults in respect of rights and responsibilities to self-determination and decision making etc. The Bill needs to reflect the fact that parents retain full parental rights and responsibilities in respect of their child until the child attains the age of 16 years (with the parents retaining residual responsibilities for providing advice and guidance until 18 years.) Although children have a right to be protected from harm/abuse and to enjoy family life etc (UN Convention), responsibility for their care and control remains with their parents.
Within this context we work within a spectrum, from parents who exercise full parental responsibility and authority with regard to their children to those parents who do neither. In attempting to meet our obligations to to "children in need", we take into account the extent to which a child's parents have the capacity to meet the needs of their children. In situations where the deficits in care that a child receives are obvious and identifiable, it would clearly not be appropriate to offer parents who are failing in their duty of care with choices about how their own needs (developing parenting skills) and the needs of their child (therapeutic intervention) can be met. Such children may be on the Child Protection Register and/or "looked after" by the local authority.

Moving between these positions on the spectrum, there is a need for caution in using SDS to determine the need for services and how they are delivered. We would support a risk-based, phased introduction to child care which includes in the first phase, e.g. children with disabilities.

It would be important that any developments with regard to SDS for children and parents are governed by the principles contained within the Children (Scotland) Act 1995 and, in particular, those which relate to a child's views being taken into account in matters/decisions relating to their welfare.

5. Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

Yes, we support the formal statutory responsibilities proposed.

6. Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?

We are generally satisfied that the areas under consideration are key to ensuring positive change. In the context of potential financial abuse, the extent of local authority monitoring responsibilities (to ensure funds are utilised for agreed purposes) would benefit from clarification by regulation/guidance. Similarly, any duties or powers available to local authorities (especially in relation to abuse by 3rd parties) should be explicit and it is recommended that workable, flexible provisions be set in place to allow investigation and remedy of financial abuse that has retrospective effect.

7. Do you have any views on the provisions relating to adult carers?

We believe these formalise and facilitate a more progressive and empowering means of supporting carers.

8. Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?
We agree with the principle that individuals should be able to achieve their outcomes through having full choice over the means, including purchasing services from a provider or individual whom they consider fit to deliver a service. Whilst we acknowledge this position does not sit comfortably with a traditional approach, we believe any regulation may unreasonably restrict individual choice.

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

It is clear from our local SDS pilot, input required from professionals in relation to assessment and support planning, is more resource-intensive than current mainstream care management practice. It is highly likely that the process will be streamlined over time, as expertise and systems are established; however, we believe the resource assumptions within the Financial Memorandum substantially understate the cost implications.

In addition, the funding attached to transformation costs appears optimistic, especially in the areas of bridging finance and commissioning where forecasting at this early stage is speculative and we would suggest the level of additional grant funding is re-evaluated. We believe the proposed funding only reflects a fraction of the additional costs that local authorities will have over the 3 transition years, in order to fully and properly implement SDS.

In terms of eligibility criteria, it is our position that the legislation should make explicit reference, in order to manage expectations, to the role of local authorities in setting thresholds of eligibility.

10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?

We are satisfied and see no problems in relation to equality.

11. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

1. To fully realise the benefits of SDS we think people should have the flexibility and choice to purchase any service which delivers their agreed outcomes. To put parameters around some services, such as residential care creates a two tier system and detracts from the principles and values of the legislation.

2. The term ‘social care’ limits the potential scope and contradicts the values and principles of SDS. It is important the title embraces duties and responsibilities for the NHS.

3. The Bill limits the involvement of the NHS whilst the principles are to allow service users to influence greater choice and control over achieving personal outcomes. This is inconsistent - health needs as well as social care needs should be addressed.
4. Neither the Bill nor supporting documents make any reference to how SDS will affect the provision of Free Personal and Nursing Care. If individuals are awarded a personal budget with few restrictions on its use, using creative and varied approaches to meeting outcomes it will be impossible, and indeed irrelevant, to establish the connection with levels of personal and nursing care. We do not believe an approach which retrospectively reviews an person’s personal plan with the aim of trying to identify elements of personal and nursing care is acceptable. We would recommend an approach which incorporates Free Personal and Nursing Care in a RAS.

5. We would ask the Committee to clarify whether the Bill places a duty on local authorities to apply the four options to housing support, particularly in relation to group living arrangements.

6. A difficulty which is likely to be faced is the issue of whether a person has the requisite capacity to make a decision / choice on service provision. If not, we may have to consider guardianship for the adult before such a decision is taken. In such an application there may be a potential conflict of interest if the Local Authority applies for Welfare Guardianship specifically to sign such a tenancy agreement when naturally the Local Authority would wish the service provider to adhere to choice (the agreed choice of all tenants).

Aberdeenshire Council
25 April 2012
Social Care (Self-directed Support) (Scotland) Bill

Action on Hearing Loss Scotland

1. Are you generally in favour of the Bill and its provisions?

Action on Hearing Loss Scotland supports the Bill’s overall aims of allowing service users to have more control over the support they receive and to maximise individual choice. We would like to see a care system that is responsive to the needs of people with hearing loss and allows them to play a more active part in the administration and arrangements for their own care should they wish to do so.

2. What are your views on the principles proposed?

We believe that the three principles of ‘involvement’, ‘informed choice’ and ‘collaboration’ are appropriate ones to use to underpin this legislation.

We particularly welcome the second principle (around ‘informed choice’):

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.

This is of great importance to deaf and hard of hearing persons who may need access to communication support during the assessment (and review) process in order to make a truly informed choice. However, we have some concerns over the implementation of this principle on the ground, especially about how to achieve consistently good outcomes across different local authority areas. The Bill states that local authorities ‘must have regard’ to the three principles and we are already aware of differences in service provision for the deaf and hard of hearing; for example, with regard to the level of deaf awareness and British Sign Language (BSL) skills among social work staff.¹

3. What are your views on the four options for self-directed support proposed in the Bill?

We have no specific comments on the four options.

4. Do you have any comment on the proposal that the self-directed support options should be made available to children and their families, together with the proposal that the degree of control a child may have over the process should vary with age?

We have no specific comments on this issue.

5. Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

We are pleased that local authorities must provide information about the four options for self-directed support in a format suitable to the person’s communication needs. In order to enable people with hearing loss to make an informed choice about their support, some may require communication support such as a BSL interpreter or an electronic note taker. Additionally, all written information materials, letters etc. should be in plain English to make them more accessible for BSL users.

We are aware that the Financial Memorandum to the Bill includes some provision for workforce development and training in connection with the implementation of the Bill. Deaf awareness training for relevant local authority staff would lead to greater levels of knowledge about how to arrange for communication support and when this might be needed. In some cases, very simple changes like looking at a deaf person (not down at a sheet of paper) while speaking can make a big difference and facilitate an informed and empowered decision for a service user who has a hearing loss. Given an apparent lack of clarity on take-up of direct payments among people with sensory impairment, we would welcome further thinking around how the four options for self-directed support can be promoted and made truly accessible and easy to understand for people with hearing loss.

Additionally, there may be opportunities for local authorities to utilise local support networks and third sector organisations to achieve better results for the sensory impaired as well as efficiencies through more joined-up working and the promotion of links between local authorities and voluntary organisations.

6. Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?

We have no specific comments on this issue.

7. Do you have any views on the provisions relating to adult carers?

We have no specific comments on this issue.

8. Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?

We have no specific comments on this issue.

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?
We have no specific comments on the Financial Memorandum.

10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?

We have no specific comments on this issue.

11. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

No.

Action on Hearing Loss Scotland
24 April 2012
Social Care (Self-directed Support) (Scotland) Bill

AIMS Advocacy

Comments on Social Care (Self-directed Support) (Scotland) Bill

We are disappointed that the bill does not include specific reference to access to independent advocacy for people offered Self Directed Support. While we recognise that it may be considered that independent advocacy is assumed to be included in terms such as ‘any assistance that is reasonably required’ we consider that it is different enough to merit separate consideration.

Organisations such as ours have experience and expertise in supporting people to explore different options and their possible implications, of making informed decisions and of helping people represent their views to other people. As independent advocacy is the only thing we do, we are as free from conflicts of interest as we can be. We are not an advice or information providing organisation and can therefore be sure that the views we put forward are those of the individuals we advocate for, and not influenced by the opinions or views of other people.

AIMS Advocacy
19 April 2012
1. Are you generally in favour of the Bill and its provisions?

I welcome the opportunity to comment on the Bill and recognise the effort that has been made by the drafting team to involve local authorities and others in the development of the bill through the consultation opportunities in which members of my staff have been involved. Although I did not support the need for legislation in this area, I recognise that this is being brought forward and that we must all work together to ensure that this legislation effectively supports the personalisation agenda and is underpinned by values such as self-determination, choice and independence. I believe that on the whole the draft bill achieves this.

In particular, I welcome the duty on local authorities to provide people with a range of options so that individuals can decide how much choice and control they want. I also support the position which ensures that self-directed support will be available to all individuals receiving social care services within the context of clearly defined eligibility criteria. This includes adults receiving support under the Social Work (Scotland) Act 1968 and children receiving support under the Children (Scotland) Act 1995. I support the principle that choice should no longer be a default position of arranged services with the option of a direct payment for particular groups of people in particular circumstances.

2. What are your views on the principles proposed?

I agree with the general principles underlying the Bill.

I agree that an emphasis on placing the person at the centre of their assessment and support plan is essential and a general principle which is set to develop the way that social work staff undertaking assessments conduct their work. This is a fundamental value of social work practice. In some regards it is disappointing that such values set out in the general principles are not already embedded in practice and that there is a need for legislation to ensure that individuals have a right to involvement, choice and control. There may be some practical issues with the extent of ‘assistance that is reasonably required…..to make an informed choice…’, for example should such assistance be independent of social work or can this function be supported by social work staff? I expect that this will be explained in greater detail in forthcoming guidance.

3. What are your views on the four options for self-directed support proposed in the Bill?

I support the options for self directed support as they enable individuals to make decisions about how much control they wish to exercise over services. I am surprised by the extent of the rewording from the original draft consulted on in March 2011 as there appears to have been a step backwards in relation to individual budgets. Section 8 and Annex A of the policy memorandum make reference to ‘individuals being informed of a transparent single amount of money or resource’ and to the
‘budget is defined’ but I can no longer see reference to this in the legislation other than in relation to the establishment of a direct payment. I would have preferred such a reference to be maintained. This should however refer to a resource allocation which is identified as a maximum amount. I believe this would support the widely perceived view that there is some expectation that self directed support will result in costs being driven down. The establishment of a maximum individual budget would also support a lesser amount being available to meet an individual’s needs within the context of the outcomes they aim to achieve. Although the term ‘individual budget’ was not clear it did lead me to believe that fairness and equity in the allocation of finance was also a central value of the SDS legislation. Perhaps in guidance a glossary of terms would have assisted clarity. I understand that the concept of fair and equitable resource allocation remains in the national strategy although I am surprised by what I see as a weakening of the legislative intentions by the loss of this reference in the draft bill.

4. Do you have any comment on the proposal that the self-directed support options should be made available to children and their families, together with the proposal that the degree of control a child may have over the process should vary with age?

I would suggest that the proposals for the self directed support options in respect of children should be limited to children with disabilities and young carers. To extend this option to all children and families receiving services under section 22 of the Children (Scotland) Act 1995 undermines our progress in working with children and families on a voluntary basis. In Angus our services are perhaps different to those provided in other authorities. Some 80% of our work with all children and families is undertaken on a voluntary basis. Working voluntarily with families aims to develop a more equal relationship where everyone is working together to improve the outcomes for children and I believe this approach leads to better outcomes for families. In implementing SDS however we believe that there must be a balance between need and risk and providing options to some families where visiting family support staff are part of the approach to managing risk may undermine our work on a voluntary basis. We are concerned that this may lead to more statutory intervention than we have previously undertaken. I have found little or no evidence in relation to SDS in this area and it does not appear to have been the subject of any of the pilots that have supported the development of work on SDS in Scotland.

5. Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

I believe that there will be challenges in supporting individuals who have difficulties in making or expressing informed decisions to maximise choice and control over their own lives. I believe the balance between ‘reasonable support’ and the use of powers provided under adults with incapacity legislation provides a sound platform for the potential development of support options such as advanced statements, circles of support or other networks around the individual which I expect will be further underpinned by detailed guidance.
Direct payments

6. Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?

Creating a legislative platform where innovation and creativity in meeting outcomes for people who require support is challenging. Such developments will have to be balanced with our responsibilities to ensure assessed needs are met and follow the public pound. It will be very important going forward to ensure that the wider public sees value for money in publicly funded support arrangements. I hope that guidance will provide sufficient detail to ensure that such responsibilities are not mutually exclusive and can be managed effectively.

Adult carers

7. Do you have any views on the provisions relating to adult carers?

The level of services provided to carers through respite and short breaks is increasing year on year. These services are provided following a carer’s assessment or an indirect assessment through the assessment of the person they care for. Currently services provided to support carers through either assessment route meet the needs of both carers and the person they care for at the same time. The provisions relating to carers potentially open up the arrangements for services to be delivered through SDS. This is a positive way forward however in agreeing the outcomes to be met with carers it will always be essential that the needs of the cared for person are also met at the same time within the same resource. There are no additional resources that would meet outcomes for carers where there is a further additional cost to meeting the needs of the person they care for. It is essential that guidance ensure that the outcomes for carers and those they care for are intrinsically linked.

8. Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?

I continue to have concerns about the employment of close family relatives. This fundamentally changes the relationship between family members and raises issues about contingency planning, risk management and adult protection. I would argue that any revision of the regulations relating to the employment of close relatives could lead to such potential conflicts of interest. I would advocate that the Bill should give local authorities discretionary powers to allow an individual to employ a close relative in exceptional circumstances.

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

A separate response on the financial memorandum has been submitted on behalf of Angus Council.
Effects on equal opportunities, human rights, island communities and sustainable development.

10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?

Yes

Other matters

11. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

It would have been helpful if the report on the SDS pilot in relation to health services in Lothian had been available. This would have allowed better consideration of the application of SDS within health services or where joint services are required. In respect of experience in Angus I would have liked to see a greater application of this legislation to certain health services. This would be particularly effective where individuals supported in the community who have complex needs requiring a level of integration of their social and healthcare were, for example, able to access a direct payment directly from the NHS. Accessing direct payments for physiotherapy and other allied health professional services is one area in particular that has been raised by parents and carers in consultation events on the implementation of SDS in Angus.

Angus Council has been clear throughout the consultation process that it does not support the use of direct payments to purchase residential accommodation this is reflected in Angus Council’s response to the earlier consultation in respect of the Self Directed Support Bill.

The introduction of direct payments to purchase residential care may lead to variable rates being charged by providers would not link well with national contracts, top up fees may become an issue, and there is a risk that service users or their circle of friends would not pay. I would argue that there are no clear demonstrable benefits to service users, providers or the local authority in implementing direct payments to purchase care.

Angus Council Social Work and Health
23 April 2012
1. Are you generally in favour of the Bill and its provisions?

The Bill outlines the proposals for all clients to be offered choice in the provision of services. Given the scope of section 13 “Power to make further provisions about direct payments” there are many areas that remain unclear. It may also be beneficial to consider the identification of persons having an interest in the care of the supported person and involvement of them in assisting the supported person in making decisions about relevant matters” more broadly than as defined in Section 5 (4).

2. What are your views on the principles proposed?

The principles of the Bill reflect what should be good “social work practice”.

3. What are your views on the four options for self-directed support proposed in the Bill?

The four options are clearly defined.

4. Do you have any comment on the proposal that the self-directed support options should be made available to children and their families, together with the proposal that the degree of control a child may have over the process should vary with age?

I would agree with the proposal that the degree of control a child may have over the process should vary with age including that a child over 12 years is “presumed to be of a sufficient age and maturity” however I am unclear as to how this translates into the responsibility for managing a “direct payment”.

5. Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

I agree with the provision relating to the provision of information and advice but would wish included along with “information about how to manage support” some reference to the responsibilities involved. I have already commented above regarding the involvement of persons having an interest of the care of the supported person.

Direct payments

6. Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?
Much will depend on any regulations made under Section 13 but would agree that the Bill should increase the options offered to people requiring support.

7. Do you have any views on the provisions relating to adult carers?

I would support the choice of the four self directed options being offered to carers.

8. Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?

I do not agree that there should be no restrictions on whom an individual may employ. Given that the Local Authority will be meeting the costs of the service being provided I would expect that any individual employed should at least be subject to disclosure checks. I am concerned that the responsibilities of the individual as an employer are not given greater prominence.

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

The transitional costs for both Local Authorities and service providers may be considerable due to the “overlap” of services being provided but accept that the amount of this is very difficult to predict as it involves predicting the number of people who will choose self directed support and the services that they then chose.

Effects on equal opportunities, human rights, island communities and sustainable development

10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?

Yes

11. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

It is only within the Explanatory Notes and other accompanying documents that (in paragraph 92) the additional “burden” either administrative or financial (on individuals) is made clear. Given the considerable responsibilities accompanying option 1 (direct payments) this should be made clearer within the Bill.

It is only within the Policy Memorandum that reference is made to Local Authorities being empowered to allow the employment of family members but this being subject to regulation. This again raises the issue of disclosure (see question 8) as both Child and Adult Protection research highlights that abuse
is often perpetrated by family members and also raises the issue of undue pressure.

Ruth Buchanan (individual)
23 April 2012
Social Care (Self-directed Support) (Scotland) Bill
Camphill Scotland

Camphill communities in Scotland support more than 400 children, young people, adults and older people with learning disabilities and other support needs, through a mixture of residential and day support. All 12 Camphill communities in Scotland are members of Camphill Scotland, which exists to promote and represent Camphill communities.

1. Are you generally in favour of the Bill and its provisions?

We are fully supportive of the policy drive to ensure that individuals have choice and control over the support they need, and are generally in favour of the Bill and its provisions as we believe that it has the potential for very positive change.

Our concerns lie in the areas which the Bill leaves open, and in its implementation.

- The Bill leaves open to regulations the issue of whether or not people wishing to access residential support will be eligible for Direct Payments (and potentially SDS overall). We do not believe that the Parliament should limit the choice and control of individuals who might wish to choose to be supported in a residential setting. We explore this further under questions 3 and 6 below.

- Like many providers, we have concerns that the introduction of SDS in some local authority areas has been accompanied by budget cuts. We understand that this is not inherent in the Bill, but would ask the Committee to be alert to this and to monitor developments, both now and during implementation if the SDS Bill is passed.

2. What are your views on the principles proposed?

We support the principles of “involvement”, “informed choice” and “collaboration” and would like these to underpin all aspects of support for people, as we believe that they will lead to support which is right for each individual. We have some concerns, explained further below, that the Bill and subsequent regulations may limit choice for people who wish to access residential support, and would urge the Committee to refer back to the Bill’s laudable principles regularly when considering all parts of the Bill.

We wonder also whether the duty on local authorities to “have regard to” the principles is strong enough? Where local authorities also have regard, for example, to financial restrictions, is this duty strong enough to ensure that the
principles of choice and control for the individual always underpin local authority decision making?

3. What are your views on the four options for self-directed support proposed in the Bill?

We support the fact that there are four options available. The mix of options allows individuals to choose the option which is right for them, and if implemented properly will be a good thing. We are also very pleased to see that individuals will not be restricted in which options they can access on the basis of their abilities or capacity.

We have some concerns related to two of the options.

Option 1
We welcome the fact that the policy memorandum accompanying the Bill talks about using the regulations proposed at Section 13 to remove the restriction on Direct Payments for those in residential care, and would ask the Committee to consider this issue in detail as part of its inquiry. We understand that some stakeholders would like to see the restriction on those in residential care continue, and that in fact they may be proposing that those in residential care should not be able to access any self-directed support. In considering this issue, we would ask the Committee to remember that residential care is not only an option for older people. We realise that there may be complexities around the re-negotiation of the national care home contract if people in older people’s care homes have access to direct payments, but we do not believe that this political issue should prevent anyone who requires support from choosing a residential support option, if this is what they would like to do. Camphill communities support hundreds of children, young people, adults and older people with learning disabilities who have decided, along with their families and social workers, that residential care is the best option for them at this time. Of the twelve Camphill communities in Scotland, nine are registered as care homes with the Care Inspectorate, two are registered as care at home/housing support services, and one has both a care home and a care at home/housing support service; it seems very unfair to restrict the choice and control of the people who live in some communities just because of the registration status of the place where they receive support. In recent times, many individuals and families have had to fight harder to secure residential support for their loved ones in the face of financial constraints and policies to promote independent living; access to Direct Payments and self-directed support would be an enormous boon to people for whom residential support is a positive option, increasing their choice and control by removing local authority gatekeepers from the selection of support.
Option 3
We seek clarification as to whether, under option three, a specific amount of money will be identified for the individual’s care and support, as it would be under options one and two. If it is not, and the local authority selects and makes arrangements for an individual’s support without an indicative budget, we have concerns that this will lead to local authorities using monies available under option three to fill and subsidise their in-house services, paying themselves more for these services than they pay to external providers and placing people in these services regardless of suitability. We would ask the Committee to investigate what processes will be in place to ensure that local authorities acting under option three are doing so in the best interests of the individual – for example, will the Care Inspectorate look at this as part of inspections of social work departments?

4. Do you have any comment on the proposal that the self-directed support options should be made available to children and their families, together with the proposal that the degree of control a child may have over the process should vary with age?

Camphill has two residential schools for children and young people with learning disabilities. In recent times, it has become more difficult for families to secure placements with the schools as local authorities have viewed out of area placements as an expensive option. Families have felt disempowered and in some cases have had to seek legal representation to secure the support that is right for their children. Access to all self-directed support options would assist greatly in helping families to source the most appropriate care and support, and giving children a suitable amount of control over the process is important in ensuring that the support is what is right for the child.

We can also see some potential for self-directed support to make the difficult transition from children’s to adult services easier for families to manage, although we would caution that a drop in budget when moving to adult services would mean that transitions are likely to continue to be tricky.

5. Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

It is extremely important to ensure that people have access to free, impartial, information and advice to help them to choose the type of support that best meets their needs. We support the need for independent organisations to provide this advice (not local authorities), but note that independence is not
the same as impartiality; we are concerned that organisations which favour a particular model of support, in particular independent living, may be reluctant to provide information on other models, such as residential support. It will be important that information and advice organisations provide information on the full range of options, to enable individuals to make informed decisions about the type of support that is best for them.

While we welcome the provision in the Bill to provide support to people who may not be able to make informed decisions alone, we have some questions about how this will work in practice. The Bill places a duty on the local authority to identify persons having an interest in the care and support of the individual, but we would highlight the difference between this and an individual’s circle of support (mentioned in the policy memorandum), where they choose for themselves who they would like to help them make decisions. Some of the people who are supported in Camphill communities have little or no input from their families, and choose to be supported in their decision making by other people with support needs and/or people without support needs who live and work alongside them in the Camphill community. We would hope that local authorities would take the wishes of both families (who may not feel able to be involved, for a variety of reasons) and the individual (who should be able to choose others to help them make decisions, regardless of how they know them) into consideration.

6. Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?

This is a very difficult question to answer without knowing the content of regulations which might be introduced under Section 13. Were it to be the case, for example, that regulations were used to remove the restriction on people in residential care from accessing Direct Payments, we would very much support this (as explained under question 3, above).

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

We very much welcome the support for providers which the Scottish Government has made provision for up to 2014/15. This funding/support is very much appreciated, but we are unsure as to whether or not this is long enough to ensure that all providers are properly equipped for a move to SDS.

We are concerned about the assumption in the financial memorandum that money will be saved as people will choose to move away from residential care – this may be the case for some people, but it is very important to recognise
that residential care is a positive choice for some people, and important not to prejudice individual choice by expecting savings to be made.

If it would be useful to the Committee, we would be happy to provide further information on any of the points raised in our submission either verbally or in writing.

Camphill Scotland
24 April 2012
Social Care (Self-directed Support) (Scotland) Bill

Capability Scotland

1. Are you generally in favour of the Bill and its provisions?

1.1. Capability Scotland is strongly in favour of the Social Care (Self Directed Support) (Scotland) Bill and its provisions. The Bill signifies a shift towards a more personalised approach to care and support for disabled people. It is in line with the principle of independent living and will hopefully give disabled people maximum choice and control over their lives and the services they receive.

1.2. As one of Scotland’s larger providers of education, employment and care services for disabled people, Capability strives to provide choice and control in its services. The Bill should facilitate the achievement of these outcomes for our service users and other disabled people across Scotland. As one disabled person commented:

“This should ensure that we control the support we get – rather than the support we get controlling us”.

1.3. The Scottish Government must, however, be aware that the Bill is being introduced at a time of massive cuts to local authority budgets and welfare benefits. As a result, Self Directed Support is understood by many disabled people to be a way of making cuts to their entitlement and their care packages, rather than a means of facilitating independent living. This is largely because several local authorities have used the process of assessing for Self Directed Support as an opportunity to ‘redistribute’ their resources. While this may have lead to a fairer and more transparent system for some (and in some cases possibly freed up resources which were being misused), in many cases it has lead to reduced entitlement, choice and control.

1.4. Laura is in her early twenties and has cerebral palsy and learning disabilities. She and her family had worked with her local authority for years to develop a package of care and find an accessible flat that would allow Laura to live independently. Soon after Laura moved into this flat, her care needs were reassessed as part of Self Directed Support implementation (despite the fact they had not changed) and her package was reduced by 30%. It is likely that Laura will soon have to move back in with her parents despite the effort and expense that has gone into the arrangement. The family are concerned that putting in a complaint will affect the relationship they have built up with the council.

1.5. Laura’s experience is a reminder that if the Scottish Government and local authorities want to introduce choice and control in a meaningful way they must accompany this legislation with adequate funding for social care services. Otherwise, as an employee of a care provider put it, Self Directed Support will do little more than ‘take from the poor to give to the poorer’.
1.6. It is also essential that the resources allocated to each individual are sufficient to cover incidental, consequential and run-on costs of their support. Capability Scotland believes that a provision to this effect must be included in the Bill. For example, where a person chooses to receive Direct Payments the cost of training personal assistants, covering sickness pay and holiday pay must all be included in the calculation, along with any redundancy pay arising at the end of the contract.

1.7. We are also concerned that the redistribution of resources that will result from Self Directed Support will lead to more people being charged for the care and support they receive. In addition, we have concerns that those receiving Direct Payments will continue to have individual contributions deducted or ‘netted off’ of the payment. This unfairly removes their right to challenge care charging decisions before any changes are made. We have raised both of these issues through our membership of COSLA’s Care Charging Working Group and will continue to work with our colleagues on this.

1.8. We also believe there is a need for an independent appeals system relating to local authorities’ decisions on the allocation of support. We do not believe that either internal complaints procedures or judicial review provide an adequate mechanism for appeal. The importance of an independent appeals system goes far beyond the settlement of individual disputes. An awareness that decisions can be quickly, easily and effectively challenged by an external tribunal will impact on the culture of local authorities; hopefully leading to decisions being better documented and easier to understand.

1.9. An independent tribunal should also help to address the imbalance of power between individuals and their local authorities. In many cases disabled people feel disempowered by a lack of information and a fear that using internal complaints procedures will lead to retribution of some kind. Jim, a wheelchair user from Glasgow who attends our policy reference group told us,

“To be honest, even if they had given me information about challenging their decision about how much they charge me, I’m not sure I would have done anything about it. I would have been scared that this would have made them cut or reduce my services. That just can’t happen. The services are too important to me.”

2. What are your views on the principles proposed?

2.1. We agree with the proposed principles. However, we would suggest that principle of ‘involvement’ is replaced with that of ‘meaningful involvement’. There is a real concern that whilst disabled people might be involved in decisions (attending the relevant meetings etc), if they are not always well informed, well supported and confident enough to express themselves then that involvement won’t be meaningful.

2.2. It is essential that disabled people can access advocacy services, as well as any necessary communication support. Capability Scotland staff and service users have provided countless examples of instances where public bodies – including local authorities – have failed to take the views and
concerns of disabled people into account. This is usually because they have underestimated the person’s mental capacity or failed to communicate with them effectively. Users of Capability Scotland’s services have made the following comments:

“People in the community can see my disability and assume that I can’t make decision for myself and talk over me.”

“Lack of confidence is an obstacle as I feel I am unable to speak up for myself.”

2.3. We would also like to see the inclusion of the principle of independent living in the Bill. We believe that this would serve to remind that local authorities that the objective of the legislation is to ensure that disabled people have the same freedom, choice, dignity and control as other citizens at home, at work, and in the community. As yet, the principle of independent living is not enshrined in legislation, despite the Scottish Government’s declared commitment to it. Including the principle in the Bill would be both an important practical and an important symbolic step.

3. What are your views on the four options for Self Directed Support proposed in the Bill?

3.1. We are in favour of the four options presented. The legislation should also make it clear that people can move from one option to the next at any time.

4. Do you have any comments on the proposal that the Self Directed Support options should be made available to children and their families, together with the proposal that the degree of control a child may have over the process should vary with age?

4.1. We are strongly in favour of the proposals being applied to children and families. It is often families that struggle to access support services which fit in with the needs of the family, including other children, as well as the disabled individual.

4.2. The parents of children who use our schools had told us about the problems they face on a day to day basis. These include the need for more individualised support for their children and for better access to sport, social and recreational activities to allow their children to develop their independence and friendships with their peers. Capability Scotland believes that accessing activities of this kind would be facilitated by Self Directed Support.

5. Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

5.1. Whilst we agree with the principles outlined, we would highlight that it is essential that local authorities have a duty to provide information on all of the
options that are available. In particular, disabled people should be made aware of the services and support they could potentially use their resource allocation to fund.

5.2. There is widespread concern amongst the staff and users of Capability Scotland services that local authorities may, either knowingly or unknowingly, be directing disabled people towards the cheapest and/or preferred provider rather than facilitating a free choice. Such an approach not only limits the individual’s choice, it also puts other care providers at a competitive disadvantage.

5.3. Joanne who has Multiple Sclerosis told us, “Our local council are ‘discouraging’ people from the service provider of their choice, in favour of the council ‘preferred’ provider.”

5.4. Local authorities should also make information available about what each of the options involves. For example, in relation to Direct Payments, information should include guidance on planning their care and support, developing terms and conditions, job specification, annual leave, sick pay, absences, handling grievances and paying national insurance contributions. This will help to ensure that those who choose Direct Payments to have a comprehensive understanding of what their responsibilities will be.

5.5. Subsection (3) of the Bill places a duty on the local authority to take reasonable steps to identify people with an interest in the care of the supported person and to involve the relevant people in the assessment.

5.6. There has been extensive discussion amongst Capability Scotland’s staff and services users about who should be involved in the assessment of an individual’s needs and the subsequent development of their support plan. Our main concern is that local authorities do not always involve the individual’s current care provider in the assessment of their needs. We believe that, unless the individual being assessed has any objection, the care provider should always be given the opportunity to contribute to the process.

5.7. This is essential for individuals who do not have an allocated social worker and, as such, have no one with a comprehensive and professional understanding of their requirements and care needs. The involvement of such a person in the assessment is vital for individuals with learning and/or communication difficulties and those who are reluctant to articulate their support needs for fear of appearing to be ‘pushy’ or ‘greedy’. Again, access to an advocacy worker is also essential for all those going through the assessment and care planning process.

5.8. Finally, when we discussed Self Directed Support with those who use our services, one strong theme came through. This was that it should be the individuals themselves, rather than their families, who should have the final say on the support they receive. Most participants agree that their families had their best interest at heart but felt that they were more concerned with keeping safe than supporting them to live a full and independent life. Jordan told us:
“It should be my choice, not my family’s. I lived with my mum as an adult for years because she said I couldn’t cope without her support. It took a big health scare for me to move into where I am now. I always wanted to move out of my Mum’s but I didn’t think it was an option.”

5.9. It is therefore essential that the legislation specifies that family members and other interested parties should only be involved with the individual’s consent.

Thank you for the opportunity to submit evidence to the committee.

Capability Scotland
24 April 2012
Social Care (Self-directed Support) (Scotland) Bill

Carers Scotland

Social Care (Self-directed Support) (Scotland) Bill – Stage 1
Carers Scotland welcomes the introduction of the Social Care (Self Directed Support (Scotland) Bill. This response aims to provide our views on what we believe are key issues affecting carers within the Bill. This builds on our earlier response to the draft Bill and discussions with the Bill team.

In the first instance, Carers Scotland believes that the Bill, building on the Self Directed Support Strategy\(^1\) is a positive development, increasing the availability, access to and choice of tailored support for individuals.

We support the four options proposed within the Bill including ensuring that the choice of retaining current support is valid. However, it is essential that local authorities and others continue to engage proactively with individuals and carers on any change to provision that would affect this legitimate choice, for example, when proposing reductions in “traditional” services such as day centres.

Principles: recognition and involvement of carers
Carers Scotland believes that there is an opportunity within the legislative principles to fully recognise the key role that carers play in supporting disabled and older people in their own homes and communities. The principles outlined in guidance for the Community Care and Health (Scotland) Act 2002 recognised carers as key partners in care and the “Caring Together: Scotland’s Carers Strategy 2010” goes further to state that carers should be seen as equal and expert partners in the provision of care. However, whilst we welcome this recognition, a principle laid out in legislation will have greater strength.

In addition, we believe that Section 1(4) of the Bill could be improved by legislating to ensure that local authorities are instructed to collaborate with any carer when undertaking an assessment and deciding what support to provide to the individual. By ensuring this is action is taken from the outset, we can ensure that carers to be fully involved. This would enable both the individual and their carer to be able to discuss what care the carer is willing and able to provide and what support the individual wants from their carer, if any. This also presents an opportunity to ensure that carers are identified earlier, offered a Carers Assessment and thereafter appropriate support. Moreover, this also ensures that an individual’s choice is not reduced.

This local authority collaboration with carers should also include young carers, including those aged under 16. It is essential and appropriate that young carers are involved in discussions and decisions on self directed support. Local authorities may wish to consider working with young carer projects to

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\(^1\) Self Directed Support: A national strategy for Scotland (2010). Carers Scotland has been involved for some time in the Implementation and Monitoring Group of the Self Directed Support Strategy and in its subgroups on support and education/training.
help develop local guidance for professionals and appropriate information for young carers to enable this activity.

**Informed choice, information and advice**

Carers Scotland believes that it is essential to ensure that statutory and voluntary organisations have sufficient capacity to ensure that they can provide advocacy, advice and information and support. We welcome the investment made in building capacity of support services and in carers’ information and training through the self directed support strategy\(^2\). However, demands on these services with the implementation of the Bill must be monitored to ensure that organisations have the capacity to respond and ensure that individuals and carers have access to timely and appropriate information and advice.

However, we have particular concerns over the availability of independent advocacy for individuals and carers. The Scottish Independent Advocacy Alliance report “More for Less”\(^3\) found that 95% of respondents reported an increased demand for their services over 2 years, with over a third (36%) reporting an increase of between 16% and 30%. This increased demand for independent advocacy reflects changes to legislation, service provision and delivery and reductions in support\(^4\). Moreover, it is within an environment of reductions of around 32% from statutory funding and similar decreases in trust and foundation funding.

Therefore, to ensure that individuals and carers have access to appropriate independent advocacy, it is essential that, in implementing this new legislation, the capacity of independent advocacy services is sustained and increased.

**Support for carers**

* **A power to support versus a statutory duty**

Carers Scotland supports the proposal to extend self directed support to carers and young carers. However, we continue to believe that this should be made a *duty* to offer self directed support for carers, rather than simply a *power*. We believe that enacting the legislation simply as a power will result in inequity with significant variances in practice, and thus support for carers, across local authorities.

As stated earlier, carers are recognised as key partners in care. As such carers require resources to assist them to continue to care, in the same way as is provided to health and social care staff. Under current legislation, there are no specific duties to provide services to carers. By legislating for a statutory duty rather than simply a power, this Bill presents an opportunity to deliver a limited right to some practical support, subject to assessed need.

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2 And in dedicated carer support and information through NHS Carer Information Strategies and local authorities.


4 “Cuts to public services inevitably result in more demand for independent help”.
Whilst we recognise that there may be costs associated with the delivery of duty rather than a power, there is a strong economic case for supporting carers in this way. Providing small interventions at an early stage and/or at the right time can prevent a crisis and a consequent breakdown of care, necessitating the provision of significantly more costly services. Providing support at the right time can also prevent carers from having to give up paid employment and activities that sustain their life outside caring, resulting in negative consequences for their finances, health and wellbeing.

**Costs**

However, whether a duty or a power, Carers Scotland has some concerns over the assertion within the Financial Memorandum that there will be no increased financial requirements (on the implementation of a power to support carers) but rather a simple transfer of resources. To make this provision meaningful it is important that additional funds are made available to local authorities and that assistance to carers through self directed support should not be at the expense of existing support services e.g. carers centres and condition specific carer groups.

**Carers Assessments**

Furthermore, we are concerned that access to self directed support is solely through a Carers Assessment. In proportion to the number of carers in Scotland, very few carers receive a Carers Assessment. Obtaining and completing a Carers Assessment can be a long process and, we believe, is unnecessary in the event of only a short or small intervention being required or where a speedy intervention to provide support to a carers could make a difference. Local authorities and NHS bodies should be provided with the power to make such interventions without the requirement of a full Carers Assessment. Furthermore, local authorities should consider the role of carer support services in continuing to facilitate speedier self assessment processes.

In addition, many carers do not qualify as “substantial” and “regular” carers and thus for a Carers Assessment. However, they would benefit from small preventative interventions, particularly to help sustain employment or wellbeing. Carers Scotland therefore recommends consideration of extending self directed support to carers who do not meet the qualifying criteria for a Carers Assessment, subject to appropriate guidance. As part of “Caring Together: Scotland’s Carers Strategy” the Scottish Government intends to commission practice guidance for Carers Assessments. This could prove a useful vehicle for exploring the social and costs benefits of providing preventative support to all carers.

**Charging**

The Bill as proposed will give local authorities the power to charge carers for the support they receive under self directed support. Carers Scotland strongly opposes this proposal. To replace the care carers provide would cost £10.3

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5 Action Point 9.3
billion each year\textsuperscript{6} and, as key partners and the largest contributor of care, it would be unjust to charge them for services that support them to sustain their caring role. (We would not, for example, consider charging health or social care staff for practical support or training to help them do their job). Moreover, this proposed approach would lead to further inequality for carers depending whether or not their local authority chose to make charges for support or the levels of local charging. We therefore recommend that Section 16 must be amended to reflect this.

**Separate budgets**

It is also important that any provision of self directed support to an individual carer is held separately from that of the person they care for and that the level of budget for the individual is unaffected. It cannot be assumed that the needs of both are the same and “sharing” of a budget could reduce choice to one or both parties.

**Support for young carers**

Carers Scotland welcomes the recognition that young carers could benefit from the same limited interventions as carers aged 16 and over, particularly in supporting education and life outside caring. To support this, we recommend that the Scottish Government and partners including young carers’ services work together to support delivery and the provision of appropriate guidance, information and advice.

**Employment of Close Relatives**

Carers Scotland welcomes the recognition that the employment of close relatives is often the best solution for individuals and will help deliver better outcomes. We further welcome the decision to reduce the restrictions currently in place and develop regulations for local authorities to consent to this solution when it is an informed choice for the individual and their carer. In particular this presents opportunities to support carers who do not currently receive any or limited support.

In research by Carers UK, 45% of respondents employed a family member and 65% of carers believed the rules about who could be employed with a direct payment should be less restrictive so that close family members could be employed more easily.

"Direct payments are the best thing that could have happened to our family. My husband would not readily accept care workers, luckily our local authority accepted our employing a family member as he has complex needs. Prior to this I coped and struggled on, virtually alone, for 20 years with no input from Social Services. If direct payments had not been available for our family, I would still be going it alone."

\textsuperscript{6} Valuing Carers (2011), Carers UK
However, to prevent any inequality, it is essential that regulations are developed in a way that provides a nationally agreed framework for consistent delivery.

**Conclusion**
In conclusion, Carers Scotland would like to reiterate our continued support for self directed support and our welcome of the proposals within the Social Care (Self Directed Support) (Scotland) Bill 2012. Whilst we have some concerns around the proposed provisions to support carers, we believe that self directed support will deliver more choice and therefore better outcomes for both individuals and carers.

Carers Scotland
24 April 2012
Children in Scotland is pleased to take the opportunity to submit evidence on the Social Care (Self-directed Support) (Scotland) Bill. We welcome the introduction of a Bill that increases individual/family choice and control over support. While the Bill is titled ‘social care’, it seems likely that many payment recipients may use their payments to access support in other areas that are equally relevant to their specific circumstances/conditions, such as healthcare and education. We would not want to see a situation where self-directed support meant people losing payments and/or the suitable arrangements they already have in place.

The Bill states that the ‘supported person’ making decisions on support for a child must (so far as practicable and taking account of the age and maturity of the child):

(a) give the child an opportunity to indicate whether she/he wishes to express her/his views directly;
(b) provide an appropriate opportunity for the child to express his/her views (if that is what is preferred by the child); and,
(c) take into account those views expressed by the child.

For the Bill’s purposes, a child who is 12 years of age or over should be presumed to be of sufficient age and maturity to form a view about needed/wanted support.

We welcome the fact that the Bill makes reference to the supported person taking into account the views of children aged 12 and above before making a support choice. However, the right to be heard does not apply only to older children and adolescents. A child under the age of 12 should also have their views on support taken into account -- whenever it is feasible to do so. However, the same presumption of capacity does not exist for a five year-old as for a thirteen year-old.

Where the supported person is the child’s parent this may not be an issue, as they are likely to discuss options with their child and have their best interests at heart. If the supported person is not the child’s parent (biological or de facto), some assistance may be required in communicating options to that child and arriving at an understanding of the child wishes and needs. Arriving at a considered decision may also require support for children and young people of all ages who have a communication difficulty.

The Bill proposes that children and families are given four options for self-directed support in the Bill – ‘direct payment’, ‘direct available resource’, ‘mix of approaches’ and ‘local authority arranged support’. We support the provisions in the Bill for providing them with information and advice to help them choose among the various options and be supported in doing so. As
above, the views of children of all ages should be taken into account in this process where possible.

Measures such as ‘easy read’ leaflets and packs would be beneficial to children (and often parents, too) in truly understanding the options available to families. Appropriate assistance in obtaining the best support available should be offered, especially to those who are not confident navigating the (often complicated) ‘system’. Advocacy is another way in which a family’s views on the type of support they want to receive can be effectively communicated.

In addition to the above points, we would also note that, as families and their circumstances are liable to change, there should be regular opportunities to review and make changes to support – as and when required. Local authorities should also monitor and evaluate self-directed payments in their area – and then produce robust data indicating whether (and where) it is successful. Feedback from users is an essential part of this evaluation/data.

**About Children in Scotland**

Children in Scotland is the national umbrella agency for organisations and professionals working with and for children, young people and their families. It exists to identify and promote the interests of children and their families and to ensure that policies and services and other provisions are of the highest possible quality and are able to meet the needs of a diverse society. Children in Scotland represents more than 400 members, including the majority of Scottish local authorities, all major voluntary, statutory and private children’s agencies, professional organisations, as well as many other smaller community groups and children’s services. It is linked with similar agencies in other parts of the UK and Europe.

The work of Children in Scotland encompasses extensive information, policy, research and practice development programmes. The agency works closely with MSPs, the Scottish Government, local authorities and practitioners. It also services groups such as the Cross Party Parliamentary Group on Children and Young People (with YouthLink Scotland). In addition, Children in Scotland hosts Enquire - the national advice service for additional support for learning, and Resolve: ASL, Scotland’s largest independent education mediation service.

Children in Scotland
25 April 2012
Social Care (Self-directive Support) (Scotland) Bill

City of Edinburgh Council

1. Are you generally in favour of the Bill and its provisions?

The City of Edinburgh Council is supportive of self-directed support being defined in statute and is broadly supportive of the Bill and its provisions.

2. What are your views on the principles proposed?

The City of Edinburgh Council is supportive of the principles as laid out. However, it is our view that the ‘devil is in the detail’ and therefore the guidance that is issued will be crucial in terms of:

- embedding the cultural change, which will be required to encourage “involvement”, “informed choice” and “collaboration”; and
- the way in which duties will be enforced and evidence provided that local authorities are acting in line with the duties.

3. What are your views on the four options for self-directed support proposed in the Bill?

The City of Edinburgh Council supports the introduction of all four options.

Whilst the Council currently makes use of all four options, option 2 has only been used on a small-scale. For example, a “Break Away” project, which supports people with learning disabilities to choose alternatives to traditional residential respite care at the same cost. ‘Brokers’ work with individuals to identify what they would like to do, then match people with similar interests and help them take the breaks they want.

The Council believes that making option 2 available on a much wider scale will present significant challenges in terms of time, resources and cultural change. There will be significant training and development needs for the workforce and for providers.

4. Do you have any comment on the proposal that the self-directed support options should be made available to children and their families, together with the proposal that the degree of control a child may have over the process should vary with age?

The City of Edinburgh Council welcomes the proposal that self-directed support should be extended to children and families where services are to be provided on the basis that the child or young person is deemed to be “in need” under the Children (Scotland) Act 1995.
However, the Council remains concerned that the provisions of the Bill do not take adequate account of the fact that some children who fall into this category are living in chaotic families who would not be able to take on additional self-directed support responsibilities or management of the child’s support. However, the draft Bill will change the position from one of deciding whether it is “appropriate” to offer a direct payment or some other form of self-directed support under current legislation, to offering the four options for self-directed support set out in the draft Bill, unless the local authority considers the person is “ineligible” to receive direct payments.

The current guidance on the capacity to manage a direct payment does not cover the kinds of issue of concern to social work services for children and families, which can currently be taken into account in the decision as to whether it is “appropriate” to offer a direct payment. It is the Council’s view that this issue needs to be clarified through regulation and guidance.

The Council supports the proposal that the degree of control a child or young person may have over the process should vary with age and the fact that section 7 appears sufficient to bring young carers into the framework of self-directed support.

5. Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

The City of Edinburgh Council is satisfied with the provisions relating to information and advice. It is our view that timely and high quality information plays a key role in the prevention agenda. However, there will be a need to ensure that any information databases are maintained to ensure information remains accurate at all times. This will have a resource implication.

The Council agrees that carers, families and friends should be involved in assisting those who have difficulty in making an informed decision. This reflects our current practice. However, further clarity on the local authority’s responsibilities for those adults who have been assessed as lacking the ability to make an informed decision would be welcomed.

In particular, it would be helpful to make specific reference to the local authority’s responsibilities under the Adults with Incapacity (Scotland) Act 2000, including the requirement to make any intervention in keeping with the principles of that legislation.

In addition, it would be helpful to state that the management of the financial aspects of self-directed support could take place under one of the other measures within the legislation, such as the “intromission of funds”. This would address the common misconception that a full guardianship order is always required when an adult lacks the capacity to make financial or welfare decisions.
6. Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?

The extent to which the Bill can achieve this is dependent upon the regulations that will follow. The City of Edinburgh Council supports the intention to issue regulations rather than rely solely on guidance. The Council suggests that a standing group is created for this purpose to ensure that legislation is regularly consolidated and reviewed, and would welcome the opportunity to be represented on such a group.

Furthermore, it would be helpful if a timetable for the publication of regulations were issued at the earliest opportunity.

7. Do you have any views on the provisions relating to adult carers?

In a response to previous consultation on the Self-Directed Support Bill, the City of Edinburgh Council raised a concern regarding the wording of this section of the Bill and proposed a re-drafting to make it clear whether councils have a power or a duty to meet the assessed needs of carers in their caring role. This has not been wholly addressed.

It is the Council’s view that if a local authority has a duty to assess needs, it should also have a duty to meet them. However, the financial and resource implications of such a change would need to be recognised and addressed in the allocation of funding.

8. Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?

The City of Edinburgh Council is concerned that the lack of restriction on the categories of people who may be employed will lead to the creation of a two-tier workforce, i.e. those working in regulated services who are subject to PVG legislation and required to undertake mandatory training in key care subjects, and those employed as Personal Assistants who are not subject to any specific requirements. We believe this is likely to inhibit the Scottish Social Services Council’s objective of having a fully registered, qualified social care workforce and, as the use of Personal Assistants increases, this will create potential risks for often vulnerable employers. We would wish to see some basic level of accreditation for Personal Assistants, and as a minimum a requirement that they be made subject to PVG checks. Where the nature of the role to be performed requires it, employed staff (excluding family members) should also have an appropriate SVQ qualification.

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

The Council believes that the Financial Memorandum correctly identifies the areas in which costs are likely to be incurred as a result of the
implementation of the Bill and the wider strategic framework. The Memorandum demonstrates a good grasp of the range of variables, which make it difficult if not impossible to estimate the overall short and long term costs with any degree of accuracy.

However, the Council is not convinced that self-directed support will become cost neutral in the long-term and is concerned that the level of transitional funding to be made available will be insufficient. The commitment to the ongoing monitoring of costs is therefore welcome.

10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?

The City of Edinburgh Council is satisfied that assessments have taken place in relation to the impact of the legislation on equal opportunities, island communities and sustainable development, and believes that the conclusions reached are reasonable.

11. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

It is understood that regulations will be issued by Ministers to determine who will be eligible for self-directed support. In the Council’s view this should not apply to people who are experiencing an emergency or crisis, for example, involving homelessness, and who only have need of a short-term service to resolve their situation and to resettle them in accommodation. There will be other situations where self-directed support will not be appropriate. The resources and time required to complete an assessment for self-directed support would mean an unacceptable delay in providing a service to people to assist them in averting or negotiating their crisis.

While the Bill does place a duty on the NHS to deliver self-directed support in connection with the delivery of social care services, when acting on behalf of a local authority, it does not extend this to wider NHS services. The Council believes that this does not reflect the wider policy agenda in terms of the integration of health and social care in order to improve services to citizens by removing organisational boundaries. Whilst recognising that it would be inappropriate to extend self-directed support to all NHS services, there are some circumstances where we believe it would be beneficial for citizens to be able to exercise choice and control over the combined health and social care resources available to support them.

City of Edinburgh Council
23 April 2012
Social Care (Self-directive Support) (Scotland) Bill

Coalition of Carers in Scotland

1. Key Recommendations

1.1 We warmly welcome the Self Directed Support Bill. The Bill is a positive step in bringing together and extending legislation in relation to self-directed support and in ensuring there is greater clarity and easier access to direct payments and other delivery mechanisms. We believe that the Bill will make it easier for care recipients to choose to direct their own support and will increase the uptake of direct payments from specific care groups, who currently have a low awareness of SDS, such as children with disabilities and their carers.

We agree with the four options proposed replacing the original proposal for people to ‘Opt Out’ of self-directed support. While direct payments provide an opportunity to extend choice and control to service users and carers, it is also important to recognise that many people are satisfied with their current provision and that wanting to retain existing arrangements is a legitimate choice. The four options provide a better balance in allowing people to determine how much involvement they want in the design and management of the services they use.

1.2 While we support the Bill we feel that it could be significantly strengthened in some areas, particularly in relation to:

- recognising carers as equal partners in care
- ensuring carers have equal access to support across Scotland, including through the provision of a direct payment
- extending the ability for people to employ a relative through a direct payment.

1.3 We also have concerns about the implementation of the Bill and the need for clear guidance and direction to local authorities in relation to adhering to the principles of SDS, ensuring there are robust and fair processes and timescales in relation to implementation and that outcomes for service users and carers are clearly recorded, monitored and evaluated.

2. Recognising Carers as Equal Partners in the Provision of Care.

2.1 We welcome the recognition of the key role that carers play in the provision of health and social care in Scotland

‘Without the contribution of Scotland’s carers the health and social care system would be unsustainable.’ (Social Care (Self Directed Support) (Scotland) Bill, Policy Memorandum)

2.2 The Community Care and Health Act, 2002 (Supporting Guidance) recognised carers for the first time as ‘partners in care’. The Scottish Government and COSLA extended this by recognising carers as ‘equal partners in care’ in ‘Caring
Together’ Scotland’s Carers Strategy, 2010. While the SDS Bill acknowledges the vital contribution carers make it falls short of recognising them as equal partners. The Minister Michael Matheson MSP, recently stated that the shift towards SDS is one of the most significant developments in social and health care provision for the last decade. The role carers will be required to play in the success of this service redesign cannot be understated. It is therefore imperative that the principle of acknowledging carers as equal partners is embedded in the Bill and accompanying guidance.

3. Direct Payments for Carers - Duty versus a Power.

3.1 The Bill provides an opportunity to not only recognise carers, but to ensure they are appropriately supported in their caring role. As stated in the policy memorandum:

‘The Bill helps to deliver the strategy by providing a power to local authorities to release support to a carer following a carer’s assessment. No specific power exists for this at present although in practice authorities can and do provide a range of services and support to carers’

3.2 Despite the growing recognition of the contribution carers make to health and social care provision, carers have never had a right to access support to assist them in their caring role. The SDS Bill provides the opportunity to rectify this by placing a duty rather than a power on local authorities and new joint health and social care structures to provide carers with support following an assessment.

3.3 While it remains a power there will always be very diverse practice and interpretation across Scotland’s 32 authorities and a danger to perpetuate current inequity and the postcode lottery of provision and eligibility of service users and carers.

3.4 At the moment the Bill proposes that the power is enacted following a carers assessment, thereby only providing carers with services they are assessed as needing. We propose this should be a duty in the same way as it is for service users who are assessed as needing a service and fit the local eligibility criteria. Failing to extend this duty to carers to apply in the same way as it does for service users could be prone to interpretation as discriminatory practice.

3.4 Local authorities will interpret a Power in different ways leading to inequity for carers across Scotland. It will result in some carers being able to access services and a direct payment following an assessment, while others with the same level of need will be denied the same rights. Until supporting carers is a statutory duty carer support services will always be vulnerable to cuts, particularly given the current and future pressures on health and social care funding.
3.5 The economic benefits of providing timely, preventative support to unpaid carers has been recognised by the Scottish Government and needs no further explanation. It therefore makes no economic sense to place restrictions on providing this support to carers following an assessment of their needs.

3.6 It is important that the needs of carers are recognised within the assessment process for SDS for the person they care for. Local authorities need to avoid the danger of making assumptions about a carer’s ability and willingness to contribute to care. It is also important to recognise and resource carer support. However, this should not be included in the care for person’s direct payment as happens in some local authorities, as this can produce a conflict of interest. For example we have evidence of carers reducing their short break provision in order to be able to direct more resources to higher cost services for the person they cares for, despite the impact on their own health and wellbeing. Similarly, this situation could work in reverse with the cared for person resenting the use of ‘their direct payment’ for carer support. There cannot be a presumption that the needs of carers and the person they care for are always in alignment. This is why it is essential that carers are able to access a direct payment in their own right.

4. Carers Assessments and considerations Relating to Carers Accessing a Direct Payment

4.1 It is important to strengthen carers assessments to ensure effective implementation of carers ability to access a direct payment. There are many excellent examples of outcome focused carers assessments, such as Talking Points, but these are not in place in all areas of Scotland and uptake for carers assessments is still poor. Evidence from many local authorities suggests continuing low level of carer assessments, which would undermine the intention of new legislation. Further investment is required to ensure systematic practice is in place in every local authority.

4.2 Scotland has an enviable network of local carer organisations that provide early preventative support services to carers, such as information, advice and advocacy, emotional support, training and access to short breaks, as well as increasingly personalised and person-centred planning in care planning. In almost all cases these services are free to carers and do not require the involvement of statutory services. This existing infra-structure of ‘universally accessible provision’ must be retained.

It is imperative that direct payments for carers enhances and complements existing services by extending the type of support carers can access, for example by allowing carers to design more personalised short break services or access support with practical household tasks. Direct Payments for carers must not be seen as a replacement for existing carer support services, which remain the
mainstay of direct carer support and are vital in protecting and promoting carers health and wellbeing.

4.3 Carers who receive a Direct Payment should be adequately resourced and supported by an independent organisation, such as InControl, to ensure there is no additional burden placed on them in regard to accessing and managing their Direct Payment.

4.4 Providing carers with access to training should continue to be a priority for the NHS and other partners, with carers being able to access free training, such as moving and handling and training courses such as ‘Caring with Confidence’. This should not be funded through Direct Payments to carers.

5. Employing a Relative Through a Direct Payment and Community Development

5.1 At the moment the restrictions placed around employing a relative through a direct payment, which directs local authorities to only permit it in ‘exceptional circumstances’, mean that many people who would choose to employ a relative are unable to do so. The SDS Bill acknowledges that this is often the best course of action for people and is likely to produce the most positive outcomes. ‘Local authorities should be empowered to allow the employment of close family members where this is the supported person’s and carer’s informed choice and where it is appropriate to do so. The Bill therefore contains a power for Ministers to issue regulations in order that they can guide authorities who may need to sanction such arrangements.’ (Social Care (Self Directed Support) (Scotland) Bill, Policy Memorandum)

5.2 We welcome the move to free these restrictions making it easier for people to employ a relative where it is in their best interests to do so. But we argue strongly, that legislation should not simply extend the power of local authorities, but instead extend and embed the right of service users to request the employment of family members. Where service users request the use of direct payments for the employment of family members or relatives, local authorities and future joint planning and commissioning structures should have a duty to consider and respond positively to such requests, and where such requests cannot be granted they should offer clear reasons why the proposal would not be considered to safeguard the care of the service user.

We believe that Ministers should develop clear regulations which adopt such a universal approach to the employment of relatives which not simply focuses on the powers of local authorities, but strengthens the right of service users to request a particular form of care provision. A Scotland wide framework of safeguarding criteria to protect vulnerable adults and ensure care criteria are met will be important.
5.3 There are many examples where employing a relative is the only available or desired option for people. The SDS Policy Memorandum touches on this issue: ‘Self-directed support may, therefore, offer a solution where there is a limited supply of appropriate care and support providers and where there are suitable family carers who are willing to become paid employees for the supported person’ (Social Care (Self Directed Support) (Scotland) Bill, Policy Memorandum) The Coalition of Carers in Scotland recently held several information events for carers in relation to Self Directed Support. In both island and rural and remote communities, such as Shetland, Angus and Aberdeenshire we found examples where recipients of direct payments were unable to access a service by recruiting a P.A or using the services of a care agencies because the area they lived in was too remote to sustain such services. The only way they were able to use their direct payment was by employing a relative.

5.4 There also needs to be a clear strategy and investment in community development to ensure that SDS is able deliver greater choice. Those living in rural and remote areas, from BME communities or looking after people with complex conditions report finding it difficult to employ PAs or purchase services from agencies. While this situation exists SDS cannot deliver on its promise of promoting greater choice and flexibility. It may be that over time services will evolve to fill this gap, however, initial investment is required to lay the foundations for this shift.

5.5 Many conditions result in challenging behavior, or anxiety associated with unfamiliar people. In these circumstances the best outcomes for the service user are for care to be provided by those people, with whom trust has already been established. For example, carers looking after someone with dementia have told us that where care is provided by a care agency there is often a lack of consistency in the staff delivering care, which is upsetting and confusing for the person with dementia. In one situation the carer told us that the local authority had withdrawn a service as her mother had become aggressive as she was upset at the number of strangers providing her with personal care. Their solution was to place her in residential care. However, by employing a relative through direct payments her mother was able to remain in the home and was no longer anxious or aggressive.

5.6. An additional group which often struggles to access appropriate support services are people from BME communities. We recently undertook some joint research with a member organisation (MEAD) around the needs of carers from BME communities in rural Perthshire. We found that one of the biggest barriers to people accessing care was language difficulties and a lack of access to interpreters. Respondents to the survey indicated that an interpreter was available in only 28% of cases. This was the same both for those trying to access an assessment and those wishing to take up a service following assessment. Unless language and cultural barriers are addressed by
mainstream services, employing a relative through a direct payment is the only suitable option for many from BME communities.

6. Issues Relating to Implementation

6.1 The success of the SDS Bill in increasing choice and control to individuals and enabling them to access more personalised, outcomes focused support is dependent on the government issuing clear guidance and regulation to local authorities. At the moment local authorities have been very inconsistent in their approach to the implementation of SDS, which has resulted in some people having a negative experience. It is essential that the Bill is supported by strong guidance ensuring that local authorities adhere to the principles of SDS, that there are robust and fair processes and timescales in relation to implementation and that outcomes for service users and carers are clearly recorded, monitored and evaluated.

6.2 SDS is being implemented at a time when local authorities are facing financial pressures and are seeking to identify savings. It is essential that in implementing SDS local authorities do not view this as an opportunity to introduce cuts to services. The government will already be aware of Glasgow’s policy of introducing personalisation and SDS alongside cuts of approx 20% to individual care packages. This goes against the principles of SDS and reduces choice, forcing people to make difficult decisions in reducing the level of services that support them and narrowing the opportunity to identify new and more innovative models of support.

6.2 In addition, local authorities must not make presumptions about the type of support people will wish to access. Some local authorities have funded SDS by firstly closing more traditional support services such as adult resource centres and residential respite units in order to shift resources towards individual budgets. However, this removes the choice for people to choose more traditional service models, which may produce the best outcomes for their individual circumstances. Choosing to maintain an existing care package rather than moving to something new must be viewed as a legitimate choice.

6.3 The process for implementation needs to be clear and robust, guidance needs to ensure that best practice is adhered to, particularly in the following areas:

a. Developing an assessment process which is person centred and outcome focused. Lessons must be learnt from the poor SEQ process developed in Glasgow.

b. Involving carers as equal partners in the assessment of the person they care for.

c. Ensuring there is a robust review process which monitors outcomes.
d. Ensuring local authorities develop Resource Allocation Systems which are clear, equitable and transparent and adhere to universal standards

e. Ensuring there are appropriate timescales for implementation so that local authorities do not adopt a whole system approach as they have done in Glasgow to the detriment of the individual. There needs to be sufficient time for information dissemination, consultation, for outcome plans to be developed in partnership with the appropriate people. Risk enablement processes need to be thorough and there needs to be ample opportunity for people to take time to be creative in their thinking when it comes to the development of their care plans.

6.4 Information provision and support is at the heart of the successful implementation of SDS:

‘Individuals and families must understand the responsibilities that come with the choices available to them, particularly in managing and choosing to take risks.’ (Social Care (Self Directed Support) (Scotland) Bill, Policy Memorandum)

Service users and carers must have access to independent support agencies who are able to assist and empower them in making decisions and understanding the responsibilities inherent in accessing a direct payment, such as managing payments or employing people. Local carers centres may also play an important role in disseminating information and providing training. For example specialist staff are already employed by local carer organisations in Dundee and Midlothian to assist in the implementation of SDS and several local carer organisations have run awareness events and training to increase carers' awareness of SDS.

5. Charging Carers

5.1 As previously stated carers have been recognised in legislation as ‘partners in care’\(^1\) due to the significant contribution they make to the provision of health and care services in Scotland. The cost of replacing care provided by carers in Scotland is estimated at over £10 billion each year.\(^2\) Carers must be viewed as contributors to care provision, rather than as service users. They should not be expected to contribute financially to the cost of services provided to the person they care for, or to the cost of services which enable them to continue in their caring role.

5.2 Section 16 of the Bill must therefore be amended in line with this principle:

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\(^1\) Community Care and Health Act 2002
\(^2\) Valuing Carers, Carers UK, 2011
Section 16 amends Section 87 of the 1968 Act (authorities' power to charge for services or support). This has the effect that authorities may charge for support provided to carers under section 2 of the Bill. (Social Care (Self Directed Support) (Scotland) Bill, Explanatory Notes)

Coalition of Carers in Scotland
23 April 2012
Social Care (Self-directive Support) (Scotland) Bill

Consumer Focus Scotland

1. Are you generally in favour of the Bill and its provisions?

The Bill makes legislative provisions relating to the arranging of care and support in order to provide a range of choices to individuals as to how they are to be provided with their support. The three general principles that underpin the Bill are involvement, informed choice and collaboration.

Consumer Focus Scotland uses a set of standard consumer principles or tests to highlight consumers’ interests and identify where and why consumer detriment might occur. These principles or tests include key factors such as choice, access, information, fairness, safety, representation and redress. We are therefore supportive of the general principles underpinning the Bill. For the purpose of this question we have focused on the Bill’s principles of choice and involvement, and on fairness.

Choice and involvement

Through this Bill it is intended that individuals are provided with a range of options as to how they meet their assessed needs, and that local authorities should facilitate genuine and informed choice for the individual. Although the principle of choice here is referring to choice with regards to the choice between different options for self-directed support (as outlined in the Bill as options 1-4), we would argue that choice is equally as applicable - or perhaps even more important - within the different options. As examples, the following points from the Bill’s Policy Memorandum support this attitude.

- **All forms of self-directed support, including the direct payment, should be flexible and be able to be utilised in any way provided they meet the agreed outcomes and assessed needs set out in the individual’s care and support plan.** (Sections 10 and 13-14: Direct Payments).
- **Local authorities must have the necessary discretion in order to allow practitioners the freedom and flexibility that they need to develop creative, empowering solutions for individuals.** (Sections 10 and 13-14: Direct Payments).
- **It allows individuals to integrate their care and support into their social and private lives and maximise their opportunity to achieve independent living.** (Effects on Human Rights).

In order for individuals to meet their agreed outcomes they need to be involved in deciding what their choices and options could be, and informed about all the benefits these choices and options can bring them. Using attendance at a lunch club as an example, an older person could be informed that the value of attendance is much greater than just the nutritional content of the food on offer. Many older people interviewed in our research highly valued lunch clubs as an opportunity for getting out and meeting people, others value the opportunities they provide to get involved and take part in their local area.
Older people using food services welcome, value and rely upon them. However, our research found choice of food services to be limited, and that information about the services was not readily available. In order to facilitate a genuine choice in food services for people living at home we have recommended that, working with other key partners, the Scottish Government and local authorities should:

- **Establish a clear strategic priority, and effectively carry forward plans, to provide a baseline range of food services for older people living at home.** Consult with consumers on what a baseline range of food services should consist of. In order to deliver services of the future in quite a different way from how they have been delivered in the past, a clear engagement process is needed to find out what type of improved health and wellbeing outcomes older people see for themselves.

- **Ensure higher priority for funding for voluntary and community organisations providing food services for older people living at home in Scotland.** Ensuring that communities have the capacity to provide care and support for their people as they get older, and making community infrastructure and organisations more resilient, will be central to achieving the Scottish Government’s stated desire to shift resources from institutional to community settings.

Small amounts of funding can often make food services for older people viable. Community Food and Health (Scotland) have recently provided ‘microfunding’ (one-off funding of up to £1500) for 20 community and voluntary organisations to develop activities that use food to promote health and wellbeing for older people. Work underway includes: a new lunch club; volunteer befrienders cooking with sheltered housing residents; and an information gathering event to consider how older people can influence the local provision of food currently being considered through the relevant Change Fund.¹ These projects encourage engagement, involvement and innovation in services.

The benefits of funding such community-based services were recently touched upon as part of the integration of health and social care discussions, for example, "currently people are offered services that do not suit them, which are delivered at a time and in a way that does not help them. If the value of the service is £150 per week, we can see that that amount of money can go an awfully long way towards keeping people engaged with more natural, community-based and creative support."²

Alongside our work on food services for older people living at home, further case study material was gathered from six lunch clubs. As part of this publication³ Perth and Kinross Healthy Communities Collaborative were highlighted as an example of where substantial outcomes can be achieved for relatively small inputs. They have produced a logic model for their lunch clubs.

and this lists long term outcomes in terms of improved health and well being in later life and reduction in health inequalities across their project areas. Although initial development support was needed to set this up, the group now requires minimal ongoing support and is run by a group of older volunteers. It is important that the impact of preventative services is properly monitored and reported against relevant national indicators, outcomes and targets.

**Fairness**

The standards of care that we want for older people are the same for everyone, regardless of where they live in the country. While we recognise that it is important to find out what a local area views as its needs, and to jointly define how these needs will be met, it is important that no consumer is unfairly discriminated against because of their physical location.

We found variation across the country in the food services available for older people living at home, with 13 local authorities providing only one type of food service and another single local authority providing five types of food service. This kind of variation can be found in social care services in general, and was recently highlighted by Audit Scotland, “the activity and expenditure on social care services differ markedly between council areas. For example, the number of people receiving home care per 1,000 population varies from just under nine in Aberdeen City and Aberdeenshire to over 20 in Eilean Siar, Shetland and South Ayrshire”

5. Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

Consumer Focus Scotland welcomes the recognition that good quality advice and information services are an essential component in helping people to take greater control. As with our response to question one, we would again like to highlight the importance of providing information about the range of options that can be considered to meet an individual’s care and support needs. Local information provision is important, and was found to be lacking, and we therefore call on the Scottish Government and local authorities to:

- **Support the development and dissemination of local information on food services available to older people.** This should be done through existing channels such as the Care Information Scotland service and the Age Scotland telephone helpline. This should also be done through any new channels for public service information, such as the forthcoming DirectScot portal. This information must also be made available in places where consumers are likely to visit, such as libraries, community centres and GP surgeries.5

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4 Audit Scotland. 2012. *Commissioning social care.*
Appropriate, up-to-date information on entitlement to, and the availability of, food services for older people living at home is essential.

11. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

Improving outcomes for older consumers requires a joined-up approach across a range of local authority services, such as housing and social work, working with community and voluntary organisations and working with other public services. Older consumers must be fully and meaningfully consulted and involved in the implementation of the Bill, and their views must have a demonstrable impact on final decisions and outcomes.

One area which would benefit from such consultation is that of procurement and commissioning of services for older people. Anecdotal evidence, and testimony from older people involved in our work, suggests that frozen meals services are replacing hot meal services. This is a decision that is unpopular and does not reflect the opinions and preferences of the older people using the service - hot meal deliveries are often a source of social contact and reassurance for isolated older people and their families.

Consumer Focus Scotland
24 April 2012
Social Care (Self-directive Support) (Scotland) Bill

CrossReach

1. Are you generally in favour of the Bill as a whole and its provisions?

CrossReach is positive about supporting people to have more choice and control in their lives and over the support they receive. We support the vision for social care that the Bill seeks both to represent in statute and to implement. However, consideration of the wider context in which the Bill sits is fundamental. The impact of welfare reforms, wider public sector cuts across Local Authorities, as well as the wider Health and Social Care integration agenda are important to any debate shaping the Bill and its provisions if Self-Directed Support is to effectively, safely and equitably support people with complex needs. For example, recent research interviews with individuals supported in one of our learning disabilities service, identified that some have become anxious and confused at the pace and scale of change to their support. Changes have become increasingly associated with efficiency savings within one Local Authority, partly as SDS was only adopted once the extent of revenue funding became clear; hence, the laudable aspects of Personalisation have been somewhat tainted by cuts in funding to individuals’ support packages. It is also important for those accessing our Mental Health services that there is clarity about how both health and social care engage with the self-directed support agenda when supporting people whose needs might rapidly change in their journey towards recovery.

2. What are your views on the principles proposed?

CrossReach supports that the proposed principles of ‘involvement’, ‘informed choice’ and ‘collaboration’ held in section 1 and subsections (2) – (4) are at the heart of the Bill. It is important that such principles are put into practice with accountability measures for local authorities clearly outlined in supporting regulations and guidance.

Greater ‘collaboration’ and partnership working between local authorities and the voluntary sector would also be beneficial for building stronger shared understanding and clarity around the changing responsibilities and roles in supporting people’s choices and to reduce duplication/conflicting information and advice about available choices and their cost or value. For that collaboration to be genuine, this must be more meaningful that voluntary organisations doing what the local authority instructs or risk losing their patronage; partnership should be about equals sharing, not commissioners exercising their authority over dependent providers.

3. What are your views on the four options for SDS proposed?

CrossReach is in support of the provisions requiring local authorities to fulfil their duty to offer four options to individual adults, children, families and carers (sections 4, 6 & 7) in how they would like to direct their support. Consistency and transparency are important for raising the awareness and understanding
needed to make an informed choice about available options. As choice is dependent on resource, a common approach to resource allocation, assessment and contracting would also support greater consistency and equity across the four options – limiting the risk of a postcode lottery.

Within learning disabilities services, we have also seen applications for guardianship increase in certain local authorities, where this was not required before. It is important that the process of choosing an option and arranging support does not result in the person’s loss of control over other financial and welfare decisions they could still make for themselves. This must be considered if the Bill is to promote an ‘assets’ approach to individuals and their capacity. Greater awareness is also needed that individuals can choose to maintain their current type of support if it continues to meet their outcomes – in accordance with the principle of ‘available to all; imposed on no one’ outlined by the Scottish Government’s Self Directed Support Strategy.

4. Do you have any comment on the proposal that the SDS options should be made available to children and their families, together with the proposal that the degree of control a child may have over the process should vary with age?

It is welcomed that the same four options above will be offered to children and/or families in need who are eligible for support under s.22 of The Children (Scotland) Act 1995. The impetus of appreciating the experiences and voice of children according to their age and stage aligns with the recommendations of the Christie Commission and builds on the principles embedded in GIRFEC. It is important for instilling respect for children and families, for preventative work, and greater understanding of rights and responsibilities. Careful identification of potential risks and conflicts of interests between the choices of the ‘appropriate person’ and the views of the child as a ‘supported person’, is needed. Wider roll-out of SDS to children and families will also require consideration of what blueprints and provisions, regulations and guidance are needed to support ‘Looked After Children’ and to promote choice in complex circumstances where children and/or their families are involuntary engaged with services. It is also important that implications of SDS for young people in transition are identified and that such young people are listened to and effectively supported to make informed choices and take control and responsibility for these.

5. Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

CrossReach welcomes the duty placed on Authorities in section 8 to provide the necessary assistance, information and advice to people. However, if choice is to be informed, the infrastructure for this information and advice must be in place and easily accessible from the outset and at each point of need. There must be uniformity across Local Authorities, on-going and dedicated investment, with the cost not being borne by the person’s individual budget. Failing to do so
undermines the integrity, transparency, and indeed the effectiveness of the process.

This has been the case for some individuals supported by our services who have received conflicting messages and a lack of timely advice from their local authority in a format appropriate to their needs. The need for education about the costs/quality ratio informing the price of support and also the role expected of social workers and care managers is crucial. The above provisions must go beyond tokenism and this requires investment in a range of information and advice options.

6. Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?

The Bill is a welcome step forward in rationalising legislation surrounding Direct Payments and introducing a uniformity of approach throughout Scotland. Descriptions of persons who may be ineligible for direct payments under option 1 or option 4, will need to be clearly outlined in regulations and guidance. Clearer guidance and support is needed about how to set up and manage direct payments, especially where take up has been traditionally low e.g. older people. Raising awareness of option 4 and a person’s right to choose a direct payment for a specific element of their care or support might be beneficial for encouraging uptake.

7. Do you have views on the provisions relating to adult carers?

It is important that carers, including the many who are unpaid, are able to access assessment and support in relation to their role and the needs of the ‘supported person’. Therefore it is good that sections 2 and 6 in the Bill show carers the possibility of support, including the same range of 4 options, to help them continue to care. However, as this is only a ‘power’ and not a ‘duty’, local authorities are under no legal obligation to provide services for carers than they have been to date. Thus, it is of concern that, in a period of continuing financial austerity, this may be unlikely to change.

8. Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals?

It is right that undue restrictions are not placed upon an individual’s choice in this regard. However, careful attention is needed when agreeing and reviewing a support plan, so that all chosen providers, circles of support, and personal assistants provide the support will do so safely and to agreed outcomes. Recognised qualifications and appropriate professional registration will assist in this respect. Taking a positive and balanced view of risk is important in supporting a person to achieve their goals – but so, too, is consistency in the regulation and standards required to support a person to achieve these outcomes safely, regardless of which of the four options or provisions is chosen.

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?
It is encouraging that the Memorandum reiterates the message from the IBSEN (2008) study - that the process is at best ‘cost neutral’ (paras. 79-81). However, the above-mentioned study does not take into consideration the full extent of implementation costs. The Memorandum rightly acknowledges the scale and cost of change for local authorities and outlines the Scottish Government’s investment of £24m towards this goal. Yet, while it is encouraging to have the cost to providers and individuals also noted in the Memorandum (paras. 90-1), it is crucial that the transformation cost to providers is not undermined in delivering funding.

Any investment, including the further £1m to build capacity of providers and £1m to develop the information and advice strand, should be open to continual review in appreciation of the impact the Bill and its provisions will have on service delivery to the large numbers of people supported and staff employed in the Third Sector. Accountability and transparency on how local authorities deploy their transformational funding should also be expected in a climate that prioritizes the evidencing of outcomes and value for money.

10. Policy Memorandum: Are you satisfied in the assessments that have taken place in regard to matters of equal opportunities, human rights, island communities and sustainable development?

In a context of changing demographics, increased demand for services, and raised expectations, equitable distribution of limited resources is fundamental – not only for those accessing social care for the first time but those who have been supported for many years. As a national organisation meeting needs on both the mainland and the islands, CrossReach also welcomes the Memorandum’s acknowledgement of the challenges posed for Island Communities. However, if the Bill and its implementation are to ‘enhance wider human rights and principles beyond legislation’ (para. 53) and fulfil its duties in the above matters, then the Scottish Government will need to ensure that appropriate timescales and sufficient investment in funding streams, research, and reviews are identified.

11. Do you have any comments on the any other provisions contained in the Bill?

CrossReach, the social care arm of the Church of Scotland, is pleased to have been consulted; the foregoing is submitted in good faith. However, we re-iterate our offer made within paragraph 2 above; we are also willing to give oral evidence to committees should it be deemed helpful so to do.

CrossReach
24 April 2012
Deafblind Scotland

Deafblind Scotland is a membership organisation serving 700 deafblind people across Scotland. The Board of Directors, in accordance with the Articles of Association, must comprise 50% of those who are themselves deafblind.

This is a low incidence disability whose needs are very specialised, and for whom the only hope of inclusion is if government, local authorities and organisations make the special arrangements necessary to include them in society in any meaningful way. The current preference – and rightly so – for inclusive communication is simply not enough to meet these specialised needs.

Their overwhelming need is for support with communication, access to information and mobility often in the form of a guide/communicator. They often have no need for “care”.

These needs are not adequately covered in any self-assessment questionnaire we have thus far been made aware of.

Previously their needs were met, financially, from a range of sources, including the BSL interpreting budget. But with the advent of Supporting People funding in 2003 they often were transferred to “care” funding sources. However in the “care” triangle of need communication is not even mentioned.

We are concerned that they will have little access to SDS funding in whatever form and feel that somewhere in the legislation arrangements need to be put in place to recognise that a small group of people don’t have difficulties with communication but simply don’t have communication at all except in the form of a Hands on British Sign Language, Visual Frame Signing, or Deafblind Manual.

Deafblind Scotland

26 April 2012
Social Care (Self-Directed Support) (Scotland) Bill

Dundee City Council

1) Are you generally in favour of the Bill and its provisions?

Yes, we are generally in favour of the Bill and its provisions.

2) What are your views on the principles proposed?

We continue to welcome the core principles set out in the Bill and find them to be consistent with our preferred approach in developing the range of support options for our citizens. We firmly believe that the three underlying principles in the Bill are essential components when supporting individuals with care and support needs to self-determine how much control and involvement in shaping and directing their care and support, as they wish.

We believe that to successfully support our citizens achieve better outcomes in life, we and our Health, Housing and Education partners all need to work together to achieve a cultural shift in our practice and embrace our citizens as equal partners. We believe that the principles will support not only a move to better outcomes for people, but also support new methods of working collaboratively between our citizens and professionals as the Bill's duties and powers are implemented.

3) What are your views on the four options for self directed support proposed in the Bill?

The four options set out in the Bill will provide those with an assessed need a good range of delivery choices available to them. Clarity of the four options, as set out, is helpful for both citizens and professionals.

We strongly agree that those in need of care and support should have all options of support delivery made known to them and in a manner which they understand and which will lead to citizens being able to make informed choice.

We also recognise that in implementing the Bill there will be challenges to ensure that choices are consistently made known to citizens as the route for assessment, review and service delivery will inevitably come through various pathways.

4) Do you have any comment on the proposal that the self-directed support options should be made available to children and their families, together with the proposal that the degree of control a child may have over the process should vary with age?

We agree that self directed support should be made available to children and their families and would expect that they are provided with the same four
options as others assessed under relevant legislation as requiring care and support services.

In considering the degree of control a child may have over their care and support arrangements and whether this should vary with age we believe that this links to the child's ability to contribute to the process and that participation and involvement at any level is progressive. We would therefore suggest that age itself is not always the best benchmark as this could potentially dilute the general principles of the Bill.

5) Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

As noted in our previous consultation response, we are satisfied with the provisions set out in the Bill relating to information and advice. With regards to the support that should be offered to those who may have difficulty in making an informed decision we believe that the person should receive as much support as possible in order to reach an informed decision.

We would also acknowledge that control is a very different matter and that our citizens should have the right to decide on the level of control they wish to have in the delivery of their support, care and services. We also firmly agree that this should not be a fixed position as individuals should be able to reconsider their choices as their circumstances change.

As an integral part of our implementation of the Bill we have an expectation that the choice and control options an individual elects will be formally reviewed at least on an annual basis in line with our current practice.

We continue to hold strong reservations around the requirement to discuss and offer all choice options when an individual is initially in a crisis situation and requires immediate support/services to be delivered. At such times it will be neither practicable nor in some circumstances safe to wait for the individual to consider all of the support options available set out in the choice and control "framework" provision. We therefore reiterate our recommendation that a caveat be included to exclude short term crisis situations, which could include measures to address support and protection concerns and enablement provision. We would see this as an interim measure in order to effectively deliver appropriate support while the individual had the opportunity and breathing space to safely consider and explore all four options available to them whilst receiving essential support.

6) Are you satisfied that the method for modernising direct payments in the Bill will result in change that the Government seeks?

Whilst we are supportive of the intention to consolidate direct payments legislation set out in the Bill we do not believe it is possible to provide an unqualified response to this question.
Our interpretation of Section 13 of the Bill is that further provision about direct payments, through secondary legislation, is being proposed without sufficient detail at present to enable us to consider whether what has been proposed will address the change sought by the Government.

In order to ensure fairness any proposed regulatory change will necessitate further consultation, which has the potential to create a delay in fully implementing the Bill.

We are also not convinced that secondary legislation will resolve the underlying tensions between the ambitions of the agenda and the legislative, policy and financial context in which it is to be delivered. It is the resolution of these issues, as well as the weight that legislation will undoubtedly give to the agenda, that will lead to real progress.

7) Do you have any views on the provisions relating to adult carers?

We completely recognise and value the significant role of our unpaid carers who contribute to a better quality of life for many of our citizens. We also acknowledge that without their support, the health and social care systems just could not cope.

Although we fully recognise that carers have their own needs, there are times when it is less clear where the needs of a carer (an individual with a right to a life of their own) and the needs of the cared for person, begin and end. An example of this could be around the provision of respite or short breaks; if there are conflicting preferences as to how the service response was to be delivered, whose choice would be valued the most and who would make this ultimate decision? This matter we believe has not been fully addressed in the Bill.

We are supportive of the Scottish Government's commitment to supporting unpaid carers. However, we find Section 2 of the Bill ambiguous in that it appears to interchange unhelpfully between powers and duties leaving an uncertainty as to the true intention of the provision in this section. We are concerned about this ambiguity and everything it implies being transferred to local authorities.

8) Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?

We do not agree with the approach taken by the Scottish Government to not place restrictions on who may be employed by an individual through the proposals of the Bill.

We do not believe that sufficient consideration has been given to safeguarding individuals and ensuring that account has been taken of their informed choices as to who should provide their support. We continue to hold
strong reservations about family members being employees other than in exceptional circumstances and even these are subject to monitoring and review processes.

We are surprised that the Scottish Government has not, to our knowledge, carried out some form of audit of adult protection concerns where a family member has been the perpetrator of the protection concern before reaching its decision not to place restrictions on who may be employed.

9) Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

We acknowledge that it is difficult to project the financial implications of implementing the self directed support Bill. The range of potential additional cost considered in the Financial Memorandum is comprehensive and we feel this covers the main areas where these costs may arise. However we have concerns around the assumption that the Bill will be cost neutral in the longer term as the potential savings identified appear to be over-emphasised with additional costs under-emphasised.

There is an expectation that savings could be achieved through more people choosing to arrange support at home as opposed to residential accommodation, however as this has been the general policy direction for a number of years prior to the introduction of self directed support it would be disingenuous to suggest such savings would be due to the introduction of self directed support.

Reduced bureaucracy costs are also expected with the shift of these to individuals. However local authorities still have to manage and monitor the self directed support package and will in effect have to operate different recording systems for those in receipt of self directed support and those receiving traditional style services, resulting in additional costs.

We have concerns about the long term sustainability of the infrastructure required to support self directed support once the allocated short term Scottish Government Funding ceases, particularly with the lack of clearly identified "resource release" opportunities. There is an assumption that transformation costs will be incurred by local authorities over a 3 to 4 year period, however our expectation is that with a gradual take up of self directed support anticipated; double running costs could be incurred over a number of years with continued demand for traditional services, which through running at reduced capacity become inefficient. We would suggest a longer term financial commitment from the Scottish Government would be more appropriate.

10) Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?
We agree that the Bill will have the potential to enhance individuals’ human rights and individuals will be empowered through genuine co-production towards personal outcomes.

11) Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

We do not have any specific comments about the other provisions contained in the Bill. However, we would want to make the following comment; the language of the Bill and the questions were not found to be accessible to our carer and service user reference groups. Finding the easy read version was not straightforward and the information contained within was insufficient to allow informed answers to the consultation questions.

Dundee City Council
24 April 2012
Social Care (Self-directed Support) (Scotland) Bill

East Ayrshire Council

1. Are you generally in favour of the Bill and its provisions?

East Ayrshire Council welcomes the Bill and is confident that our practice currently reflects similar provisions and principles in terms of person centred practice and inclusion of the individual at the centre of service plans relating to them.

It was felt that there is a need for a code of practice for the implementation of the Bill to ensure standardisation across Scotland.

In addition to Local Authorities own internal measures for monitoring and regulation it is proposed that this is also undertaken at a national level.

Clarity is required on the role of the Care Inspectorate for people who may elect to procure individual support outwith registered bodies and for the potential development of Brokerage Agencies.

General principles underlying the Bill

2. What are your views on the principles proposed?

The principles underlying the Bill are fundamentally similar to those which inform social work practice in East Ayshire Council. East Ayrshire Council welcomes the adoption of these principles into Social Care legislation and would support any forthcoming legislation based on similar principles.

3. What are your views on the four options for SDS proposed in the Bill?

The Council supports the 4 options and recognises that Option 1 should have primary status.

We recognise focus would be required to ensure that adults who lack capacity are assisted to make a true informed choice on the way in which their support is delivered and also how they will be supported in the long term to ensure their outcomes best meet their needs.

It was anticipated by front line staff that there may be a substantial amount of time required with some people who require assistance in supportive decision making and in giving them time to make their choice. This has resource implications for local authorities.

The implementation of the sliding scale is a huge cultural change and will require awareness raising and training with providers, health and other services as well as the wider community on the principles behind and the options for self directed services.

The level of uptake of Option 1 should it increase substantially may lead to change to cost driven services where the individual opts to employ personal
assistants who may be at present untrained and unregulated or regulated providers who offer lower cost/ lower quality services.

Additionally the level of uptake of Option 1 may have an impact on local authority contract and commissioning services, legal services, systems for payment and charge recovery and IT system development. There will also be impact on traditional building based services such as day care centres, and respite units as well as local authority homecare staff while independent sector providers will also require to review and develop their services.

The 4 options in terms of the proposed legislation will require significant training resources for the council’s workforce and external support agencies and partners.

4. Do you have any comment on the proposal that the self directed support options should be made available to children and their families, together with the proposal that the degree of control a child may have over the process should vary with age.

Staff directly involved in the provision of children’s services more than welcome the Bill’s options and will equally welcome guidance, regulation and monitoring.

Staff members are in agreement that children should have control over the process and their services dependant on their age. It was felt this would assist in the transition for children into adult services. However it was also recognised that this could be a very complex area of work depending on the legal status of the child. Additionally we could find no reference in the Bill to section 29 of the 1995 Act and its potential for the use of Self Directed Services. This may benefit from clarification also clarification that sections 23-24 of the 1995 Act are included.

5. Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

It is acknowledged that a wide range of support and advice will be required to implement this Bill and will impact significantly on local organisations, care providers and partners who are already working to capacity.

There may be challenges for the social care workforce in ensuring that people who lack capacity are assisted by an appropriate person, supported to make an informed choice and then who will be able to assist them once the support is in place. There was concern expressed for the potential increase in financial abuse and control of vulnerable adults and children. It was also an issue of concern as to who may be considered an appropriate adult for some people who require support.
For some individuals interventions within Adults with Incapacity legislation in terms of guardianship may be required which may delay the time between thinking and planning and subsequent implementation of care plans.

**Direct Payments**

6 Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?

This method plus the underlying principles of the Bill should result in the modernisation of direct payments if and when appropriately resourced.

**Adult Carers**

7. Do you have any views on the provisions relating to adult carers?

The power for the local authority to offer service to carers may encourage the uptake of carer assessments/support plans as we would be able to offer services in a direct response to the carers assessed need.

We should recognise the potential for conflict to arise when the carer is also the responsible person/guardian for the person who is being cared for.

The implementation of delivering services to carers may have an impact of double funding with regard to some services which are currently delivered to the cared for person i.e. respite.

There would need to be clarity on whether there would be a charging policy for carers’ services.

**Individuals’ responsibilities and risk enablement**

8. Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?

It is felt that there is still a need for protecting individuals from potential risk and as at present a PVG is always completed and that this should continue.

Currently discretion lies with local authorities with regards to employing close relatives and it is our view that this should be maintained with further guidance provided on this.

We recognise that safe recruitment is paramount to the success of Option 1.

**Financial Memorandum**

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

A separate submission has been made to the Finance Committee with respect to this and has been attached for reference. It is concerning that the
assumptions made with respect to implementation of the Bill does not reflect the most conservative calculations submitted in August 2011.

**Effects on equal opportunities, human rights, island communities and sustainable development**

10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?

East Ayrshire is a mix of urban and very rural community and as a consequence there was concern around the costs for some people to access a quality service due to their rural locale which may result in inequality.

**Other matters**

11. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

There is no mention of how the Bill will work in partnership with Health given the consultation on the integration of Health and Social Care which is expected this year.

There are concerns about how the Bill would fit within joint financial arrangements as these become increasingly complex as progress is made, particularly with respect to charging guidance.

It was felt there is a missed opportunity to expand the use of Self Directed Services to other service provision for instance within Leisure and Housing to enable a service user to have a truly holistic support plan of their needs.

The implementation of the Bill gives a real chance for service users to be innovative about the outcomes that they feel would most benefit them.

East Ayrshire Council
26 April 2012
Social Care (Self-directed Support) (Scotland) Bill

East Renfrewshire CHCP

1. Are you generally in favour of the Bill and its provisions?

We are generally in favour of Self Directed Support and committed to implementing the SDS strategy.

2. What are your views on the principles proposed?

We are in favour of the three principles, of “involvement”, “informed choice” and “collaboration” and find them helpful in guiding our functions under the Bill.

3. What are your views on the four options for self-directed support proposed in the Bill?

We find the four options helpful although would wish for more detail in the guidance particularly with regard to procurement regulations on non direct payment options.

4. Do you have any comment on the proposal that the self-directed support options should be made available to children and their families, together with the proposal that the degree of control a child may have over the process should vary with age?

We are committed to Getting It Right for Every Child (GIRFEC) and the SHANARRI\(^1\) outcomes. We have some concerns about SDS in the context of child protection and endorse the COSLA response in this area.

5. Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

We support that those individuals who encounter difficulties in expressing an informed decision have the right, and are supported, to find ways to be fully involved in the decision making process. It is commendable that Scottish Government recognises the challenge in ensuring that individuals have the right to greater control while balancing this against the protection of those who may require statutory intervention to prevent harm or in ensuring their rights.

The Policy memorandum is explicit however the wording of the Bill does not reflect this well and could cause confusion. It should be made more explicit that if a person lacks capacity then the safeguards available within the Adults with Incapacity (Scotland) Act 2000 or 13ZA of the Social Work (Scotland) Act 1968 should be considered.

\(^{1}\) Safe, Healthy, Active, Nurtured, Achieving, Respected and Responsible and Included
It would seem that this section would be better split into two parts;

- those who lack capacity to make decisions due to mental disorder or an inability to communicate that cannot be made good, [and where assistance, as defined in the Bill, is an insufficient safeguard]

- those who may experience variable capacity or an illness which affects their decision making at times and where assistance, as defined in the Bill may be of benefit.

Moreover, the term ‘difficulties in communicating due to physical disability’ as defined in the Bill fail to reflect the AWI context expressed in the policy memorandum that it is an ‘inability to communicate because of physical disability: but a person shall not fall within this definition by reason only of a lack or deficiency in a faculty of communication if that lack or deficiency can be made good by human or mechanical aid; and incapacity should be construed accordingly.

Without this qualifier statement the Bill could be perceived as discriminatory to those who have difficulties in communication but manage to communicate very well. A difficulty in communication does not automatically mean that the adult would wish to have assistance to reach decisions about support and would likely expect to be consulted and give consent to support from an interested party,

Section 20 and 50 of the explanatory notes refers to those who, because of a particular mental illness, encounters difficulty in understanding or making a selecting their choice of self directed support on their own. These adults may well benefit from assistance as defined in Section 5.

Other matters

11. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

The recent report relating to Mr and Mrs D and misuse of Powers of Attorney reminds us that capacity is difficult to determine. Mr and Mrs D had capacity but were very vulnerable and subjected to undue pressure. The Bill does not provide any safeguards in relation to those providing assistance - we would wish this to be considered.

Section 4 (6) It would have been helpful if the information relating to ineligibility regulations under section 13(2) (a) i.e. descriptions of person who are ineligible had been available so that this could be cross referenced to aspects of assessment and decision making by the local authority.

Those with mental disorder as defined in the Mental Health (Care and Treatment) (Scotland) Act 2003 have a right to independent advocacy we
suggest that this should be highlighted to serve as a reminder to all concerned.

East Renfrewshire CHCP
24 April 2012
ENABLE Scotland

Social Care (Self-directed Support) (Scotland) Bill

Introduction

ENABLE Scotland is the largest voluntary organisation in Scotland of and for children and adults who have learning disabilities and their families. We have a strong voluntary network with around 4000 members in 51 local branches as well as 500 national members throughout Scotland. Around a third of our members have a learning disability. ENABLE Scotland campaigns to improve the lives of people who have learning disabilities and their families and carers. ENABLE Scotland provides social care services to more than 2,000 people across Scotland who have learning disabilities or mental health problems.

Responses to Consultation Questions

1. Are you generally in favour of the Bill and its provisions?

ENABLE Scotland welcomes the Bill on self-directed support. We strongly support moves whereby people who have learning disabilities are empowered through choice and control over services that enable them to lead full and meaningful lives. ENABLE Scotland’s service provision and branch members extends across 29 local authorities. In our experience there are various degrees of enthusiasm from, and interpretations by, local authorities about the introduction of self-directed support, making legislation in this area important.

ENABLE Scotland believes that self-directed support can help people who have learning disabilities to achieve better outcomes and a better chance of getting the support that is right for them and their family. People who have learning disabilities and those who know them best are the right people to decide what they want in their lives and self-directed support can give them the opportunity to do this. It gives individuals power, rights and opportunities to determine what life they want to lead and the means to achieve this – often at better value for money than current models of social care provision.

However, we believe that the Bill should explicitly state that self-directed support should become the default option offered. Unless there is a commitment to wholesale transformation we are concerned that people will be denied the opportunity this Bill intends to provide. We remain concerned that if self-directed support is not the default position, it will only happen for a few. Option 3, for example, needs to be clear that the individual is choosing their support, not the Local Authority, and if this is not explicit then the Bill could suffer the same criticisms as direct payment law. As noted in the Bill’s explanatory notes, “if these wider transformational changes are ignored, the Bill is likely to be weak and ineffective in the long term, much as existing direct payment law is seen to be”.

1. http://www.scottish.parliament.uk/S4_Bills/Social%20Care%20%28Self-directed%20Support%29%20Bill/Ex_Notes_and_FM.pdf
As the Bill currently stands, if someone does not make a positive choice, the local authority will decide what to offer (section 4(4)). This may effectively make council arranged support the default option. We believe that there should be a more explicit principle that in such circumstances the option chosen should be the one that provides the most control to the individual, having considered their wishes and capabilities. This would be a similar principle to that of the 'least restrictive alternative' within the Mental Health (Care and Treatment) (Scotland) Act 2003.

2. What are your views on the principles proposed?

ENABLE Scotland welcomes the principles proposed within the Bill. Involvement, informed choice and collaboration reflect some of the principles of self-directed support. However, we also believe that transparency must be added to the guiding principles. Transparency of budgets and costs will allow individuals to make informed choices – a key starting point of the self-directed support process. There should also be transparency about the range of options available, the parameters within which people can direct their support and use their budgets, and in communication with stakeholders.

It has been our experience to date that even where local authorities take positive steps towards the implementation of self-directed support, key issues have been a lack of transparency of process and poor communication with key stakeholders. Self-directed support should be a journey that people go on, rather than something that is done to them. This includes creative use of budgets to ensure the person’s outcomes are met. As such, we believe that the Scottish Government needs to prescribe to local authorities that they cannot be overly restrictive about what people can spend their budget on.

Local Authorities will need to be clear about what changes will take place to ensure the principles contained in the Bill will be implemented in their area. It is difficult to see, for example, how the principles can be effectively applied within block-contract arrangements for care and support services. Clear local authority transition plans, with set objectives, milestones and timeframes will help achieve the transformation that the Bill seeks to achieve.

Local Authority Care Managers will have a critical role in ensuring the person’s outcomes are met and will need to work with the person and with other agencies in a holistic fashion, being realistic and honest about what choices are and are not available.

We believe that associated guidance should be produced to accompany these principles which explicitly show how the operation of self-directed support link with the National Care Standards or inspection of services delivered through self-directed support.
3. What are your views on the four options for self-directed support proposed in the Bill?

Self-directed support is not just about getting a direct payment and must be about having lots of different options. We welcome moves in the proposed Bill to replace the assumed norm (local authority arranged services) with clear options. Some people may just want to change one aspect of the support they currently get, some all of it and some none of it. All options should offer a level of flexibility that allow people to try something out and the chance to review it and change again if that is what is needed.

An individual may choose for a local authority to make arrangements for the local authority to provide support, however this is not for the local authority to decide. We believe that Option 3 – “the local authority selects the appropriate support and makes arrangements for its provision by the local authority” – does not sit comfortably within our understanding of self-directed support and should be reconsidered to reflect the principles of the Bill. This option leaves the power clearly with the local authority and, as worded, there is a danger that this will prevent the transformational change the Bill seeks to introduce.

Subject to amendment of option 3, these options are largely welcome. We would also note, however, that one of the critical success factors in the implementation of self-directed support will be the transparency of budgets. Therefore we would like to see explicit reference to the use of Individual Service Funds as a means for managing budgets on an individual’s behalf when that individual chooses not to hold their own budget.

It is our view that the Scottish Government should collect data from all local authorities on the roll-out of self-directed support and the use of each of the options available to measure progress and impact.

4. Do you have any comment on the proposal that the self-directed support options should be made available to children and their families, together with the proposal that the degree of control a child may have over the process should vary with age?

ENABLE Scotland agrees that all forms of self-directed support should be available to children, young people and their families, and that they should have the same options as adults.

5. Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

We support the provisions in the Bill related to information and advice. Communication will be vital in achieving the required cultural transformation, as everyone involved in providing social care must be clear about the implications of the change to self-directed support. This will require both a national and a local communication strategy. This must involve all points of
contact for social care – including Social Work, General Practitioners and schools. Although the Bill is primarily a social care Bill, a wider communication strategy that involves partners from the health sector, housing, education and other agencies is required.

The current model for accessing social work services is complicated and it is essential that there is accessible information available to promote the implementation of the legislation. The Scottish Government should give consideration to how people who have gone through the self-directed support process can share their learning with other people.

Clear information must also be available from local authorities on sources of assistance or information in each local area. Such information should be widely disseminated in various accessible formats and also through a national media campaign targeted towards people who use support services.

6. Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?

We welcome proposals that improve the flexibility of self-directed support and ensure that it responds to individuals’ needs. The critical intervention must be the flexibility to purchase goods or services to support the individual’s outcomes. People should be able to use Direct Payments and Individual Service Funds to support them to achieve the outcomes they have set for themselves and should be as least restrictive and as flexible as possible. We would seek an assurance that statutory guidance will specify how direct payments and Individual Service Funds cannot be spent rather than on how they can be spent.

We welcome the principle of Ministers being explicit about who is ineligible to receive a direct payment. However, we would seek further clarity about the criteria on which a person will be deemed ineligible before making a judgment on whether this will have a positive impact on the intentions of the Bill to modernise direct payments.

7. Do you have any views on the provisions relating to adult carers?

The text of section 6 of the Bill refers to the “supported person” rather than an adult carer. If the intention is for this to refer to the adult carer then we agree with the provisions of the Bill in relation to adult carers.

8. Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?

In principle, we agree with the least restrictive approach to how direct payments and individual budgets can be used. However, we recognise that this is a complex area, raising questions around regulation of the workforce, workforce training and the need to protect people from harm (whilst acknowledging that there is existing legislation to protect vulnerable people
who are at risk of harm). We note in section 125 of the explanatory notes that in this area “the exact content of regulations has yet to be determined”, and would urge further consultation with individuals and family carers.

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

There will be a long run requirement before self-directed support is cost neutral, and the Financial Memorandum therefore recognises that there will be an overlap period where additional costs are inevitable. We are pleased to see transparent and funding arrangements detailed in the Memorandum. Transition funding is essential to ensure a successful promotion and uptake of self directed support. Communication and clarity on how to access transitional funding beyond that already allocated will be critical to a wide range of stakeholders including individuals, social care providers and communities.

ENABLE Scotland notes that £520m was made available to local authorities in England for transformation over 3 years. The equivalent for Scotland would be £52million. Although we recognise that a direct comparison is not possible, we note that what is being made available in Scotland is less than half (£23m over 3 years) than that made available in England, and we are concerned that this may hinder the implementation of self-directed support, limiting the numbers of people who are able to access it. Noting the current operating environment, which is characterised by increasing demand and decreasing public resources, achieving value for public money is critical. As noted in the Memorandum, there is evidence that self-directed supports are more cost-effective than traditional support arrangements, and so ENABLE Scotland believes that the Scottish Government should carefully monitor use of the funds it is making available to ensure implementation is not being delayed or impeded due to a short term lack of transition funding.

10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?

ENABLE Scotland agrees with comments in the Scottish Government’s Equality Impact Assessment that encouraging independence and wider participation in society advances equality of opportunity. However, it is important to recognise that the introduction of self-directed support is happening in a climate of decreasing budgets, meaning that there may be less formal, paid, supports available to individuals. We are concerned that this could have a disproportionate impact for women, whose unpaid care is most likely to replace any lost paid supports.

A lot of evidence within the Equality Impact Assessment appears to have come from pilots/demonstrations where there was no associated reduction in budgets for individuals moving from traditional support arrangements to self-directed arrangements. We are concerned that this may have given a false, overly positive picture as in reality Local Authorities are now making financial
savings when individuals go through the self-directed support process. We know that savings must be made by Local Authorities regardless of the models of support used, however we think that the EIA should give consideration to this reality.

According to the Equality Impact Assessment there is no requirement to carry out a further impact assessment related to age, disability or gender. We would argue that there is a need to carry out a further assessment, given the level of transformational change required across sectors, and the points made above.

11. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

The statute book is littered with attempts to empower disabled people, including the Chronically Sick and Disabled Persons Acts, the Disabled Persons (Services, Consultation and Representation) Act, and various attempts to support independent advocacy – none of which have had the intended impact. We believe that the Scottish Government should be explicit about what it would consider success to be, and undertake an independent review of the provisions after three years, to assess whether the intended cultural change has been achieved.

ENABLE Scotland has long believed that people who have learning disabilities and their carers are the best placed to determine what lives they want to lead and should have as much choice and control in achieving this. We believe that self-directed support can be a very positive step in transforming the provision of social care.

ENABLE Scotland would welcome an invitation to give oral evidence in relation to the Bill.

ENABLE Scotland
25 April 2012
Social Care (Self-directed Support) (Scotland) Bill

Equality and Human Rights Commission

The EHRC would like to make a number of points on the Bill as introduced, in relation to its broad policy intentions, particularly with regard to independent living and human rights principles. We also believe it is important to situate the Bill in the context of existing and forthcoming equality law and regulation, which should directly affect how public authorities which will have new powers and duties under the Bill will discharge these.

General Principles, Independent Living and Human Rights: The Commission supports the Bill’s policy intentions, particularly in relation to building more responsive public services and a more rights-based and participatory model of service design and delivery. We are encouraged that ministers are making the links between public service reform and policy areas such as self-directed support. We also feel that self-directed support can and should be situated within the preventative spend and early intervention agenda – investing in people’s ability to make meaningful choices about their own support needs is directly linked to delivering better outcomes for individuals, and reducing what has been described as “failure demand” in Scotland’s public services. The Bill should also be read in light of ministers’ new National Outcome in the National Performance Framework: “Our people are able to maintain their independence as they get older, and are able to access appropriate support when they need it.”

Nevertheless, although independent living is mentioned in the Policy Memorandum, in line with organisations such as Inclusion Scotland and the Independent Living in Scotland Project, we would like to see specific reference to the principles of independent living and how self-directed support is a necessary (though not in itself sufficient) precondition for independent living – on the face of the Bill.

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1 The Bill “…aims to provide people with choice and control over their support. The wider policy aims are to ensure that services and support become more flexible and responsive to people’s needs (in line with the Christie Commission’s recommendations), and to drive a cultural shift around the delivery of support that views people as equal citizens with rights and responsibilities rather than people who receive services.” (Policy Memorandum, paragraph 16)


3 www.scotland.gov.uk/About/scotPerforms/outcome/indLiving

4 Independent living is defined by the Scottish Government-Funded Independent Living in Scotland (ILiS) project as “…all disabled people having the same freedom, choice, dignity and control as other citizens at home, a work and in the community. It does not necessarily 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.” (www.ilis.co.uk/independent-living)
Important as this would be as a statement of principle, we believe it would also be of practical assistance to professionals working to the new legislation: a useful parallel is the experience of adult protection professionals and the usefulness of the set of principles on the face of the Adult Support and Protection (Scotland) Act 2007 in helping make proportionate balanced and rights-based interventions. Explicit reference to independent living would also support the policy intention of making the cultural shift away from seeing people as merely passive recipients of services, and towards being treated as bearers of rights and responsibilities who are best placed (with assistance) to determine their own needs.

We share the concerns of other organisations, such as the Law Society of Scotland, ILiS and the Scottish Human Rights Commission, about the need for greater clarity at Sections 5 and 15 (regarding, respectively, assistance with making decisions and assistance with assessments) of the Bill. Given that Sections 5 and 15 are intended to apply to people who are capable, but may need assistance, it would be preferable, (and, again, more in line with independent living principles) if the supported person, rather than the public authority, identifies who should provide this assistance.

In line with other concerns raised by the Law Society of Scotland, we would also like to see greater clarity that these provisions apply to those who have capacity but may need to support, but not to those who lack capacity. As the Bill stands, there is a danger that the provisions at Sections 5 and 15 could be applied to a person without capacity, bypassing the human rights and guardianship protections set out elsewhere in devolved legislation (e.g. the Adults with Incapacity (Scotland) Act 2000).

Equality Law and Regulation: As the regulator in Scotland for the Equality Act 2010 and Public Sector Equality Duty (PSED) we must underline the importance equality law and regulation in the context of the Bill.

The General PSED places a requirement on all public authorities, in the exercise of their functions, to pay due regard to the need to:

- Eliminate discrimination, harassment, victimisation, or other unlawful conduct;
- Advance equality of opportunity between people who share a relevant protected characteristic and those who do not; and
- Foster good relations between people who share a protected characteristic and those who do not.

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5 The EHRC took evidence from ASP professionals in Scotland as part of its inquiry into disability-related harassment - www.equalityhumanrights.com/legal-and-policy/inquiries-and-assessments/inquiry-into-disability-related-harassment/ and is now working with Adult Protection Committees to identify how equality and human rights principles, including those on the face of the 2007 Act can be better applied to their work.
The new duty applies across the ‘protected characteristics’ of age; disability; gender; gender reassignment; pregnancy and maternity; race; religion and belief and sexual orientation.

In Scotland, the power to place ‘Specific Duties’ through regulation on named devolved public authorities lies with Scottish Ministers. These duties set out the particular steps that key authorities in Scotland should take to help meet the General Duty. The regulations setting out these duties are currently being considered by the Scottish Parliament\(^6\), and are subject to its approval, but we anticipate that they will come into force in May 2012.

There are a number of duties contained in the draft regulations, but, crucially, these include a requirement to set equality outcomes (and involve protected groups in identifying these outcomes) and monitor and report on progress. The regulations will also place a duty on local authorities, health boards and others to assess and review all new policy decisions, in order to anticipate, and remove or mitigate negative outcomes for protected groups. In effect, the Specific Duties will provide a framework to inform how local authorities engage with disabled people, older people and others in the design and delivery of self-directed support, and a duty to assess the impact of self-directed support policies in eliminating discrimination, advancing equality of opportunity and promoting good relations.

Equality and Human Rights Commission

27 April 2012

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\(^6\) [www.legislation.gov.uk/sdsi/2012/9780111016718/contents](http://www.legislation.gov.uk/sdsi/2012/9780111016718/contents)
Social Care (Self-directed Support) (Scotland) Bill

Falkirk Council

1. Are you generally in favour of the Bill and its provisions?

Officers would generally be in favour of the provisions within the Bill.

2. What are your views on the principles proposed?

Officers would endorse the principles proposed in the Bill:

- To demonstrate the application of the principles it will be necessary for providers to clearly evidence individual outcomes in the context of outcomes focussed support plans. Staff will need to be trained to identify and measure outcomes. There are likely to be resource implications for providers to achieve this.
- Quality Assurance systems will also need to be more detailed and robust, and include good risk management approaches. While this is welcome there will again be resource implications for providers.
- Inspection processes need to recognise a system for acceptable risk taking/management and the individual’s responsibility in taking informed risks. Current processes are likely to stifle this.

3. What are your views on the four options for self-directed support proposed in the Bill?

Falkirk Council officers are supportive of the four options to be offered to individuals assessed as in need of care and support. There is still some concern that there are issues which need to be addressed to ensure local authorities are able to comply:

- The right to choice and control means individuals taking responsibility for their choice of support. Where individuals have reduced capacity there will be a responsibility on local authorities to ensure that the individual's rights are upheld by families and carers. This can be a sensitive process but needs to be acknowledged.
- Reference to the allocation of a budget for options two and three, which was made in the draft Bill during the 2011 Consultation, is no longer included. If this marks a shift in emphasis towards direct payments it could weaken the impact of the other options.
- Rules on procurement of services by the local authority may mean that the individual’s preferences in relation to option two are difficult to deliver if it results in the local authority being compelled to put services out to tender to comply with current regulations on procurement. This option needs to be examined with regard to regulations for procurement.
- The release of funds from current services, to ensure that they can be allocated on an individual basis to be spent on alternative services,
could have significant resource implications in terms of staff resources and provision of funds to purchase alternatives. Local authorities will need to have adequate resources to implement the changes and to meet it's responsibilities to current employees who may be affected by these changes.

- Service providers may struggle in some areas to deliver the options requested by individuals. There may need to be changes to working patterns etc to accommodate individual choices. This will need to be carefully managed and timescales for implementation should reflect this.
- There may be resource implications for providing services directly to carers as this could lead to increased demand from individuals who don’t currently seek support from the local authority.

4. Do you have any comment on the proposal that the self-directed support options should be made available to children and their families, together with the proposal that the degree of control a child may have over the process should vary with age?

- While there are some exciting opportunities which the provision in the Bill could provide, to attach it to section 22 could cause significant difficulties. Section 22 covers a wide multitude of childcare situations, from straightforward welfare advice and assistance (where we could be very innovative) through to high profile cases where the child is on the child protection register but we do not have sufficient evidence to pursue compulsory measures of care. The reality is that in some of these situations children can come to serious harm.
- If therefore section 22 as well as section 23 is to be the way for families and children to access self directed support, it is absolutely crucial that sufficient limitation and discretion is set on what type of section 22 cases would be eligible. It would be preferred that the Regulations for self-directed support provide some definition of the circumstances within section 22 where an individual would be eligible and to ensure that local authorities can refuse access to self-directed support in response to appropriate risk assessment.
- In relation to the age of the child, currently children over 12 are considered to have capacity, and be able to express a view, but local authorities are expected, rightly, to take their views into account at every stage. We would suggest that this is a reasonable standard, but there should be some guidance for situations where the child wants a different option from the parent/s.
- If young people aged 16/17 years lack the capacity to make decisions we hope the current situation, where parents are able to make those decisions until the young person reaches 18 years, would continue.

5. Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?
• The provision of support and advice, especially to those who may have difficulty in making an informed decision, is consistent with the Falkirk Council process of assessment and support planning. Where individuals want to take advantage independent support and advice, information on the availability of this is also provided.
• Local authorities may have work with families where there is disagreement and conflict within families where an individual has difficulty making decisions. Some guidance for local authorities and families on dealing with this in and ensuring the process is transparent would be useful in ensuring that the wishes and aspirations of the individual can be acted upon.
• There is some concern about the capacity of local organisations that currently provide support and advice to individuals, including direct payments support, to meet the expected increased demand. These organisations tend to be relatively small and a large influx of new requests would inevitably put them under pressure to respond. This is likely to lead to funding issues since increasing capacity will often require extra resources. In the current financial climate this is becoming increasingly difficult to achieve.

6. Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?

We are broadly satisfied with this aspect of the Bill. However there have been some issues relating to financial monitoring of direct payments.

• A ‘light touch’ approach to financial monitoring does not seem to meet with current Audit Scotland requirements to account for the use of public funds. Some changes will be needed to make this workable.
• Proper auditing of individual budgets is likely to increase pressure on staff resources.

7. Do you have any views on the provisions relating to adult carers?

We would view the provisions to include carers as a positive step.

Eligibility framework and charging guidance will need to take account of the inclusion of carers and how they will therefore be treated with regard to these. The SDS outcome options may be quite different for carers and could have an impact on commissioning for local authorities e.g. a carer may choose to have domestic support to enable them to carry out of personal care tasks. This will also have an impact on charging e.g. guidance will be needed on how this fits with eligibility for free personal care where the individual and carer option is for the carer to provide personal care and use self directed support to access services which would normally be chargeable i.e. domestic support.

8. Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?
There are two main areas of concern in relation to this aspect of the Bill.

Employment of relatives

We acknowledge that the Bill will provide some discretion to local authorities on the employment of relatives and would highlight the following to inform that position:

- Employing relatives can be complex and have a significant impact on the personal relationship between the paid carer and the person in receipt of care and support. The distinction between family member and employee can be a difficult one to manage and maintain. It can also cause difficulty in the wider family context when one family member is being paid to provide support and another is not (could lead to a reduction in unpaid support if others opt out).

- The distinction between paid and unpaid support can be difficult to establish when one person is doing both and it can lead to increased stress for the carer. Requests for employing relatives often propose employing the person who is providing significant levels of unpaid support and it becomes very difficult to ensure that sufficient breaks are built in for both the paid and unpaid support.

- There are also of issues around employment law regarding statutory breaks and statutory holidays – how does the unpaid support impact on the ability to take breaks and the European Working Time Directive? Normal practice is that, where there are a significant number of hours in the support plan, more than one person is employed to ensure that holidays, sick leave etc can be covered. Many requests for employing relatives propose employing one person, which means that cover for absences may not be well planned and can lead to difficulties in sustaining the support or fulfilling legal obligations as an employer.

- Paid support by a relative who is also providing unpaid support would impact on carer’s assessment and access to respite or short breaks? Local authorities would not normally assess paid carers as being eligible for short breaks but if they are providing both paid and unpaid support this could create conflict.

- There have been a number of requests from carers who have been granted Power of Attorney or Guardianship orders to receive a direct payment on behalf of a person in need and then to employ themselves. We are aware that the Office of the Public Guardian has expressed some concern that these circumstances could result in potential conflict of interest i.e. where there is a conflict between the interest of the individual and the needs or wishes of the carer. It would be difficult for the local authority to monitor the appropriateness of support in such circumstances.

Safe Recruitment and PVG

While we acknowledge that PVG Scheme membership is only a part of safe recruitment process we have the following concerns:
• The current regulations for Protection of Vulnerable Groups mean that local authorities are unable to ensure that personal assistants are members of the PVG scheme. This is optional for personal assistant employers and the local authority can only advise, but not insist, that PVG checks are carried out. Since this is an unregulated workforce the risk to the individual is greater.

• Where employers make an informed choice not to seek PVG Scheme membership they will need to take responsibility for this. However, some people may have difficulty understanding the process and the implications of their decision, which could mean employing a personal assistant is a less viable option for them.

• Personal employers have access to the PVG Scheme Statement but not the Scheme Record. This means that some conviction information which may be relevant, but not necessarily bar someone from working with vulnerable groups, will be undisclosed e.g. theft, fraud, driving convictions. If managing finances or driving is part of the support plan this information could be important.

• Current regulations don’t allow employers to check against both lists. This means that an adult in receipt of services who is living with children can’t access information about whether their personal assistant is barred from working with children.

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

Falkirk Council participated in the consultation conducted by COSLA and have also responded to the COSLA draft response to the Financial Memorandum and concur with the detail of the response.

10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?

We are broadly satisfied with the outcome of the assessments.

Other matters

11. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

Residential Care

• We are concerned that people using direct payments to purchase residential care may be viewed by providers as being self-funding and therefore being asked to pay a rate which is higher than the rate agreed under the National Care Home Contract. Some provision or explicit guidance for local authorities and providers to mitigate this risk would be helpful.

• Would the provision of cash rather than accommodation affect the statutory requirement for financial assessments? This relates to the
statutory obligation on the local authority to provide accommodation in certain circumstances.

Commencement

The timescales for Commencement should allow adequate time for local authorities to change systems, train the workforce, work with providers, service user, carers and communities to ensure an appropriate range of options are available. The local authority tests sites have demonstrated that sufficient time and resources will be required to ensure SDS is effective and has the desired impact on individual choice and outcomes.

Falkirk Council
23 April 2012
Social Care (Self-Directed Support) (Scotland) Bill

Fife Council

Views on the Bill as a whole

1. Are you generally in favour of the Bill and its provisions?

Legislation was generally welcomed in consultation last year and attendance at the Bill’s launch in March 2012 at Dynamic Earth confirmed that there is a real desire, particularly from service users and carers, to have legislation to underpin and embed SDS.

- It is suggested that the term ‘social care’ ought to be removed from the Bill’s title; the principles of choice and control need to extend across health and social care. This is particularly relevant given the integration agenda. The current title is too restrictive therefore.
- Recognition needs to be given to the fact that SDS in health is in its infancy but there are two NHS/Local Authority test sites currently (Fife and Lothian). Links between social and health care referred to in the draft bill and accompanying memorandums, should refer to and reflect findings of the two NHS/Local Authority SDS test sites due to be reported on in Spring 2012.

General principles underlying the Bill

2. What are your views on the principles proposed?

- Principles underpinning other legislation e.g. Mental Health Act and AWI Act have proved to be very helpful so a principles based approach is very welcome here too. The principle of reciprocity is included in the Mental Health Act and it is suggested that this principle be considered in the context of the SDS Bill too thus embedding true partnership and making expectations explicit on partners.
- Reciprocity in this context would require the recipient of self-directed support to deploy any allocated budget in ways that meet mutually identified outcomes agreed with the local authority. Accountability therefore sits with the individual and the local authority.
- SDS and its principles rightly presume inclusion however there will be some individuals and groups for whom risk assessments and individual needs assessments dictate that SDS is not appropriate. Discretion and professional judgement therefore needs to be embedded in guidance and regulations.
Options for self-directed support

3. What are your views on the four options for self-directed support proposed in the Bill?

- The four options will provide greater flexibility with the aim of achieving better outcomes for the individual. The delegated powers memorandum confirms that Ministers are keen not to unnecessarily limit any future practice to these four options and this is welcomed; none of us know how SDS will evolve but our hope is that flexibility and creativity of choice will grow beyond the four options we are aware of to date.
- A choice of options also ensures that individuals can choose what is right for them at a particular time and also choose different options according to changing needs.
- Personalisation and increased choice and control will bring with it challenges too, for example, within shared living settings where service users may choose a variety of different providers/arrangements.
- Experience in Fife to date confirms that the effectiveness of any options will be underpinned by the quality of advice on choice and clarity of information provided to the individual. Significant investment therefore is required in training those who will support this transformational change. It will be essential to provide consistent and accurate information across all sectors in a range of accessible formats via a wide variety of delivery methods. This will ensure maximum participation and inclusion.

4. Do you have any comment on the proposal that the self-directed support options should be made available to children and their families, together with the proposal that the degree of control a child may have over the process should vary with age?

- This is in line with GIRFEC and complements well established child/family centred planning approaches practiced by integrated children’s services. As with adult services, other legislation will also necessarily be taken into account where required e.g. where there are compulsory measures of care.

5. Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

It is agreed that the provision of information and advice should be given a high priority and importance in the Bill however it is suggested that more detailed guidance should be provided on how this should happen based on current good practice. Particular guidance with reference to matters of incapacity and links with Section 12AZA, 13ZA and the AWIA Act would be welcomed. It is vital that provisions do not in any way dilute the powers of the AWI Act.
Direct payments

6. Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?

Further clarity by way of Regulations is welcomed particularly in relation to capacity issues and compulsory measures of care. It is vital that current protective legislation e.g. AWI Act is not diluted and that any groups deemed ineligible are small in number with a clear rationale for this.

Adult carers

7. Do you have any views on the provisions relating to adult carers?

- Informal care underpins a great deal of community supports and it is recognised that a strong argument for the proposed power to support carers to be replaced by a duty in the Bill could easily be made. However if this were imposed on local authorities the implications for additional funding/resources would be significant and the Government would have to support this.

Individuals’ responsibilities and risk enablement

8. Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?

- This is another area where clarity by way of Regulations is required. This question links to the principles referred to previously and risks, responsibilities and accountability. SDS would suggest that people have the right to employ someone of their own choosing and they, as employer, can decide whether or not to arrange for a disclosure check. However decisions not to complete a disclosure check will potentially influence risk assessments, professional judgement and other legislative responsibilities e.g. adult protection. Given the approach by the Scottish Government, Regulations are required to provide clarity for both the local authority and SDS recipients.

Financial Memorandum

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

- As noted previously, SDS requires transformational change. Whilst the Government’s approach seems reasonable, there are concerns over whether the funding is sufficient to cover the transition costs. For example, as service users start to make their own choices, dual running costs may arise (it may be that services currently provided by councils may be provided by third parties, but the council is left with running costs until the facilities can be fully closed down).

It is unclear whether these costs may work through the system within the 2012-15 spending review period. It may take longer for these changes to be implemented. Councils are also at different stages of
SDS implementation and local contracting arrangements. In Fife we have yet to gather clear evidence of the potential level of demand for services different to those currently provided. It is therefore suggested that further detailed consideration is required regarding the appropriate level and duration of funding. The potential for a reduction in housing benefit income should also be taken into account.

- Fife Council participated in the costing exercise undertaken by Stirling University on behalf of the Scottish Government. The costs gathered in Fife at this time primarily related to direct payment arrangements (which had been embedded for 12 years) as Fife were at an early stage with SDS. It is suggested that Stirling University repeats this exercise within 2 years as SDS progresses and calculations will then truly reflect actual SDS implementation and inform long term financial expectations.

**Effects on equal opportunities, human rights, island communities and sustainable development**

10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?

- Yes, satisfied that the Scottish Government is best placed to ensure that all appropriate assessments are undertaken and outcomes are fully considered to inform these matters. It is noted that an EQIA has been undertaken and the Scottish Government confirms that SDS implementation ought to ensure enhancement of rights afforded to individuals.

**Other matters**

11. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

- The SDS Bill should link in more strongly with the agenda for integrating health and social care initially for older people. As joint budgets are established for this growing sector of the population, clear guidance needs to be given on how and who to manage SDS for these individuals. As there are many synergies between the SDS and integration agenda, there is an excellent opportunity for both policies to enhance each other if implemented in a co-ordinated and integrated way. There will clearly be a role for health authorities in this which is not reflected in the draft Bill as it stands.

Fife Council
8 May 2012
Social Care (Self-directive Support) (Scotland) Bill

Getting There

1: Are you generally in favour of the Bill and its provisions?
Yes we do support the Bill. The provisions seem to establish a sound basis for the development of self-directed support (SDS).

2: What are your views on the principles proposed?
We are strongly in favour of SDS, a positive and progressive development for the provision of care support packages in this country. The Bill sets out the general principles of involvement, collaboration and informed choice quite clearly.

3. What are your views on the four options for self-directed support proposed in the Bill?
The four options are clear and would appear to be underpinned by the general principle of involvement and informed choice wherever possible. However, true involvement and properly informed choice for everyone will not be easily achieved. Many if not most people will require access to advice, guidance and support from an independent source with good knowledge of the range and quality of services in the area, and of SDS. Funding of accessible, independent brokerage services, therefore, will be important to ensure the principles are applied.

Similarly, review and appeal procedures will demand independent advocates to support service users, with provision for funding outwith local authority SDS budgets may be necessary to ensure independence.

4. Do you have any comment on the proposal that the self-directed support options should be made available to children and their families, together with the proposal that the degree of control a child may have over the process should vary with age?
There is no reason children supported by their parents or other responsible adults should not enjoy the full benefits of SDS. SDS is likely to have such a profound influence on the future shape of the entire care and support sector that children (and their parents) can only gain from the experience of the system that may become applicable to some when they reach adulthood.

5. Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?
Provision of information, advice and support outlined in the Bill does not seem adequate. Independent brokers will be necessary to provide support, enabling people to become fully involved, make informed choices and, where appropriate, facilitate collaboration. Independence from local authorities and major providers will also be important, so separate funding should be considered.

We believe independent brokerage will act as quality assurance too, making for a healthier diversity of smaller user-led providers and niche services. This input can also support individuals to explore options, understand the implications and responsibilities that will follow from their decisions and negotiate better deals perhaps in co-operation with other service users.

Diversity of providers and services will be crucial to the ultimate success of SDS – the principle of informed choice is only meaningful with a reasonable range of distinctive services realistically accessible. Developing and maintaining a diverse local market will not happen without thoughtful strategies from local authorities committed to this principle, so independent brokers and advocates will be an essential component of the controlled market mechanism.

6. Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?

In some respects yes, but more robust provisions are needed. The Bill will allow many more access to direct payments and make personalisation of services far more inclusive but the breadth and quality of services will not necessarily protected or even enhanced. SDS demands innovation and diversity but local authorities under pressure to deliver cuts in expenditure in an unfettered marketplace could rapidly lead to a situation where a few large providers dominate, stifling the very diversity desired for successful delivery of SDS. Moreover, many services may be used by people who may not have a level of need requiring formal assessment or an SDS care package, but their involvement is beneficial as a preventative towards a worsening of their situation, especially in the field of mental health.

Establishing and sustaining a healthy diversity of service providers therefore must be a conscious policy in each local authority area, with good practice from all areas of the country and beyond shared. We would like the legislation strengthened to require local authorities to implement positive strategies to develop and sustain a healthy diversity of providers in their respective areas.
7. Do you have any views on the provisions relating to adult carers?
Yes. Carers will need the same level of access to independent advice and support as people who use the services.

8. Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?
We agree individuals should have the right to employ who they wish, subject to minimum standards and checks. Wholly unrestricted conditions on the employment of P.A.s leaves the system open to abuse: Will agencies be entitled to employ untrained staff to work as P.A.s? Will job seekers have no option but to accept offers of employment as a P.A. whether they are suitable for this kind of work or not?

The care sector has worked hard in recent years to improve standards and ensure safety. There is a danger some of those advances may be undermined and standards reduced. Many who wish to employ P.A.s will have levels of vulnerability that could leave them open to abuse, while poor pay and conditions for P.A.s is not in the interests of anyone who wants to see SDS deliver real improvements of in the lives of users of care and support services. Further work is necessary to ensure minimum standards, proper checks, inspection and review by the local authorities, the Care Commission or independent agents.

We would ask consideration be given to establishing a register of P.A.s to enable checks and reviews to take place as necessary, and as a safeguard against abuse.

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?
Withdrawal or phasing out of block grants or service level agreements means most if not all providers will be obliged to market (or tender) their services for individuals at Full Cost Recovery on a per head basis – basically, block price arrangements may prove to be significantly less than individualised SDS prices. Local authority policies to fix rates for services within an individual care package must take this into account.

Though we believe SDS will reduce overall costs, we also feel most benefits will only arrive in the longer term. SDS will be implemented in a time of acute austerity yet significant investment may be required to facilitate the adaptation of the care sector – i.e. sudden withdrawal of block grants / service level agreements could see many worthwhile services collapse under the financial strain of managing a less stable cash flow while trying to develop more
tailored services, seriously damaging the quality and range of services and so restricting the choice of service users.

There is a need for local authorities to support smaller service providers through a reasonable period of adjustment, meaning some costs may in fact grow initially. Developing the infrastructure to enable informed choice, suitable support and advice throughout the new processes will need investment for long term sustainability, while the possibility of unqualified P.A.s downward pressure on wages and standards threatening the viability of good quality providers cannot be dismissed.

10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?
A good deal of work is progressing on issues arising from the implementation of SDS, extension of direct payments and the personalisation agenda. Major change of this nature must be managed so a period of transition would assist providers making the necessary adjustments if supported by a coherent strategy from local authorities and government to achieve a healthy, diverse and thriving sector.

11. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?
CARE MANAGERS: Care Managers negotiating and agreeing individuals’ care packages will be pivotal to the success of SDS. What size of caseload will any one Care Manager – or Care Team – be expected to handle? Pilots and experience elsewhere in the UK (and abroad) should inform optimum numbers, but it will be important to guard against overloading these professionals in a drive to cut costs.

Also, we do not believe Care Managers can fulfil a dual role of supporting the individual to explore and make informed choices while having the final say on what is permitted within that individual’s care package (and at what price). This underlines the necessity for independent brokerage services.

RURAL AREAS: Specific issues about the availability and viability of services in rural areas may need special consideration. Where the population is spread out over a large geographical area, and where actual numbers eligible for services may be numerically small, providers – particularly smaller providers – may struggle to survive if people using their services fail to reach the critical mass needed if there is no underpinning subsidy. This could lead to further reductions in service and choice.
VARIATION: People with fluctuating conditions, notably in mental health, could pose problems for a system not designed to cope with change. SDS promises more discrete services and greater flexibility. For many people the proof of this will be the ability to vary services within a minimum and maximum range on any given day or week. This is where the caseload size for Care Managers will be tested, as will mechanisms for review, appeal and development.

ENABLING RISK: Enabling reasonable levels of risk by individuals making properly informed choice is a necessary part of the SDS process. To enable that then professional independent advice and support must be on hand from brokers and/or advocates at the key stages during the research or agreement of care packages.

EMPLOYING P.A.s: People assuming the role of employers must have access to accurate, comprehensible information and training – e.g. easy to follow handbooks or checklists; starter and refresher workshops on responsibilities and expectations – and understand the full implications of their decisions. Peer support networks and specialist local agencies could help build the confidence of individuals to take on employer responsibilities.

CULTURE CHANGE: Local authorities must engage constructively and openly with providers from the public, independent and third sectors to help bring about the changes needed to make SDS work for people in reality. Flexibility, diversity and co-operation led by local authorities can help bring about this culture change.

Getting There
23 April 2012
Social Care (Self-directed Support) (Scotland) Consultation

Glasgow Centre for Inclusive Living

1 Introduction

1.1 Glasgow Centre for Inclusive Living (GCIL) is an organisation which is run by and for disabled people (i.e. a Disabled People’s Organisation or ‘DPO’). GCIL provides a range of services which aim to help disabled people challenge the barriers to independent living. These include a variety of employment, housing, training and self-directed support (SDS) services. In terms of services which have a specific relevance to this consultation response, GCIL currently supports approximately 350 disabled people in Glasgow, and a further 100 in East Dunbartonshire, to manage their own packages of support using SDS.

1.2 In broad terms, GCIL supports the responses submitted by Independent Living in Scotland (ILiS), Self Directed Support Scotland (SDSS), and Inclusion Scotland (IS). In addition, we would like to make the following specific points.

2 QUESTION 1: Are you generally in favour of the Bill and its provisions?

2.1 In principle, GCIL supports the proposal to consolidate and update existing legislation on direct payments.

3 QUESTION 2: What are your views on the principles proposed?

3.1 We believe the principles outlined are broadly positive. However, we would like to see the Act based on the explicit principle that SDS should be implemented in such a way that it promotes independent living. For this to be realised it would be necessary for legislation to guarantee not just the level of control that an individual can have over social care provision, but that the level of that provision must extend beyond basic personal care and safety. In other words, it must guarantee minimum entitlements to supports that enable a disabled person to live as an equal citizen with the same opportunities to participate and contribute to society as non-disabled people take for granted.

4 QUESTION 3: What are your views on the four options for self-directed support proposed in the Bill?

4.1 As indicated in a previous submission, we still believe the options set out are slightly confusing and do not distinguish sufficiently between provisions which enable the individual to achieve greater day to day control over their support, and simply making a decision not to do this (or, indeed, making no decision at all).
4.2 Confounding the options in this way, and regarding all of these options as forms of self-directed support, devalues the genuine meaning of the term. SDS gives practical effect to an individual's desire for more choice and control in the support they use on a day to day basis. Choosing to use local authority provided services, or expressing no preference about how needs are met (even if there exists a general entitlement to have more involvement in assessment and provision where desired) are not the same thing at all. Perhaps the term 'personalisation' could have been reserved for this broader redefinition of a more individualised and co-productive approach to social care assessment and provision.

5 QUESTION 4: Do you have any comment on the proposal that the self-directed support options should be made available to children and their families, together with the proposal that the degree of control a child may have over the process should vary with age?

5.1 We strongly agree that self-directed support should be more widely available to children and young people. It is at this age that many disabled people develop low expectations regarding their future prospects. SDS is a crucial tool in building self-esteem, raising ambitions and aspirations, and showing disabled children and young people that independent living is possible and achievable.

6 QUESTION 5: Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

6.1 We would like to see a more robust duty on local authorities to ensure that service users and their representatives have access to comprehensive, accessible and independent information, advocacy and support. In practice, as the Bill is implemented over time, it may be that a number of organisations develop relevant services. However, we believe that local authorities should be required to make every effort to ensure that at least one such resource is run by disabled people and is able to offer independent information, advice and support. This should include the requirement to resource and arrange community development to build the capacity of local disabled people to provide such a service. Unless this is undertaken, it is all too easy for local authorities to claim that local disabled people have no appetite for developing a local user-led SDS support organisation.

6.2 Where a market of independent support providers does develop, it is crucial that the cost of purchasing such support does not act as a barrier to obtaining it. Services can be block funded so that they are free at the point of delivery, or the cost can be included in an Individual Budget which the individual then uses to buy in the help they need. If the latter option is developed, it is essential that the cost be identified
separately in such a way that there is no incentive for the individual to redirect the funding to what may be viewed as more pressing areas such as additional hours of help with personal care. The best way to do this would be for support organisation costs to be ring-fenced within the Individual Budget.

6.3 In addition to specialist SDS support, ‘generic’ advocacy can be vital in ensuring that disabled people have their voice heard in engaging with public agencies and service providers. The inclusion of an enforceable right to independent advocacy would strengthen the likelihood that the SDS system as a whole would be implemented in a genuinely empowering way.

7 QUESTION 6: Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?

7.1 No, the method will help, but it will not of itself guarantee the kind of empowering system of support that the Government is seeking to achieve. We know from experience that SDS can give people more choice and control over their social care and support and that it can lead to better outcomes and improved quality of life for individuals. However, whilst a right to SDS is essential, it cannot make up for the combined effect of increasingly restrictive eligibility criteria, cuts in individual assessed budgets, and increasing charges. These are in danger of wiping out any gains from the introduction of a theoretically more empowering framework for assessment and provision.

7.2 For example, at the present time, many people re-assessed within the personalisation programme being implemented in Glasgow have experienced such severe cuts in funding combined in many instances with increased local authority charges, that their quality of life has been severely degraded rather than improved by the new approach. Many people are coming to regard an Individual Budget as an invitation to ration their own support rather than as an opportunity to take greater control. It is no surprise that the redistribution of funding from some individuals in order to fund others who would not otherwise have been supported within the overall social care budget has been described as ‘the redistribution of poverty’.

7.3 To be absolutely clear: GCIL unequivocally supports the need to update the legislative basis for direct payments and SDS – we simply believe the crisis in social care is in danger of undermining all our efforts.

8 QUESTION 7: Do you have any views on the provisions relating to adult carers?

8.1 We would support the introduction of a discretionary power for the local authority to offer SDS to an informal carer, as long as this is
unequivocally to meet the carer’s own assessed needs, but not in order to meet what are in reality the needs of the disabled or elderly person.

8.2 In respect of these needs, we would re-iterate the position stated in a previous submission: ‘We believe that the disabled person should always be the main focus of any support or intervention. Receiving support from informal or unpaid carers should be a positive choice of all concerned, not the only option available. Where the individual disabled person has capacity, there is no reason why the payment should need to go to the carer, even for services which may assist the informal carer in their role. If the person does not have capacity, then existing (and proposed) mechanisms exist to deal with this. We believe this arrangement promotes and prioritises the empowerment of individual disabled people and we therefore do not support the suggestion to extend the right to receive SDS to informal carers.’

9 QUESTION 8: Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?

9.1 Yes. We agree that it is vital for anyone contemplating employing Personal Assistants (PAs) to have access to good information, advice and support on the responsibilities involved in doing so, particularly with respect to employment law, training, safety etc. Nonetheless, many disabled people value the flexibility afforded by employing individuals who do not have pre-existing attitudes acquired through working within the ‘mainstream’ social care system.

10 QUESTION 9: Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

10.1 Although we agree with the broad thrust of the Financial Memorandum, we are slightly sceptical regarding some of the costs as detailed. Firstly, as noted above, for SDS to work in the empowering way intended, we believe that support organisations run by disabled people (ie genuine DPOs) should play a central part in providing independent advice and support at the local level.

10.2 Whilst we welcome the recent funding made available to build support organisation capacity under the recent SDS implementation programme, there remains much to do in many areas across Scotland. We therefore question the position that ‘...local authorities will not require to set up or fund significant numbers of new organisations, but will need to work with existing organisations to ensure efficiency, effectiveness and value for money’(FM s88). The existing landscape of support organisations is unlikely to change significantly without a more targeted approach combining a legislative requirement with long-term funding either at the local or national level.
10.3 Secondly, workforce issues are inextricably linked with local SDS funding in as far as they affect Personal Assistants (PA) and agency workers. If employing PAs is to be a genuine choice within a spectrum of options using an Individual Budget, then funding must include the ongoing costs of training, employment insurance, recruitment, payroll etc together with the costs of meeting employment responsibilities such as redundancy payments where these apply. Individuals should not have to choose between paying for the essential support they need or meeting their legal employment responsibilities. At the same time, it is essential that PA employers can afford to pay hourly rates and other terms and conditions of employment that are comparable with traditional forms of service provision. Unless this is so, the role will not attract high quality staff, individual support arrangements will be jeopardised, and SDS will be open to allegations of being designed to provide ‘care on the cheap’.

10.4 Comparisons with costs under direct payments should be treated with some caution as the implementation of direct payments did not always reflect these important costs either.

11 Effects on equal opportunities, human rights, island communities and sustainable development - The Policy Memorandum (para 52-63) accompanying the Bill outlines the assessments made by the Scottish Government on the potential impact, if any on equal opportunities, human rights, island communities and sustainable development. QUESTION 10: Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?

11.1 We would strongly agree that ‘self-directed support, if implemented in line with its core values and principles, can enhance wider human rights principles beyond those enshrined directly in legislation’ (PM s53).

11.2 However, as has been pointed out in other submissions (eg by Independent Living in Scotland), SDS could be much more effective in doing this if certain fundamental features of the entire social care system were addressed.

11.3 These include a re-prioritisation of social care nationally leading to more realistic resourcing, addressing the inequities arising from localism, the need for a more robust rights-based approach with minimum entitlements, and the abolition of charging for social care in line with health care. Clearly these issues are beyond the scope of this specific piece of legislation alone and warrant consideration through an appropriate mechanism such as a Scottish Social Care Commission.

11.4 In terms of the impact of SDS on different ‘protected groups’, a flexible approach to using budgets offers clear opportunities for individuals to use funding in a way which meets personal, or cultural needs.
However, it is important that local policies on issues such as the employment of relatives, do not act to undermine this potential. Clear national guidance on these matters would be welcome.

12 QUESTION 11: Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

12.1 As noted in a previous submission, we are disappointed that the Bill does not remove the current restriction on the use of SDS to pay care home costs where, of course, residential care is genuinely the positive choice of the individual. We believe that this would fundamentally improve the relationship between care home and individual resident, ensuring greater direct accountability to the ‘customer/resident’ rather than to commissioners as at present. This would encourage more of a ‘hotel’ culture where care homes are in direct competition with each other and are motivated to provide high quality services, ‘customer care’ and value for money.

12.2 We also believe that individuals should be enabled to supplement care home provision with additional support funded through SDS. This could enhance the experience of residential care, enabling greater mobility and general autonomy in addition to the basic day to day support provided. We recognise that this would have significant resource implications. However, without such an option we remain sceptical that some care homes are capable of meeting the essential requirements of current human rights legislation (eg European Convention on Human Rights).

Glasgow Centre for Inclusive Living

3 May 2012
Social Care (Self-directed Support) (Scotland) Bill

Glasgow Personalisation Network

The Glasgow Personalisation Network is organised by the Defend Glasgow Services Campaign; Social Work Action Network; Learning Disability Alliance Scotland; Coalition for Carers and UNISON. The Network was established in spring 2011 in response to the growing unease amongst workers, service users and carers and families in relation to how the personalisation agenda was developing in Glasgow. Since forming, the Network has held a series of regular information exchange and advice sessions where all parties can share knowledge on current developments; we have lobbied the Council and attended scrutiny meetings; we have met with Elected Members and Council Officers. On 10th March 2012 we held a conference with over 100 people in attendance which culminated in the following statement being agreed. The Network was central in getting the last meeting of the current Council to debate personalisation and acknowledge there were concerns. On 23 April 2012 the Network held a local government elections hustings with over 40 people in attendance.

The Network has also published a pamphlet ‘Personalisation in Scotland – the Facts’ which is attached.


We believe that only by the Scottish Government ensuring the aspirations contained in our agreed statement are met is there a basis for personalisation/self directed support delivering on the purported values that we all ascribe to. Without these conditions the experience in Glasgow which is one of cuts, distress and exploitation of workers will be replicated elsewhere.

The statement reads as follows:

The Glasgow Personalisation Network calls on Glasgow City Council to:

- Redesign its assessment process to ensure that those with complex needs have those needs fully recognised
- Create real opportunities for individuals and families to reach a consensus with the local authority over the size of their support budgets.
- Enable all Individuals and their families or their advocates to be part of all allocation meetings that set a budget.
- Ensure there is more flexibility about how social care budgets can be spent. Individuals need to be given more scope and responsibility on how they spend their budgets to meet their needs in creative and imaginative ways.
• Support more people to have real control over their budgets through setting up or extending support services to help people manage their budgets.

• Ensure that all support staff employed through Individual Budgets are paid the “Living Wage” whether they are employed by the statutory, voluntary or private sectors or by individuals.

• Ensure the new individual employers understand their role and receive adequate training and support to do this.

• Ensure the employment rights of workers employed through the use of individual budgets are adhered to and that their terms and conditions are broadly similar to those providing care and support in the public sector.

• Ensure that all members of the workforce have access to sufficient support and training to carry out their jobs effectively.

• Ensure that every Personal Budget meets all associated employer costs; such as holidays, sickness absence cover and training.

• Ensure that carers and family members are recognised as equal partners in care and that they are fully involved in every stage of the process.

• Ensure carers’ own support needs are recognised alongside the needs of the people they care for.

At the Conference we received many statements from service users, and attach two comments below:

“I’ve lost 45% of my service. I left home 3 years ago but now have to spend more time relying on my family... this makes me feel like a child.”

Glasgow Service user, 10 March 2012

“I’m getting depressed, anxious and lonely and having bad dreams but they won’t listen. I feel trapped!”

Glasgow Service User, 10 March 2012

We would welcome the opportunity to come and speak to you about our experiences.

Glasgow Personalisation Network
24 April 2012
Hayfield Support Services

Point 1
Hayfield is generally in favour of the proposed Bill, but feels that more needs to be included to ensure that the application of the Principles outlined are appropriately monitored and that there should be clear channels of enforcement when they are not adhered to. Hayfield is particularly concerned about the need to respect and provide for the communication needs of deaf people who may have additional minimal language skills (i.e., deaf people who have difficulty communicating even in standard British Sign Language – BSL – due to other problems). This will be highlighted in following sections.

Point 2
The general principles, as outlined in para. 7 of the Policy Memorandum, focus on the 3 issues of “involvement”, “informed choice” and “collaboration”. In each of these areas, the reality of experience of deaf people at Hayfield, to date, is that none of these principles is being properly applied by the appropriate authority.

In terms of “involvement”, the majority of care managers/social workers with responsibility for overseeing the care arrangements for deaf people at Hayfield, have little or no skills in communicating with deaf people and many are not even ‘deaf aware’. (Under the previous system of Regional Local Government, all the Scottish Authorities had a recognised service for deaf people, which employed staff with an acceptable level of communication skills. Under the existing Unitary Council system, over half of the Authorities have no specialist services and no staff with adequate communication skills). It should also be noted that most BSL interpreters have had no training in working with deaf people with minimal language skills, so that the provision of such interpreters for deaf people at Hayfield is not always an appropriate solution. All these issues taken together lead to a reality in which the notion in which the principle of “involvement” for deaf people with other communication skills is merely tokenistic. At Hayfield we have already had examples of care managers using BSL interpreters when meeting with deaf individuals about SDS assessments and funding, and then discovering that the individual had no understanding of what had happened.

Similar problems arise when considering the issue of “informed choice”. Such choices can only be made when an individual has the knowledge and understanding themselves, or has the support and advice of an independent advocate. Most of the deaf people at Hayfield have no reading or writing skills, are basically innumerate and many have additional communication difficulties, even in BSL. Few if any have any real understanding of the benefit system or about how their existing care and placements are funded, so it is unlikely that they could fully grasp the issues involved with the change to SDS or what choices they might have to make. At the same time, they are hampered by the fact that there are NO independent advocates with skills for communicating
with deaf people in Glasgow or the West of Scotland, and so they cannot access help or advice from this source.

Hayfield’s experience of “Collaboration” by authorities, both with the organisation and with the individuals who we work with, has also been disappointing. There has been little in the way of support or advice from any of the authorities that we work with – contact seems to be limited to repeated demands for more information and for cuts in fees. Hayfield managers have met with staff from the Scottish Government SDS team, but it appears that they regard their responsibility primarily to work with local authorities and not service providers.

In terms of authorities ‘collaborating’ with deaf individuals, experience to date has been that authorities give limited time to meetings or appointments (when in fact all work with deaf should really be given more time). There have also been occasions when interpreters are not available and care managers have used family members to assist with communication without seeking the deaf person’s permission or irrespective of how capable the family member is at communicating with them. There are also problems with local authorities not really collaborating with Hayfield care staff who probably have the best overall view of an individual’s needs and abilities. Again, the notion of “collaboration” is tending to be tokenistic, without any real commitment to ensure the best outcomes for the deaf individuals involved.

Point 5
Relating to the issue of provision of information and advice and support offered to those who may have difficulty making informed decisions. These issues have already been addressed to some extent above, but it is important to stress the fact again that deaf people in general, and deaf people with minimal language skills in particular are not having their needs and rights for equality of services met by the present way that SDS is being introduced. The question of provision of information is largely dependent on the skill, knowledge, support and patience of the care managers dealing with any SDS processes. Hopefully the above details will have highlighted the many failings in this area from the experience of deaf people in Hayfield to date. The Committee may be aware that the Scottish Government, along with the Scottish Council on Deafness’ has produced a BSL DVD about the basic aspects of the SDS’s aims and processes. However, Hayfield is unaware of any local authority who uses this resource or who has made this information available to deaf people in an accessible format.

This has made it basically impossible for any of the deaf individuals in Hayfield to make effective informed choices about their future care. This is compounded by the fact that there are no readily available alternatives to the range of care supports and opportunities available, either locally in Glasgow or in Scotland as a whole.
Point 6
Because of the issues raised above, Hayfield has to take the overall view that, without the introduction of effective monitoring and the introduction of verifiable safeguards to ensure equity and access for deaf people with multiple, complex needs, the methods for modernising direct payments, as proposed in the Bill, will not necessarily result in the changes that the Scottish Government seeks. In fact, early indications are that local authorities are taking a very restrictive, non-specialist view of service provision, which could limit and possibly endanger the future of this unique service in Scotland. This in turn would lead to the possibility of these deaf people either receiving inappropriate, inaccessible care packages, or having to be placed in hospital settings at considerably more cost to the Government. It must be stressed that although there are other organisations that provide limited care packages for deaf and deafblind people in Scotland, none of them are able to provide the same range and depth of services, on a continual (24/7/365) basis and with the same level of staff training, knowledge and experience. Hayfield is a unique service for deaf people in Scotland, whose future can only be assured by a formal recognition of the need for appropriate funding.

Conclusion:
Effective and appropriate Communication has to be the foundation of all care services in Scotland. Where there is a barrier to such communication, such as deafness in general and minimal language skills in particular, there MUST be a recognition that specialist support must be available to allow for any work to be done to safeguard the needs and aspirations of the deaf individuals involved.

Hayfield works with deaf people with multiple, complex needs. All staff receive training in a range of communication and care issues, and as such they are a unique resource in Scotland. They are not registered interpreters, but through their day-to-day contact with the people they work with they have learned the most appropriate ways of communicating with each individual, whether it is through the use of idiosyncratic signs (which would not been known to BSL interpreters), mime, or pictorial and graphic mediums.

Hayfield is also disappointed that the process of assessing deaf people with multiple, complex needs has led to them being ‘pigeon-holed’ as being in the category of “physical disability”, irrespective of what other conditions they have (e.g. cognitive impairment or mental health problems) and which might have more effect or their lives and care needs. It is suspected that this may be used as a way of restricting the way in which their needs are assessed and minimising the supports that are made available to them.

Finally, Hayfield is concerned that the idea of ‘day support’ is being marginalised and limited, with local authorities claiming that this is an outdated model of care. This highlights the fact that not only care managers but also service managers and commissioners have little or no understanding of the social and emotional needs of deaf people with other problems. Without
the day-to-day opportunity to meet with deaf peers and care staff with appropriate communication skills, these deaf individuals would be left isolated and vulnerable, without recourse to social or community support, which could lead to mental health problems (deaf people generally are 4 times more likely to experience mental illness than their hearing peers, and this increases for deaf people with more complex needs), alcohol abuse, financial abuse and physical abuse.

Hayfield Support Services with Deaf People
20 April 2012
Please see below our previous submission to this bill, this was agreed at our last meeting we would also like to state the need for people to have access to advocacy when you consider the progress of the bill.

The following are the comments of HUG members on the consultation on self directed support. We have not answered each question, the length of the consultation document and the timescale prevented this.

HUG is a network of 400 people with experience of mental health problems. It acts as a voice for people with a mental illness in the Highlands through its collective advocacy function and through its awareness raising activities. More information can be found about it at hug.uk.net. The HUG Friday Forum is a forum of our more active members that allows members to respond to such things as consultations. This response came from 12 people.

We have concentrated our views about direct payments and self directed support on how they may apply to people with mental health problems. We have spent most of our time addressing the central assertion in the consultation document that self directed support would eventually become the principal mechanism by which social care services are delivered in the future.

We have been consulted on and off for at least the last decade about the need to get a higher uptake of people with mental health problems using direct payments. We would imagine that the continuing extremely low use of direct payments by people with mental health problems is partly due to lack of publicity about them and simple mechanisms to use them as well as a reflection that many people who receive support do so principally from health services. However we also think it may because people with mental health problems are often not interested in them. We would hope that the value that they have to people with physical and other disabilities has not been transferred wholesale to people with mental health problems without reference to their particular needs.

We would hope that in the future that it becomes easy for those people who have mental health problems and who actively want self directed support to obtain this but we strongly oppose the idea that self directed support becomes the default mechanism for care provision.

The reasons we have for this are (in no particular order):

- We worry about the burden of administering self directed support and direct payments. Most of us have enough trouble dealing with our own often precarious day to day existence without having to manage and employ other people who will in turn help us manage our lives. This especially applies to direct payments. If we were to pass over responsibility for providing support to another agency then we see little
difference in concept to the present arrangements except, perhaps a privatisation of Social services.

- Having a mental illness is often intertwined with extreme stress and anxiety, self directed support could increase this.

- We worry that this is a way of Government passing responsibility direct to the individual. We live lives where our ability to take responsibility for our lives and sometimes our families is often extremely compromised. This is part of the nature of our impairment. We can need other people to take responsibility when we can’t.

- If our support worker goes off sick or leaves when we are responsible for managing them it will be our responsibility to make alternative arrangements, possibly at times of difficulty for us. We are not willing to be given this burden.

- When we are ill the majority of us would not be in a condition to manage our support or direct what we think it should be doing for us and yet this is the time when we most need support. It is possible that we would be in a position where we would lose the support at a time when we most need it because we could not manage or control the support we get.

- If we are to manage the support that is provided for us we think we should get a management fee for carrying this service out on behalf of the local council.

- We worry about the effect on benefits such as DLA if we get Direct Payments.

- We are aware of people with special needs who do get direct payments, they seem to benefit from the services that are provided to them but they can need to employ accountants to administer their service. Doing something like this would be beyond us.

- Many of us will at some point be sectioned, at which point we would lose the service at the very point we most need it. Being sectioned at different intervals means that we would have to go through the whole assessment process again and again and select our own support at times when least able to do this. People subject to section are likely to use council services the most and therefore be most likely to be eligible for self directed care when they are not under section.

- The type of support that we get from the council is often very different to that of those for people with physical disabilities. It is often of the sort that acts at a psychological or emotional level as well as helping us with daily tasks such as managing our finances and paying our bills. We are often in a position where we depend on our support workers for advice and direction and motivation. It would seem incongruous for us to then be put in a position where we direct our supporters in what
advice and support to offer us and even stranger where we may rely on a support worker to help us manage their payroll, conditions of service and management.

- We tend to have cyclical or episodic illnesses which means that the level of support we need will vary from week to week. Any support has to be flexible enough that it helps maintain us in the community when well and then increases in intensity when we are ill.

- We worry that passing over control to family and friends for self directed support may leave us more vulnerable than the present system of relying on statutory services for support.

- A lot of the support that the Council provides is through the voluntary sector which often provides group and communal activity that we value greatly. We often benefit hugely by socialising and mixing with our peers for instance in drop in centres or training units. We worry that the focus on the individual will have a negative impact on these services and will amount to a direct attack on our community which many of us place great store in.

- We worry that it would make it much easier for the Government to reduce costs, they will be able to reduce care on a person by person basis and these people are likely to be in a very difficult position to challenge funding and resource allocation decisions.

- We think many of us would have a great need for advocacy if we were to have to challenge any assessment of our care. Advocacy is limited in its provision across Scotland.

- Many of us also have alcohol and other substance addictions. We live unpredictable and at times, chaotic lives and would not be able to participate in these forms of support.

- Some of us have impairments that mean that we cannot manage money, for instance we may go manic and spend resources in ways that are not permitted.

- Those of us on procedures such as the care program approach may be those that use council services the most. The implementation of our care under these systems may be very directive for instance by putting pressure on us to take medication, have suitable relationships and generally act in more sensible and healthy ways than we may naturally be inclined to. Whilst we agree that we should have a say and some control in our care and can resent it when our autonomy is taken away we often, especially in retrospect, accept that these interventions are in our best interests at a time when we are less able to act in this fashion. This approach does not fit easily with the philosophy of self directed care.
Our conditions are such that our needs change frequently we cannot anticipate the future or predict what level of care we need from month to month. If we are given a set amount of money to manage our care it will be at times too much and at other times far too little.

Many of us who use Council services have frequent admissions to hospital at which point our self directed care would stop. This would mean that we would lose our support when we have a high need for it and would have to reinstate it on discharge when very vulnerable.

The Government publication on self directed support produced in conjunction with VOX and the Mental Health Foundation repeatedly says that local mental health user groups would provide support advice and information and promotion for self directed support. As one of the leading local user groups we would like to state that we were never asked whether we would do this. We value our autonomy and having our own voice in these matters and, as a collective advocacy group (which is the case of most mental health users groups such as us) believe that this would compromise our role if we became a service provider in this fashion.

Some of us would feel profoundly uncomfortable if were expected to instruct our support workers in what to do for us.

Further Comments

For those people who would want to use self directed support and direct payments there should be better publicity and support to use and access them. We are aware of some people feeling that they were eligible to them and not being able to access them because by the time they applied the budget was used up.

Some of us value our existing support agencies greatly and may be more inclined to use direct payments if we could get them directly from these existing trusted familiar and high quality service providers.

We do like the idea of agencies that manage payroll functions, this might persuade some of us to use this service.

We do want more say and control over our care and this care could be provided in a much more flexible way. We may do better to have a modernised service from the statutory sector than a brand new system of care provision.

Some of the attractions of direct payments such as being able to buy a laptop, get alternative therapies, access the respite that we want are very appealing to us. To have access to a fund that would allow these things to happen could be great. We don't think that having access to such possibilities should be available only to those able to take responsibility for the provision of their own care. If there were small
funds of money that would allow this to happen whilst still receiving council services we would be delighted. We imagine that this is very unlikely in the present financial climate.

- Using advance statements to help determine our care when ill may be very helpful.

- Direct payments may be very useful in rural areas where there is such a paucity of statutory services that commissioning our own services may bridge a service delivery gap.

- Whilst we have little knowledge of their effect on people with a mental illness we are aware that direct payments have transformed the lives of other people and have helped them back in to social networks and employment.

- Some of us think that we would like direct payments if we could find someone to administer and manage our care on our behalf but when we think of this as an option it seems to go against the whole point of direct payments.

- We do need the services that are provided for us to be as person centred as possible and genuinely needs led. This does not mean that they have to be arranged under the aegis of self directed support.

I hope that these comments from our members are useful in the development of the self directed support bill. I would emphasise again that we have little problem with people getting this service but we do have a great anxiety about it being provided universally. If it were we expect that many people with a mental health problem would suffer unnecessarily and be disadvantaged.

HUG Action for Mental Health
12 April 2012
1. Are you generally in favour of the Bill and its provisions?

Despite some previous ambivalence about the effectiveness of legislation in facilitating cultural change, in Control Scotland is strongly in favour of the Bill and its provisions (along with the associated policy memorandum and explanatory notes) which we believe will provide further impetus to support change and the move to consistently implement a sustainable system of self-directed support in Scotland.

2. What are your views on the principles proposed?

In Control Scotland is supportive of the principles described. In addition, however,

- we feel that the legislation (and/or supporting documents) should make some reference to the helpful overarching notion of an individual budget as the amount of funding that a person is entitled to and which they can direct, using any of the four options described below.
- We also feel that it is essential that the principle that individuals and families should be informed of the funding that is available, firstly as a transparent indicative allocation and then as an approved amount of funding is included as element of a system of self-directed support, irrespective of the mechanism the person chooses (i.e. It should be really clear that this is expected for everyone not just if the person chooses to take a direct payment) On this basis, we would argue that the indicative allocation available to people is provided prior to the discussion and explanation about the different mechanisms as this may be taken into account by the person when deciding how they intend to direct their support. As a general point, however, we feel that everyone should have information about the approved allocation available as this is needed to influence decisions about how arrangements can be reviewed and changed.

3. What are your views on the four options for self-directed support proposed in the Bill?

In Control Scotland feels that the four options described are all reasonable, appropriate, and legitimate, though we would suggest that option 3 is described differently to more clearly articulate that it is still intended that the person influences and directs how, when and by whom they receive support, even when it is arranged by the local authority. We also think that option 2 should more wholeheartedly embrace the description of this option as an’ Individual service fund’ as this term now has wider understanding and usage.

4. Do you have any comment on the proposal that the self-directed support options should be made available to children and their families,
together with the proposal that the degree of control a child may have over the process should vary with age?

We feel that the proposal to make the self directed support options available to children, young people and their families is very important and an as yet underdeveloped option in Scotland. We think it reasonable and relevant that the degree of control a child may have over the process should vary with age.

5. Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

Yes

6. Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?

Yes, as long as the focus on flexibility of spend to achieve outcomes is also emphasised

7. Do you have any views on the provisions relating to adult carers?

in Control Scotland feels that this is a step in the right direction, though would prefer to see this as one of the duties identified rather than a power.

8. Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?

Yes, this seems reasonable and consistent with the aspirations of the legislation

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

We recognise the difficulty in accurately projecting the costs of effectively implementing a sustainable system in particular in identifying bridging costs. We would note that is likely that some of these costs will continue beyond the current spending review. We welcome the funding that has been identified so far to implement the strategy

10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?

Yes

11. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?
No, main points other than agreement are raised in the answers to questions 2 and 3 above.

In Control Scotland
24 April 2012
Social Care (Self-Directed Support) (Scotland) Bill

Inclusion Scotland

1. Views on the Bill as a whole

Inclusion Scotland welcomes the opportunity to give evidence to the Health and Sports Committee and we submit the following comments and recommendations on behalf of our members, who have been consulted on the draft Social Care (Scotland) SDS bill (2011). We have worked in co-operation with Independent Living in Scotland (ILiS) Project¹ and its other steering group members to flag up our key issues with the bill. Our DPO members have been working hard to identify disabled people’s views on SDS, and some of our members have had opportunities to attend meetings and share these.² We have also identified those expressed in others’ consultations and in research.³

Recommendations are highlighted in bold.

Are you generally in favour of the Bill and its provisions?

1.1 Inclusion Scotland is generally in favour of the Bill and its provisions. The bill is necessary to achieve choice and control for disabled people within legislation, and we therefore support its intention and aims.

1.2 The Government needs to fully engage with: Local Authorities via COSLA, disabled people and their organisations, local voluntary organisations, people already using DP’s, advocacy organisations, and the independent living movement; to ensure the provisions of the bill are fully understood by all and that publications and guidance to support people can be co-produced with the people that will benefit from them. This would resolve the current experience of SDS being ‘publicised insufficiently’ (p. 6, Manthorpe et al. 2011⁴).

1.3 There should be further allowance throughout for independent advocacy, in addition to advice and information, as this is an essential requirement for the majority of disabled people making life changing decisions. The inclusion of independent advocacy will safeguard the disabled person from abuse, financial or otherwise, or biased decision making,⁵ as informal and formal

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¹ Inclusion Scotland has membership of the Independent Living in Scotland (ILiS) Project steering group, and are now hosting the ILiS project.

² Inclusion Scotland listened to some of the concerns of members of Glasgow Disability Alliance at the organisation’s “Self-Directed Support: The Road to Discovery” information and engagement event for + 350 of GDA’s members, held in Glasgow in April 2012.

³ For example, Rummery, Kirstein, and David Bell, Alison Bowes, Alison Dawson and Elizabeth Roberts 2012 ‘Counting the Cost of Choice and Control Evidence for the costs of self-directed support in Scotland’ University of Stirling, for the Scottish Government, SRR Findings No. 110/2012 http://www.scotland.gov.uk/Resource/0038/00388620.pdf


⁵ Please see also the Scottish Independent Advocacy Alliance submission to this evidence collection, and go here http://www.siaa.org.uk/ for further information.
carers alike may have vested interests in the option/s chosen by the individual.

2. General principles underlying the Bill

What are your views on the principles proposed?

2.1 We welcome the principles underlying the bill set out in Section 1, as they clarify for disabled people and professionals alike their expectations in terms of assessment and provision of SDS.

2.2 In order to encompass an independent and human rights based agenda, we recommend that the Scottish Government incorporate the independent living principles proposed in the ILiS project evidence submission, those of: freedom, choice, dignity, control, improving outcomes for individuals, mutuality, equality, portability, and accountability, in order to achieve the highest possible standards of support for disabled people to live independently and within their community.6

2.3 We support the widening access to SDS that the bill provides as this is a measure that may improve implementation of the culture change that is required to make independent living a reality, ensure flexibility and choice; and ultimately ensure the success of SDS. In order to gauge the success of this aim, we therefore support the ILiS recommendation that ‘in addition to LA’s ‘promoting’ SDS, at section 17, the Bill places a duty on them to identify potential SDS users, and also to monitor and record how they do this, and how many people this ‘attracts’”.7

2.4 If SDS is to be used to allow someone to become an employer, then it should resource and empower them to meet their responsibilities as an employer, both during the time when their personal and social needs are being met and directly thereafter. This has also been recommended within the Scottish Government’s commissioned study into the barriers and facilitators of SDS (Manthorpe, et al. 2011a) which examined the experiences of SDS users in 3 LA pilot rollouts.

2.5 There should therefore be provision within the bill for allocation of resources to individuals to cover incidental and consequential costs in use of DP’s: for example, training, sickness, holiday and redundancy payment for support staff. This will ensure that disabled people are not left with inadequate hours or quality of support because they are covering these additional costs that they would not incur if they chose another option,9 and nor will the family of a person be left to cover these extra costs after the death of the person in receipt of the direct payments, as can currently be the experience.10

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6 ILiS Project http://www.ilis.co.uk/independent-living/

7 Point 2.3, p. 3 of ILiS’ submission to the same inquiry, April 2012.


10 Communication from an IS member to whom this has recently happened.
2.6 Timely implementation, at the same time conducted with attention to detail, and in co-production with disabled people and their advocates, will ensure people are not left waiting to receive the kind of support they want or need.

2.7 This has not been the experience for some who have been through this process in LA’s where SDS has already been rolled out to service users:

‘Glasgow City Council rushed through their charging policy, they didn’t give people enough notice of this or information about what was happening. I had two weeks’ notice of this change, it was a real bolt from the blue. This made me upset and stressed because I had already made plans about how I could spend my money. These plans were for a couple of months in the future and included visiting my family in London and going on holiday. I am now in debt and will be for the next few months’

Having to pay charges means I have less money to do things in the community. This is going to leave people stuck at home more than they are used to and will not be good for their health’ (Idem Lewis).11

2.8 Currently some people in receipt of SDS in parts of Scotland are unhappy with the experience because during or after transition to SDS, the amount of money the person receives has been cut. This leads some to think that SDS is merely a ticket to less support.

We hope the Government and CoSLA will find a way to safeguard against such consequences, to ensure that people are able to access the support they choose, with the appropriate amount of resources allocated to do so. This needs to be included in the bill.

3. Options for self-directed support

What are your views on the four options for self-directed support proposed in the Bill?

3.1 We welcome the four options for self-directed support proposed.

3.2 In order to ensure successful delivery of these options, we recommend that the regulations underpinning specific circumstances around delivery of each are broad enough to ensure they enable widening and simplification of access to and flexibility of use of the options. And therefore we further recommend that these are coproduced with disabled people, their organisations and their carers throughout Scotland.12

3.3 Clarity is also needed around flexibility of reviewing options, so that people are aware that they can change their chosen option if and when they wish to.

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11 People First member, Glasgow.
12 IS members can help facilitate this. IS are already working with ILiS and other steering group members to gather evidence from disabled people, and we are planning future information and engagement events in alliance with our partner and member organisations. We further draw the Committee’s attention to Glasgow Disability Alliance’s SDS Road to discovery workshop report when it is published, here: http://www.gdaonline.co.uk/index.php.
3.4 **Statutory guidance explaining the options and how they might be used, and guidance on all the bill’s principles and provisions, should be:** easy to follow, in accessible formats, co-produced with disabled people, and readily available in all local authority areas following publication of the bill.

3.5 **Proposed timescales should be publicised which show when the options will be presented to disabled people and to their carers,** so that no matter in which LA they live in, they will have the options offered by a certain date, assurances for a smooth transition to receipt of their choices, and will not face a possible ‘postcode lottery’ of delays.

4. **Do you have any comment on the proposal that the self-directed support options should be made available to children and their families, together with the proposal that the degree of control a child may have over the process should vary with age?**

4.1 We agree that the SDS options should be made available to children and their families in order to enable families the same flexibility, choice and control regarding support for disabled children as disabled adults.

4.2 In addition to the degree of control accounting for age, which we agree with, we think the maturity of the child should also be accounted for. Most children will be able to understand and express their choice, and this should also be reflected in the bill.

4.3 **Should the child lack capacity to make a decision, it might be that a family member, guardian or carer needs to make a decision on their behalf in the best interests of the child.**

4.4 As with disabled adults, it is important that there is a role for independent advocacy both for disabled children and their parents and carers. **Clear guidance and communication support should be made available for all children in order that they can have support to express their opinions.** The services of a local independent advocate should be offered to a child so they may benefit from experienced and unbiased advice and information.

4.5 This will also aid in identifying fully the additional mix of care and support that may suit the child and its family best, providing authorities and others involved with truly person-centred and co-produced information.

5. **Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?**

5.1 No. **We would like to see more provision throughout the bill for support and advocacy for anyone who needs it.** We think that the provision of this should be a default position and there should be a duty on LA’s, at appropriate sections within the Bill, to refer people to such support.

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13 We would refer the Committee to the Children’s organisations’ evidence regarding regulations in additional existing legislation that might apply within this bill.
5.2 This should apply not just to making the decision, but also when managing the option chosen, which may cause significant challenges for the individual. For many, the extent of impairment may have little impact on capacity to manage the implications of a choice. For example, someone who has always led a relatively independent life with a support package and who may have a high level of capacity for decision making may still have no experience whatsoever in being an employer, nor knowledge of the risks and opportunities that this may present. For this reason, the link between advocacy and support and capacity is arbitrary and support should be offered on the basis outlined above (5.1).

5.3 This is a particular concern as the experience of implementation of a choice will vary considerably from person to person due to the individualistic nature of the policy and of needs and ambitions of the disabled person. The challenges that it presents will be equally varied.

5.4 The importance of such advocacy and assistance in choice and control over SDS was highlighted by Idem Lewis, a service user in Glasgow who is a member of People First Scotland:14

'It is really important that people get the right independent support when planning their SDS. Asking someone what support they want is very difficult to answer, when they have always been told what support will and will not do. There needs to be time spent preparing, thinking it through, before people will be able to make informed choices. This independent support should be on-going'.

Without the support I got from People First, which really allowed me to calm down when I was really upset, I worry that I could have become unwell. I worry about how other people will cope in similar circumstances if they can’t access good advocacy and independent support'.15

6. Direct payments

Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?

6.1 Inclusion Scotland hope that the bill and its provisions secure a culture change where SDS is offered widely and provides the choice, control, freedom and dignity that we seek as disabled people. For this reason, the regulations and guidance within the bill need to aim to do this. There are several areas that should be addressed within the bill before we believe it can realistically achieve this:

6.2 The aims of the bill should be to achieve equality of access, as mentioned above, and therefore should address the rising eligibility criteria for social care, with its regional variations – and which restricts access to social service care for many disabled people - need to be addressed so that more people are eligible for SDS at the point of need rather than at the point of crisis.

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14 For more information on People First Scotland, please visit http://www.uoa7.net/peoplefirst/
6.3 Care charges, which we see as a tax on disability, limit options that disabled people have as they find that much of their income is spent on personal care. By reducing their incomes and limiting options, care charging may limit the potential that this bill has for increasing the choice, control, freedom and dignity that we wish to see happening with implementation.

6.4 The following points are contained within the ILiS submission, and we fully promote them:

- ‘Article 14 of the European Convention on Human Rights states that, “The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination”. Article 19 of the UNCRPD highlights that in order to ensure disabled people equally enjoy the rights laid out in the ECHR; states must ensure that “disabled people have a right to live in the community; with the support they need and can make choices like other people do”. One of the things states must do, put simply, is to make sure that disabled people get the help they need to live in the community. Paying for equal enjoyment of human rights in this way is specifically unique to the experience of disabled people who use community care; there is no other sector in society which is charged to enjoy human rights. We therefore believe that any such charge discriminates against disabled people in their access to the support they need to enjoy their rights and freedoms under all such regulations and conventions.

- …‘Community care is essential for the equal enjoyment of human rights of disabled people … and so systematic barriers to accessing it have implications for enjoyment of them. As the policy memorandum points out, SDS advances human rights in terms of delivery of care, however, if barriers to accessing it, such as charging for it, are not addressed, it can never achieve this aspiration.

- It is therefore our view that ‘charging for community care services is a significant barrier to independent living and that it should be free at point of delivery, as health services are’ (pp. 8-9, ILiS submission).

6.5 We therefore recommend that these concerns are reflected in provision of health and social care that is offered through the regulations in this bill, with a clear commitment and plan to achieve this. This means the Government, CoSLA, LA’s and regional health services should work together to ensure a realistic vision of this is included in it.

7. Adult carers

Do you have any views on the provisions relating to adult carers?

7.1 Inclusion Scotland also supports the following recommendations made by ILiS\textsuperscript{16} in this same evidence collection. That:

- ‘Starting from the premise that unpaid carers can benefit indirectly when the person they care for has greater choice and control over their support, we

\textsuperscript{16} Points 5.1-5.3, p. 10.
believe that, where possible, the LA should seek to offer support to the service user.

- ‘Where informal care is the express choice of the disabled person or other SDS users, we recommend that the disabled person or other SDS user receive SDS directly to meet the needs that arise from the informal carer’s role (other than in cases where the individual is considered not to have capacity). We continue to believe this is a much more empowering method of supporting informal carers.

- ‘...Any move to offer support to unpaid carers directly must be supported by a separate system of assessment and a ring fenced budget for this provision, so that provision of support to a user doesn’t impact on the funding available to the carer and vice versa’.

8. Inclusion Scotland wish to thank the Scottish Parliament’s Health and Sports Committee for inviting comments on the SDS bill, and we look forward to assisting the Scottish Government and CoSLA in further co-producing their approach to providing genuine choice, control, freedom and dignity to disabled people and their carers in Scotland.

Inclusion Scotland
24 April 2012
Social Care (Self-directive Support) (Scotland) Bill

Independent Advocacy Perth & Kinross

1. Are you generally in favour of the Bill and its provisions?

The Bill should include specific reference to access to independent advocacy for people offered Self Directed Support. An effective Independent Advocate will work to ensure that an individual’s rights are upheld, that they make informed decisions, that they understand the consequences of their decisions and that they are fully involved in decisions that affect them.

2. What are your views on the principles proposed?

The principles need to be more clearly defined making it clear that under Self-directed Support: the person’s views will be taken fully into account, their rights will be upheld, any support provided will be informed by what is most important to the person, and that the person will be empowered to have control over their life and the support and care they receive. Independent advocacy is an integral part of this process and therefore a right of access to independent advocacy should be included as a principle in the Bill. We believe that Principles should be amended to reflect the Millan Principles\(^1\) of non-discrimination, equality, respect for diversity, informal care, participation, respect for carers, least restrictive alternative, child welfare, reciprocity and benefit, upon which the Mental Health (Care and Treatment) (Scotland) Act 2003 is based.

3. What are your views on the four options for self-directed support proposed in the Bill?

There needs to be greater clarity around the meanings and potential implications of the four choices.

4. Do you have any comment on the proposal that the self-directed support options should be made available to children and their families, together with the proposal that the degree of control a child may have over the process should vary with age?

All individuals covered by the Mental Health (Care and Treatment) (Scotland) Act 2003, regardless of their age, have a right to access Independent Advocacy, and therefore many children and young people affected by this Bill will already have a right of access to Independent Advocacy. Independent Advocacy can also be an important source of support for individuals who are not covered by any current legislation. We believe that children and young people should always have their views and wishes fully considered when establishing how their support is managed and must be supported to do so. This should include access to Independent Advocacy (the importance of

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\(^1\) [http://www.scie-socialcareonline.org.uk/repository/fulltext/mharev.pdf](http://www.scie-socialcareonline.org.uk/repository/fulltext/mharev.pdf)
Independent Advocacy to informed decision making is covered in detail under question 5). Any child commenting on their options under SDS should be referred to Independent Advocacy. The variation of degree of control suggested should not simply be dependent on age but should take account of the level of maturity and understanding of the individual child. Account should also be taken of the fact that most children will be able to understand and express some level of choice which should also be considered.

5. Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

In order to ensure that people's views and wishes are taken fully into account the Bill should include specific provision of independent advocacy as distinct and separate from provision of information and advice. It will also be necessary to ensure a clear understanding of what Independent Advocacy is and how it differs from information and advice.

An independent advocate helps people express their views and make informed decisions. An advocate helps people to find out information, explore options and decide for themselves what they want. An advocate can be a voice for the person and encourage them to speak out for themselves. Advocates do not tell or advise someone what they think they should do. For more information about Independent Advocacy please see the ‘SIAA Principles and Standards for Independent Advocacy’.

Independent Advocacy organisations are free from conflicts of interests as they provide only Independent Advocacy. We believe this independence is particularly important with regards to the implementation of SDS as the individual may be making decisions around the payment of care and support services and therefore service providers or other relevant people who are supporting or caring for the person may have a potential conflict of interest.

The need for access to Independent Advocacy was recognised by the recently published report, ‘Counting the Cost of Choice and Control: Evidence of the Costs of Self Directed Support in Scotland’.

We believe that the Bill should be amended to include a right of access to Independent Advocacy as defined by S259 of the Mental Health (Care and Treatment) (Scotland) Act 2003. This right should be available to all who are offered SDS under the legislation, including adults, children and young people (see response to question 4) and carers.

Independent Advocates have raised concerns regarding the quality of information sometimes provided to people making decisions around whether they should use this method of personalising their care. In some instances they have noted that the person has not always been made aware of the responsibilities connected with direct payments and have only been informed of the benefits, and on occasion they have been concerned that the person
has not been made aware that they did not need to move to direct payments but could keep existing arrangements. We believe that to ensure that the person is assured of an informed choice the legislation should specify in detail the information that should be provided to a person making a choice under SDS including information about local Independent Advocacy services in addition to advice and information services.

6. Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?

We are unable to comment on this question as the Bill as it stands contains insufficient information.

7. Do you have any views on the provisions relating to adult carers?

The Scottish Government strategy ‘Caring Together: The Carers’ Strategy for Scotland (2010-2015)’ confirms the importance and value of advocacy for carers in their own right and it encourages support for the development of carer advocacy. This should also apply to adult carers in this situation. Carers have an essential role, and need support to help them address their own needs in addition to those of the person they care for. They should also have the right to the same level of advice and support around SDS including the right to Independent Advocacy.

8. Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?

We are not in a position to comment on this.

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

In this evidence to the Committee we have highlighted the important role that Independent Advocacy must have in the implementation of the Self-directed Support Bill. We believe that the Financial Memorandum should consider the particular role of Independent Advocacy and the demands the Bill will place on this organisation and the movement both in the short term and how this can be sustained in the long term. This should be included within the costs associated with the implementation of the Bill (table 1 of the Financial Memorandum).

The Scottish Independent Advocacy Alliance’s recent report, ‘More for Less?’2, on the impact of the recession on Independent Advocacy, has shown the steady increase of demand for independent advocacy in response to cuts to support services; a situation experienced by this organisation also. These raises the concern that, in the current economic climate, rather than being

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2 [http://www.siaa.org.uk/images/books/1112sia08_moreforless.pdf](http://www.siaa.org.uk/images/books/1112sia08_moreforless.pdf)
cost neutral, the implementation of SDS will be seen as a further opportunity for cost savings and therefore have a negative impact on the support offered.

10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?

There will be a need to be vigilant to ensure there is no inadvertent discrimination arising following the implementation of this Bill as experience in other situations has shown that often certain groups or sections of society benefit more from changes to services than others. A right of access to independent advocacy will help in ensuring equality of access to SDS for all.

11. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

The Bill should include a right of access to independent advocacy to ensure that the views, wishes and concerns of all affected are taken fully into account and that people are as fully involved as possible in the decisions made about them and their lives.

Independent Advocacy Perth and Kinross
12 April 2012
Social Care (Self-directed Support) Scotland Bill

Independent Age

1. Are you generally in favour of the Bill and its provisions?

Yes, Independent Age is generally in favour of the Bill and its provisions.

2. What are your views on the principles proposed?

We believe that the three general principles are a sound basis upon which to ensure that local authorities are legally obliged to involve and collaborate with older people in need of support throughout the assessment. In particular, we consider that it is vital older people are enabled to make an informed choice in regards to the provision of any services.

However, we believe that further clarification of the meanings of the following two phrases may be required to avoid potential legal challenges:

‘As much involvement as the person wishes’ (SDS Section 1, clause 2) - in regards to assessment and provision of support

‘Reasonably required’ (SDS Bill Section 1, clause 3) - in the context of supporting a person to express their views on self-directed support and informed choice.

3. What are your views on the four options for self-directed support proposed in the Bill?

The four options for self-directed support proposed in the bill are welcome. Notably, ‘Option 4’ which enables a person in need of support to choose a mixed package of options to meet a range of needs.

We are however concerned that all efforts be made to avoid defaulting to ‘option 3’ – local authority arranged support, except in exceptional cases, where a person has been able to make an informed choice ‘not’ to pursue taking responsibility for their own care.

The experience gained from the implementation of Self Directed Support in England and the establishment of the target that all people using community-based social care services receive a personalised service by April 2013 has led to accusations that councils are defaulting to a similar ‘option 3’ in order to meet targets, particularly for older people.

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4. Do you have any comment on the proposal that the self-directed support options should be made available to children and their families, together with the proposal that the degree of control a child may have over the process should vary with age?

No, as this is outside of Independent Age’s policy remit.

5. Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

We believe that local authorities should indeed hold the responsibility to support the person in need of support to access information and advice about how to manage self-directed support and to explain the nature and effect of each of the four available options.

However, when it comes to the local authority’s responsibility to offer information and advice about individuals who can provide assistance and information to the person to enable them to make decisions about the options, we strongly believe that the local authority should have a duty to ensure the quality of any advice service and where possible ensure that advice and information is accessed from an external, independent source in order to avoid conflicts of interest.

ADASS notes that a weakness of the experience of personalisation in England is the lack of availability of quality information and advice to enable people to make informed choices about services\(^2\).

6. Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?

We agree that the Bill should result in the changes that the Scottish Government seeks. That is, to make legislation more flexible to respond to older people’s needs. We also welcome the proposal to grant power to Scottish Ministers to introduce secondary legislation to specify additional requirements or exemptions given prior history has demonstrated minister’s support for flexibility and positive access for older people.

7. Do you have any views on the provisions relating to adult carers?

We welcome the move in the Bill to grant adult carers the same rights to self-directed support as other users of social care services, and we support giving local authorities the power to provide such services. However we are concerned in practice with the limited number of carers who are accessing assessment, and in turn receiving practical support as a result.

\(^2\) Ibid. P. 5
8. Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?

We agree with the approach taken not to place restrictions upon employment in the Bill and instead include more detail in subsequent guidance, although experience from England shows that local variations in interpretation of the legislation surrounding who can and cannot be employed can emerge. We believe it is important that positive risk-taking is encouraged by local authorities and, in addition, that local authorities respect the right of the individual to employ a person of their choice.

We welcome the commitment to publishing statutory guidance on the local authority’s role to ensure individuals are aware of their duties as an employer and safe employment practices as this will enable people who need support to negotiate becoming an employer. We must stress, however, that it should be set in guidance that any information and advice provided by local authorities should be straightforward and accessible to encourage those who are unconfident about taking control of their support to take advantage of the benefits of self-directed support, and to ensure that a range of information, advice and additional support is available so that personalising their care will not be overly onerous.

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

We are concerned that there is no provision made by the Scottish Government for investment in Information and Advice despite there being a recognised indirect cost for this in the form of capacity building. However, we recognise the substantial investment made towards the development of Care Information Scotland and would expect that in the absence of further funding that this resource is developed further to support Self Directed Support.

We recognise that the majority of spending will be to transform local authorities prior to a full roll-out in 2014/15 and that this will likely be the largest area of expenditure. However, in England it has been noted that efforts to promote transformation among care and support providers have not been wholly successful and that the market remains underdeveloped. As a consequence, we would expect that sufficient resources are made available to support Scottish providers through the transformation period and to avoid similar problems in development of the Scottish care market.

10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?

We are satisfied that the assessments that have taken place in regard to these matters, and the conclusions reached by the Scottish Government are sound.

We do however note in regard to para 59 that while we accept the conclusion that the EQIA did not identify any group that would be adversely affected by the new legislation, we do recognise that there is a risk that adverse effects could emerge should there be significant variation in approaches to implementation between local authorities and between client groups.

The Alzheimer’s Society found that in England, personal budget use among older people with dementia is underdeveloped and that over half of those assessed by local authorities are not offered a personal budget⁴. Age UK in 2010 found that in practice in England the proportion of older people in receipt of a personal budget or direct payment is small and that this is often partially because older people don’t wish to manage their budget or are assessed in a time of crisis⁵.

It is Independent Age’s view that the failure to offer adequate support to older people in order to manage a direct payment successfully can reinforce the stereotype that the direct payment option is not appropriate for older people. The risk if this stereotype is perpetuated is that local authorities may avoid offering direct payments as a choice.

11. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

In implementing this legislation and the provisions within, we ask that the Scottish Government closely monitors the UK Government’s response to the recent report from ADASS ‘The Case for Tomorrow’⁶, and in particular to ADASS’s recommendations for improving self-directed support in England.

Independent Age
19 April 2012

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⁵ Age UK (2010) Personalisation in practice: Lessons from experience
Social Care (Self Directed Support) (Scotland) Bill

Inverclyde Council

1. Are you generally in favour of the Bill and its provisions?

General principles underlying the Bill

Section one of the Bill proposes three principles, which are described as “the general assumptions under which professionals and individuals should operate.” (Policy Memorandum, para 17). The principles encourage “involvement”, “informed choice” and “collaboration”. Local authorities would have a duty to have regard to these principles when carrying out their functions under the Bill.

General Overview Response

1. We welcome the general objectives and provisions of the Self Directed Support (SDS) Bill, the move to consolidate and update existing legislation and acknowledge the Bill will help broaden understanding of self directed support beyond direct payments. The Bill represents a shift and incorporates comments expanding on detail requested from the previous consultations 2010/11. For example key concepts are developed there is more clarity on a number of areas which will impact positively on local authorities, whilst maintaining flexibility to adapt to changing practice and conditions, as set out and explained more fully in the explanatory notes, policy and delegated powers memorandums.

2. We appreciate the positive aspirations and spirit of the Bill and recognise the challenges outlined in the policy memorandum with the need to deliver responsive services in the current climate. The principles of involvement, informed choice and collaboration are relevant to the interface between public services and citizens but are also necessary for the cultural shift required of public services as a whole to collaborate in order to meet our obligations to provide responsive services. Principles of co-production, partnership and mutuality are also relevant. We note these principles have been included and expanded on within the policy memorandum (p6). We note further statutory guidance will elaborate further on the application of these principles including:

- individual rights and responsibilities, we note further guidance will be developed.
- balancing rights with risks- linked to national work underway to develop risk enablement approaches and practice.
- advice and information- the importance of a range of support to ensure citizens can make informed choices. Including collaborative approaches through the national strategy work streams to develop advocacy, communication support and development of the assessment journey to facilitate informed decision making.
- Workforce development – we acknowledge the supporting work underway to ensure the necessary skills development of social
workers, care managers and others is progressed to empower staff to work with and manage complexity. To work more effectively with citizens to consider SDS options.

- There are some areas we would value further exploration and clarity in the statutory guidance to be developed, which includes interface between local authorities duties of care under existing legislation, balancing protection with enablement. We make further comments in relation to these issues the following sections of this response.

The advances outlined in the Bill and supporting memorandums acknowledge the practice realities of implementation and will support local authorities in developing local arrangements to meet the Bills aspirations.

3. We believe the Bill and supporting memorandum are consistent with our preferred approach in developing a range of support options. In particular if our partners in health, education and housing are to support the potential of better outcomes we need to see a cultural shift backed up by guidance and some regulation to ensure a partnership approach is realised. We welcome reference to further guidance being developed acknowledging the complexities in practice.

This was an area of concern in earlier consultations and we acknowledge efforts to develop more clarity on the interface and application of various pieces of legislation.

4. We appreciate implementation is supported by the work underway through the national strategy work streams along with the financial framework and funding to support the significant work required, for example to develop skills of workforce at all levels of public services and with voluntary and community sector to facilitate transition and service redesign to facilitate implementation.

5. We note that the Bill sits alongside existing Health and Community Care legislation and the bill will apply to NHS services where there is a social care element to the provision of services. We acknowledge that there is an expectation through the acceleration of integration of health and social care services, (which may be subject to separate legislation) partners including the NHS will be subject to the provisions of the Self Directed Support Bill.

We feel further explanation, detailed guidance and the facility to bring forward regulations will be necessary to ensure shared decision making and shared resourcing can be achieved with the range of public service partners.

6. The interface between further or secondary legislation in relation to integration will need to be aligned to the challenges in relation to Welfare Reform which will contribute to local authorities ability to develop a range of community based options and funding arrangements.

We acknowledge the Scottish Government in partnership with Cosla and others have been proactive, undertaking extensive mitigation activity, including the potential of legislation to protect, for example, passported
benefits, which would have a positive impact on the promotion of self directed support, particularly participation in social leisure and community activities.

7. The challenges and impact of welfare reform adds to the need for local authorities in conjunction with health, education and housing partners and providers to collaborate more effectively, shared resourcing is essential to ensure a range of options are developed and are genuinely made available in the spirit of the Bill.

2. What are your views on the principles proposed?

Options for self-directed support

Sections 3-4, 6-12 and 17 of the Bill contain the core self-directed support provisions. Included are that the local authority must offer an individual four options in how they would like to direct their support – “direct payment”; “direct available resource”; “mix of approaches”; or, “local authority arranged support”. The provisions would relate to adults assessed as requiring community care services, and also children and their families where a local authority decides to provide services under the Children (Scotland) Act 1995. Other provisions include that individuals must be provided with information and advice to help them make that choice, and those who may have difficulties in making informed choices are provided the necessary support to do so.

We agree that those in need of care and support should have all options of support delivery made known to them, across all service groups. This raises the importance of transitions which the supporting documents to the bill expand on in more detail.

Developing a mix of support options consistently will represent a challenge to local authorities which reinforces the need for guidance and development of regulations to support implementation.

The interface with and application of eligibility criteria, the use of and development of resource allocation systems are relevant here and the policy memorandum refers to linkages with the national strategy work streams and support funding in order to develop local arrangements.

3. What are your views on the four options for self-directed support proposed in the Bill?

We agree with the four options proposed

4. Do you have any comment on the proposal that the self-directed support options should be made available to children and their families, together with the proposal that the degree of control a child may have over the process should vary with age?
We agree with the options and acknowledge greater clarity in the process realising more detailed work is underway, supported by funding to advance the change management required to undertake cultural change at a local level. Buy in by our partners and the interface with other legislation existing or proposed will be essential to achieving a shift in care arrangements as outlined in our points under question one.

We note reference to GIRFEC and existing legislation including child protection in Section 7, p10 of the Policy Memorandum and Statutory Guidance will clarify what this will mean in practice for local authorities. The evolving use of SDS in Children and Families work will change practice over time therefore linkages, practice development and skills development will be required as outlined in relation to adult and community care services outlined above.

5. Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

We acknowledge and support the emphasis on information and advice. By implication requires local authorities in conjunction with our partners to raise the profile and practice in relation to the role of information and advocacy providers- within and out with the local authority-extending role of and developing alternative methods of support such as circles of support, communication support, talking mats.

This raises the profile and need for training and skills development on the interface between Equality and Human Rights legislation, Self Directed Support, Independent Living and Social Inclusion as a priority for local authorities and partners to embed proactive approaches in practice.

We acknowledge the investment by the Scottish Government to develop this work and to facilitate transition collaboratively.

Direct payments

The Bill seeks to modernise and consolidate current legislation on direct payments, in order to make it more flexible to respond to individuals’ needs. Whilst local authorities would retain a range of duties and powers, the Scottish Government does not wish these to impinge on people’s ability to determine their own support. However, section 13 of the Bill would seek to do this through secondary legislation by granting Ministers powers to introduce regulations, rather than setting this out on the face of the Bill.

Secondary legislation may be necessary to fully develop local authorities influence to make SDS a reality. SDS is dependent on a holistic collaborative approach with all public service partners to develop community support and infrastructure , this requires development either in the Bill or through the facility to develop the regulations.
Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?

**Adult carers**

Currently, adult carers of other adults or children are entitled to have an assessment of their needs. However, section 2 of the Bill proposes that local authorities should have the power to provide support to a carer on the basis of that assessment. Where a local authority decided to provide such services, section 6 would require it to offer a choice of the four self-directed support options to the adult carer.

We agree with the principle to offer support to carers, as stated in previous consultations. There is a risk of a tension and conflict between the needs of a carer and cared for, the supporting documents go some way to clarify arrangements for carers. However further work through the national strategy work streams and evolving guidance for the Bill could expand on practice realities to minimise potential tensions.

**7. Do you have any views on the provisions relating to adult carers?**

**Individuals’ responsibilities and risk enablement**

The proposals in the Bill could place a significant amount of responsibility on individuals and their families, particularly in managing risk. The Policy Memorandum (para 26) accompanying the Bill makes particular note of the current ability of people to employ personal assistants through the use of direct payments (option 1 in the Bill). Whilst the Bill does not place any restrictions on the categories of people that may be employed by an individual, the Scottish Government would publish statutory guidance which would cover ensuring individuals are aware of their duties as an employer and the risks in not adopting safe employment practices.

We acknowledge the Scottish Governments desire to promote flexibility, enabling and empowering practice and has provided more clarity by expanding on the local authorities’ role in relation to its duty of care, the interface of other legislation, for example, provisions under;

- Adult Support and Protection,
- Adults with Incapacity Act and
- Mental Health Care and Treatment Act.

Referenced in the Policy Memorandum p9 sections 26, 27 and 28 extending to p10 section 32 with the use of section 13ZA of the Social Work (Scotland) Act.

Practice is still evolving in the application, knowledge and case law emerging in terms of the interface of these pieces of legislation which in effect provides a framework for adult protection in Scotland. More work is required on: the interface between these pieces of legislation, aligned with the national work
underway on risk enablement, linked to our duties and responsibilities under equality and human rights legislation to provide equal access to services.

Safe practice and flexibility is also required to ensure local authorities can act and intervene appropriately to avoid exploitation or the risk of harm therefore safe recruitment and more detailed guidance on suitability of persons who can be employed will be essential in developing risk enablement approaches for SDS.

The identification of the PA workforce with measures to promote mediation, peer support and conflict resolution will also have greater prominence. There is evidence to suggest that citizens can become more vulnerable to risk in the community and this will need to be effectively managed by public services with citizens who take up SDS options and when undertaking significant cultural change in the way services are delivered.

More detailed guidance on appropriate safe recruitment and good employment practice is crucial in developing an approach which signals a fundamental shift in how services will be delivered in the future.

We note reference to appropriate person but would ask there is further work to explain and agree who can be an appropriate adult and whether or not there is scope to define this in more detail as requested in previous consultation.

8. Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?

As outlined above this needs careful consideration and needs fleshed out linked to the experience of the implementation of Adult Support and Protection and related legislation to date, augmented with case studies or examples to encourage awareness of positive and negative experiences in developing practice. Flexible responsive practice to SDS will require robust flexible arrangements supported by legislation and guidance to ensure the balance between rights, responsibilities protection and independence can be achieved.

We would prefer more detailed guidance and regulation in order for local authorities to be able to discharge their duties in the best interests of citizens with support needs or who maybe at risk of harm.

Financial Memorandum

The Financial Memorandum accompanying the Bill sees much of the Bill being cost-neutral in the long term. However there is an acceptance there will be transitional costs associated with transforming the culture, systems and approaches to social care provision as a result of the Bill and the Government’s wider strategy.
9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

We welcome the Scottish Government’s commitment to provide funding to support transitional arrangements to drive forward significant change to the way services are delivered. As outlined above the impact of welfare reform and the intentions to accelerate integration of health and social care will influence how local authorities can manage change effectively at a local level, with the potential of these factors presenting challenges to the ability to provide effective levels of service and delivery in the way intended by the spirit of the SDS Bill.

**Effects on equal opportunities, human rights, island communities and sustainable development**

The Policy Memorandum (para 52-63) accompanying the Bill outlines the assessments made by the Scottish Government on the potential impact, if any on equal opportunities, human rights, island communities and sustainable development.

10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?

We welcome the comprehensive assessments undertaken in respect of the Bill. We would add welfare reform and acceleration of integration of health and social care are 2 significant factors that could impact on effective implementation of SDS positively or negatively. A third factor would be policy in relation to reserved matters and potential impact on devolved powers. We recognise these are unintended consequences and whilst the Bill on balance anticipates neutral impact we are advocating caution in this respect.

**Other matters**

11. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

Inverclyde Council
24 April 2012
I've read the Bill.

On the first question I would answer no. I oppose it in principle and in its entirety.

Social care should be of good quality and provided by democratically elected Local Government. I know it's old fashioned.

From my point of view as a service user I hate empowerment, collaboration or any of the other current buzzwords being rammed down my throat.

Placing no restrictions on who care provide the care is reckless in the extreme.

It will inevitably lead to even more exploitation of those providing the care. But nice fat profits for the "care" agencies which employ them. Before my illness I worked as a live in carer so have some experience of the tyranny workers suffer. Local authorities can at least set some standards of pay and conditions as well as health and safety. Being an employer is a serious business.

For adults no longer able to make their own decisions there is a clear risk that the person managing the budget may simply help themselves to the funds.

So it put dosh into the hands of shareholders, exposes the user to pilfering from their family and to unsuitable carers and puts the carers at all sorts of risks as well as slashing their pay and conditions.

Still we're all customers now and the customer is always right.

Robert Johnston (individual)
18 March 2012
Social Care (Self-directed Support) (Scotland) Bill

Joint Submission - National Carers Organisations

We comprise the following organisations:

Carers Scotland, Coalition of Carers in Scotland, Crossroads Caring Scotland, MECOPP, The Princess Royal Trust for Carers in Scotland (part of Carers Trust), Scottish Young Carers Services Alliance and Shared Care Scotland.

We believe we can deliver more for carers by working together to share our knowledge and experience, and by focusing our collective efforts on achieving improvements in areas of policy and practice that are of greatest concern to carers. It is our shared vision that all Scotland’s unpaid carers will feel valued, included and supported as equal partners in the provision of care.

Joint Statement

We welcome the Self Directed Support Bill. The Bill is a positive step in bringing together and extending legislation in relation to self-directed support and in ensuring there is greater clarity and easier access to direct payments and other delivery mechanisms.

While we support the Bill we feel that it needs to be significantly strengthened in some areas, particularly in relation to:

- recognising carers as equal partners in care
- ensuring carers have equal access to SDS across Scotland by making it a Duty rather than a Power for local authorities to provide support to carers following an assessment. In addition, clear eligibility criteria need to be developed to support this process in order to avoid the potential issue that many carers who are assessed as requiring a service may not be able to access this as they do not achieve a high enough prioritisation when judged against other categories of service user.
- extending the ability for people to employ a relative through a direct payment. Local authorities and future joint planning and commissioning structures should have a duty to consider and respond positively to such requests. Where such requests cannot be granted they should offer clear reasons why the proposal would not be considered to safeguard the care of the service user
- reflecting the status of carers as equal partners in care and amending Section 16 in line with this principle by removing the ability for local authorities to charge carers for a service. Carers must be viewed as contributors to care provision, rather than as service users. They should not be expected to contribute financially to the cost of services provided to the person they care for, or to the cost of services which enable them to continue in their caring role.
We also have concerns about the implementation of the Bill and the need for clear guidance and direction to local authorities in relation to adhering to the principles of SDS, ensuring there are robust and fair processes and timescales in relation to implementation and that outcomes for service users and carers are clearly recorded, monitored and evaluated.

We would expect the Statutory Guidance accompanying the Bill to give direction to local authorities with respect to their responsibilities in relation to:

- being transparent and clear about how resources and budgets are prioritised and allocated to individuals, and being clear about what support is available, if necessary, to help people appeal a decision.

- adopting more proactive and flexible approach to carrying out assessments to achieve a greater uptake of assessments and consequently, a better understanding of the range and pattern of needs that exists locally.

- their role in ensuring there is sufficient choice and capacity within local services and supports to deliver the intended benefits of SDS. Smaller parent or community-led projects will be particularly vulnerable at this time without the financial cushion to see them safely through a transition to spot purchasing.

We look forward to working with government in the future in relation to the progress of the Bill and the development of regulations and guidance.

Joint Submission – National Carers Organisations
25 April 2012
1. Are you generally in favour of the Bill and its provisions?

Yes – We think that having a Self Directed Support Bill is a good step forward

2. What are your views on the principles proposed?

We think that these are good principles. They will be an important starting point for the development of self directed support in practice.

We do think that there should be a fourth principle that can strengthen the first three. “Openness and transparency” about the process should be added as a fourth principle so that collaboration and informed choice can take place.

For Self Directed Support to be truly collaborative, individuals taking part in it need to know information on the same levels as the other parties to the process.

A key part of the transparency that should be at the heart of the Self Directed Support are decisions over the use of resources. The use of a Resource Allocation System (RAS) is now common to give individuals an indication of what resources they will be able to use to meet their needs.

Local Authorities have become aware that R (Savva) v Royal Borough of Kensington & Chelsea made clear that the figure generated by the RAS should only be used as a starting point, which could be – and should be - altered to meet the appellant’s assessed needs.

However without openness and transparency over how this altering is done and how the individual can “collaborate” and be “involved” in the altering then “informed choice” will be severely limited.

We know of local authorities who use a RAS to deliver individual indicative budgets but have opaque systems for the subsequent adjustment of the budgets to meet actual needs. No one knows how much discretion in altering the budgets different social work officers have. No one knows how much power Resource Screening Groups have to increase or decrease indicative budgets. No one knows how Risk Enablement Panels arrive at their final decisions. Each such obscure decision undermines people’s faith in the process.

By adding such a fourth principle, we can expect people to have much more confidence with the process of Self Directed support

The second point we would like to make here is that for people to have confidence in these principles, it is important to know how the Scottish
government is going to keep an eye made sure that the principle parties stuck to them.

- Would they form part of the Single Outcome Agreement?
- Are they going to be measured some way?
- Would the Care Inspectorate (SWIA) use them in their inspection of local authorities?
- Is there going to be special reporting on this matter to the Scottish Government?
- Are they just decoration that was hung around the Bill to make it look more interesting?

3. What are your views on the four options for self-directed support proposed in the Bill?

We like the four options that are on offer for self directed support. Too often people are offered a council arranged service on a take it or leave it basis. It is really important that the council will now have a duty to offer all the 4 options.

It will be important to make sure people have all the options explained to them at the start so that they know what they can do.

To make this a real choice it will be important that the people had the help to make a choice. Many adults with learning disabilities need special types of support that can help them make real choices. We talk more about this in another answer.

We have found that there is already a lot of confusion over the different terms. Many professionals we have spoken to find the terms used to describe the four options easy to confuse with other terms. Many people with learning disabilities who we have spoken to have just got used to the phrase “direct payments” and don’t see the difference. As a result it will be important to stick to consistent language in the use of such terms.

4. Do you have any comment on the proposal that the self-directed support options should be made available to children and their families, together with the proposal that the degree of control a child may have over the process should vary with age?

These seem fine to us.

5. Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

We think the provision of good information is crucial to the success of the Self Directed Support process.
There need to be more consistency in providing information. We have members all over Scotland and they have reported that there is too much variation between local authorities. Already different forms of assessment, budgets, levels of payment, views on capacity and so on are in effect in different areas.

This position is likely to get worse as much of the emerging structure of the Self Directed Support will be unique to each of the 32 local authorities, if there is no change in current practice.

General Information should go back to the basic principles in the Bill as a good starting point and it is important that any information produced really takes on the principles of collaboration and informed choice.

Our members felt accessibility in information was important. Making sure that information is produced in Easy Read is important for everyone. Language should be simplified and the design features take into account the needs of those who find it hard to read written text for a variety of reasons. But Easy Read should also be tested for comprehension as some recent Easy Read documents meet the letter of making it simpler but then fail to cover the important points.

Good information may be enough for some active people but for some people with learning disabilities a more active form of support brokerage should be considered.

One other problem with information is that even the best information on available resources cannot make up for the lack of resources. We note that Centres For Independent Living are looking at how they can support people with learning disabilities and that some of the other "funded" projects will be doing the same. But there will be gaps both geographically and organisationally in the type and range of support on offer to people with learning disabilities and "information" cannot substitute for that.

There is a need to recognise the importance of independent advocacy given that many existing user of services will be in existing relationships with service providers. This makes it hard for people to consider alternative care options if it means changing of what they have at present. Having an independent advocate can support people having a real choice.

We think it is a weakness in the bill that it does not place a duty on local authorities to ensure that there is adequate resources provided to ensure that the three (four?) principles of the Bill are implemented in their area and then good information provided on these resources.

On the second part of this question, we do have some concerns over the question of support for people with learning disabilities within the Self Directed Support process.
At our consultation meeting we heard worries about who might support people who didn’t have family around to help. There were some suggestions that they might find that they ended up having a guardian.

We know that there is a real problem with this issue. Many people with learning disabilities in Glasgow have been put in guardianship as part of the SDS process.

The Office of the Public Guardian reports an increase of 67% in the numbers of guardianship orders in the year up to end of December 2011 in the Glasgow City Council area.

<table>
<thead>
<tr>
<th>Glasgow City</th>
<th>Financial</th>
<th>Welfare</th>
<th>Both</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>35</td>
<td>113</td>
<td>83</td>
<td>231</td>
</tr>
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<tr>
<td>2011</td>
<td>38</td>
<td>148</td>
<td>201</td>
<td>387</td>
</tr>
</tbody>
</table>

The all Scotland increase has been of the order of 7% for each of the last 5 years. The table below shows that most of the applications for guardianship were not by the local authority but by private individual.

<table>
<thead>
<tr>
<th>For the year to Dec 31st 2011</th>
<th>Private guardianships granted 2010-11</th>
<th>Local authority guardianships granted 2010-11</th>
<th>All applications granted 2010-11</th>
</tr>
</thead>
<tbody>
<tr>
<td>Glasgow City (learning disability only)</td>
<td>135</td>
<td>14</td>
<td>149</td>
</tr>
</tbody>
</table>

From families we have spoken to, we believe the rise in private individual applications can be linked to family members taking out guardianship to ensure they have a right to participate in the assessment and support plan processes of Glasgow’s Personalisation programme. Often this has been done at the suggestion of local authority staff.

Already we know of two cases where individuals are being supported to challenge their families taking guardianship out on their behalf. Many people with learning disabilities don’t like to challenge their families, so we have no real idea that all the guardianships that have been granted are benign.

The bill only proposes help for people in the choice of options and in the assessment process. It doesn’t offer support in the long term process of managing the budget and care. This means that there will some help for the start of the process but people might still end up in guardianship.

We think that for most people this will be a formal process but it is a worrying side effect of a process that is meant to empower people to take more control over their own lives.
We have heard that even where local authorities supported people to take up Direct Payment already there were problems with local authorities making sure people got the right help to manage these. Many people with learning disabilities who did have capacity to make a number of decisions over their own lives were being refused a Direct Payment unless there was a guardianship order in place.

As a result we are disappointed that the earlier proposal to allow a “suitable person” to be nominated and approved for the sole purpose of managing the Self Directed Support option was not progressed. We hope that the original proposal can be revisited as part of this consultation.

6. Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?

We think it is right that local authorities should be empowered to allow the employment of close family members where this is the supported person’s and carer’s informed choice and where it is appropriate to do so.

But we are not sure about whether this will lead to real change. Much of the research and results from practical experience such as the test site work indicates that local authority internal barriers provide most of the difficulties in developing self directed support.

For example, much of the hold up in giving people direct payments is a concern by local authority staff that money may be diverted elsewhere or spent inappropriately. While there is evidence that only relatively small amounts go missing and there are much larger forms of waste in local authority spending, such attitudes are hard to overcome.

We suspect that similar problems may apply to the future employment of relatives. Even when the Scottish Government has empowered people to employ family members, local authority staff may be reluctant to grant approval for fear of misuse. As a result the Scottish Government’s plans for change may be hard to deliver.

7. Do you have any views on the provisions relating to adult carers?

Yes – we are very concerned that the current proposals will not see a material change for carers. There already exists opportunities for local authorities to carry out assessments on carers and to identify the needs that they have. This power has existed for some considerable time.

The provisions relating to adult carers seem to add little to the existing legislative position. Giving local authorities the power to meet the needs of carers assessed as part of the process of supporting the vulnerable adult is unlikely to lead to any automatic increase in resources going to meet carers needs directly or indirectly.
Many stories exist about the problems that carers face. For example, the last Cross Party Group for Carers heard from one family carer who had received her first Carers Assessment three years earlier. She had not received any services in her own right in this time.

Even the Financial Memorandum to the Bill expects little real change as a result of this proposal “It is reasonable to conclude that the volume of carer’s assessments in Scotland is not significantly lower than in England and would not be expected to rise substantially in response to the Bill.” (p28)

Our members have reported how life is very hard for carers and it took time to get an assessment and then not getting a real choice about the support. When they didn’t accept the first offer they were made, they might be told they were off the books. This is because local authorities have no obligation to provide services. As a result, they view the refusal as an indication that the carer is not really in need.

If the principle of collaboration is to be meaningful for carers, then the position of carers needs to improve by providing a legal duty on local authorities to meet their needs.

8. Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?

We think that there is merit in individuals being able to choose to employ family members to support themselves. For many people, family members are their chosen carers and the quality of support offered could be far better than that offered by a dispassionate or casual member of staff.

We know there are problems with the management of such relationships and it can be hard to exercise control of your own support when it gets confused with family relationships. This, of itself, is no reason to prevent such arrangements but it does require further thought on how this can be managed.

Monitoring through Adult Care and Support arrangement, or through a Care Manager or through a specialised financial and management support agency or the provision of independent advocacy are all possibilities. The arrangements for the monitoring of family members to provide support should be considered whenever permission is given for this arrangement.

We do think that there is the question of training is a key issue in who is employed. There is no nationally recognised qualification for personal assistants and no legal requirement for the personal assistants to be trained. Even where a personal assistant or a support worker is hired from an agency they are likely to be supplied with only basic on-the-job training in health and safety, food hygiene, moving and handling and so on.

For the “early adopters” who are motivated to make this process work this may be fine, because they have the capacity to direct and train support staff in
detail on the job. But for many others who arrive as Self Directed Support as the mainstream option or for those people with profound learning disabilities who do not have the capacity to direct their own staff, there is a high degree of vulnerability. Such individuals may not alert or be able to alert staff to inappropriate activities that they are inadvertently or otherwise carrying out that put people at risk.

The consequence of this can be fatal as recent cases may indicate.

Even where staff are formally trained in nursing or other tasks, this cannot be taken to assume that they individual knowledge of a person’s needs and the chosen balance between risk and safety.

For the management of risk for people with profound disabilities needs far more consideration than has been given to date. It cannot be assumed that these people’s needs are the same at that of other people with disabilities. The questions of capacity and communication make understanding their needs and their opportunities to challenge good and bad practice by support staff much more challenging than has been considered to date.

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

We are concerned about the comments in the Financial Memorandum on page 17 about the Alzheimer’s Scotland Direct Payment project from 6 people in Ayrshire. This is such a small number as to be statistically insignificant but more importantly it is not controlled by any comparison to alternative forms of non-Direct Payment provision other than residential care.

Such stories, and they are nothing more than this, have been common throughout the development of self directed support and have helped to contribute to an attitude that SDS can be linked to cost cutting without any adverse side effects. A number of local authorities are already building in percentage reductions in the care budgets to be met by the introduction of SDS e.g. Glasgow 20%, North Ayrshire 10%.

Such stories, instead of supporting a move to Self Directed Support, actually undermine it as many individuals become wary that SDS will see their care budgets cuts.

We also have concerns over the Transformation costs allocation of funding for local authorities. £24 million is to be granted over 3years, peaking in year 2 and then declining. The evidence from the test sites project run by the Scottish Government was of a much slower scale development over the 2-3 years that it ran for.

Only a small number of people in each local authority, in the order of 50-100 were enabled to take up Self Directed Support options despite funding of ½ million per year being made available to each local authority. The amount
proposed is less than this if the £24 million is split evenly between local authorities.

As a result we believe the expectations of this policy and bill need to be clearly stated as significantly less than full scale transformation or the amount of funding made available to support the change process needs to be increased.

We think it is a mistake for the Financial Memorandum not to look at what will happen with the Independent Living Fund. The existence of the ILF has been important is supporting the move towards SDS. For individuals managing this contribution to their care has helped them become more confident in managing the local authority contribution in Direct Payments. The ILF is closed for new applications but the latest statement on the Independent Living Fund has guaranteed a degree of security to it for the remainder of this session of the Westminster parliament. That is expected to be 2015. In Scotland in 2009 ILF spent £60 million.

A long term proposal to transfer the ILF funds to local authorities may be put out for consultation shortly. This will be aimed at the English proportion of the fund but will have implications for Scotland. For Scotland the fund is likely to be transferred to the Scottish Government to manage, who would then be able to decide the appropriate placing within a Scottish context. They may be able to choose to transfer it to local authorities or not.

We have a number of real concerns over such a transfer to local authorities

- The value of additional funding may be lost amongst the much bigger pot of social care spending
- There is no statutory right to “independent living” so the money will be directed towards basic care needs.
- There may be reductions in the level of support enjoyed by recipients as there will no longer be a necessity for a minimum care package to be in place for ILF eligibility.
- The ILF money may eventually be lost entirely to the social care budget as it may not be ringfenced.

Our view is that the Independent Living Fund should continue to exist as a ringfenced fund managed by the Scottish Government and use its resources to complement local authority spending on social care services. The ILF is a relatively small contribution to social care. In 2009 local authorities spent £840 million on social care for people with learning or physical disabilities – 14 times as much as the £60 million contributed by the ILF.

Its funds would be better used to support people who already received a social work service but were in need of further support to improve their quality of life. Funds could be allocated following assessment by ILF assessors to meet quality of life outcomes, perhaps guided by the Talking Points model.
This would mean that where people were having their basic needs met by the local authority, they could apply to get additional help from the Independent Living Fund to

- Live safely and securely in their own home
- Have meaningful things to do in their lives
- Make, keep and sustain friendships
- Keep in good health and well being.

Applications to the new ILF could and should also be available to those who fall out with the eligibility criteria for social care services i.e. their needs are classed as less than critical or substantial. Such people at moderate “risk” can also have a high level of needs but because their families are coping at home, the local authority does not see them as a priority. They often only need a small input of care to prevent their needs rising and failure to get this may see themselves presenting to the social work departments again with a greater level of needs. The ILF could provide a small degree of funding to these people on the same basis of outcomes in order to help them live sustainable independent lives.

In a sense this would return the Independent Living Fund to a clear purpose a fund to provide more flexibility and money for the individual in organising their support to live independently in the community.

Nonetheless these changes to the ILF impact on the future of the Self Directed Support Bill and need to be taken into account.

10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?

We have some concerns over the evidence used in the Equality Impact Assessment to look at the impact of the policy on people with disability generally and in particular people with learning disability.

The IBSEN report and the Scottish Government 2008 review of Direct Payments are early works looking at the introduction of new systems. Many of the points in the reports were qualified and cannot be taken as a clear indication of what might happen in the future. They are clear stories about what has happened in the past and as far as we are aware no one has questioned the validity of what they found.

Two main types of problems have been noted with this type of review. First most of the individuals looked at in the studies were “early adopters”. Individuals highly motivated to take more control over their own lives or who were seeking to find a new system to resolve problems that had emerged in their lives. This motivation leads “early adopters” to be more active in the management of their own care and support and will lead to these enjoying an enhanced lifestyle with better outcomes. The experience of “early adopters”
cannot be assumed to be continued in the mainstreaming of Self Directed Support.

Secondly many of the early pilot projects looked at in IBSEN and even the Scottish Government’s test sites enjoyed an initial funding boost to support the projects. This brought in extra staff to manage budgets, allowed for additional project support in person centred planning and more time generally to be spend preparing and supporting the individuals taking part. Given that we are in a time of restricted resources, there will not be such additional funding for the mainstreaming of Self Directed Support.

This does not mean that the conclusion reached in the Equality Impact Assessment is necessarily wrong but it is too early to be sure. Some of the evidence that is emerging from the implementation of Self Directed Support in Glasgow is that some of tools that are being used to assess needs and allocate resource are not properly tuned to the needs of people with more profound disabilities leading to a large number of appeals. Some of those whose appeals are unsuccessful or are not supported to appeal may be having to manage with inadequate resources to meet their needs.

This may arise because of the wrong processes or poorly applied processes. No research has been carried out on such causes but it is also possible that the problem occurs because the local authority believed that as Self Directed Support was more “equal” and “fairer” there would be no equality issues to concern it.

We think that the needs of people with more profound disabilities is poorly understood in the context of self directed support. Even when family carers are closely involved in planning the care of the individual, they will rarely be present when support is actually being delivered. As we indicated above, training may not be adequate but even where it is, there is a question over the “capacity for good judgement” in support staff.

Where Self Directed support is linked to reduction in spending, casual staff, staff on zero hour contracts may be asked to step in at the last minute to provide support for people whose needs they do not fully understand. The safe use of hoists and changing facilities, gastronomy feeding or even the safe use of wheelchairs may be unfamiliar to such staff and real dangers to people may emerge.

Equality Impacts Assessments need to look at what the likely outcomes of such legislation might be and how such risks should be handled. It may mean statutory duties placed on local authorities to have Risk Enablement Panels, it may mean a further role for Adult Protection Committees. These are issues that need to be considered seriously.

We think that this matter requires continuous examination. An equality impact assessment is a continuous process and not a single action. It is important that the Scottish Government continues to review the equality impacts of this policy. We believe this will involve ensuring that local authorities and health
boards monitor the impacts of the implementation of the policy on the ground and feed these back to the Scottish Government.

We think that advice issued by the Department of Health and ADASS in England to local councils on their duties to carry out EIAs as they implement the national policy is worth bearing in mind.

**Advice on local equalities impact assessments**

- **Councils should make sure that they have carried out an overall equalities impact assessment relating to social care transformation, which includes in its scope the introduction of self-directed support. This will therefore include resource allocation.**

- **Councils should consider how they will monitor the impact of the policy on all six equalities groups. This is likely to include collecting data on uptake of self-directed support and outcomes for the six groups.**

- **Councils should consider the advice in the equalities section of this common resource allocation framework, in particular the need to apply the same approach to identifying needs to all groups.**


11. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

No.

Learning Disability Alliance Scotland
24 April 2012
Social Care (Self-directive Support) (Scotland) Bill

Legislation Governance group of NHS Greater Glasgow and Clyde

In general we support the aims of the bill, in that it seeks to increase the choice for individuals as to how, and in which form they receive support. We also believe that the aim of providing access to all levels of self directed support to individuals with impaired capacity is the correct way forward.

We do have concerns, however, that where decisions are to be made by a proxy, a Power of Attorney, Guardianship or Intervention Order, this may expose the individual to financial abuse. This is of particular note with regard to the provision of a Power of Attorney, where the stipulations concerning controls and monitoring are less stringent than those relevant to a Guardianship Order. Clarity with regard to the type of powers to be considered in any one case would also be helpful: decisions about medical or social care usually concern a person’s welfare only, but the management of direct payments, particularly as outlined in option 1, may require financial powers as well.

There appears to be no restriction as to who could be employed as a provider of support. This lack of stipulation around vetting carers could provide opportunities for unscrupulous carers. Even when a person requiring care has capacity, he could still be pressurised into choosing a person purporting to be a friend, but who would ultimately take advantage, to be his carer.

Legislation Governance group of NHS Greater Glasgow and Clyde

19 April 2012
Long Term Conditions Alliance Scotland (LTCAS) welcomes the Social Care (Self-directed Support) (Scotland) Bill and the Bill’s aims to increase people’s choice and control over the support that they receive. LTCAS supports the introduction of this legislation which provides a clear legislative framework for self-directed support (SDS) in Scotland, imposes firm duties on local authorities and sets out the options available to people. SDS is one of the mechanisms for driving forward the kind of public service reform envisaged by the Christie Commission. It has a vital role in making a reality of an asset-based approach, in which people can combine formal services and other support (for example from family, peers or local community groups or services) to produce the best outcomes and value.

This piece of legislation is vital in helping to increase the take up of SDS across Scotland and achieving personalised support and equal rights for people with long term conditions in Scotland. It offers the clearest chance yet for Scotland to close the gap between promise and practice. The opportunity that this Bill provides should therefore be exploited to ensure that SDS becomes entrenched as the norm in Scotland for providing care and support to people with long term conditions.

Positive outcomes

LTCAS supports the general principles of the Bill which encourage ‘involvement’, ‘informed choice’ and ‘collaboration’. It helps to outline the framework within which SDS will operate in and ensure that support is flexibly provided around people’s needs. However, the Bill should be more definitive about how SDS is part of a broader agenda which ultimately aims to improve outcomes for people.

It is important that the Bill recognises that SDS is derived from an asset-based approach where people’s capacities, skills and resilience are harnessed to create positive outcomes for people. This will require the joining up of organisational boundaries to ensure a more flexible and responsive use of all care and support resources to allow people to gain control of their lives. Thus the use of ‘social care’ in the title of the Bill sits relatively uneasy within the personalisation agenda, as this infers that the Bill’s principles will be applied specifically within social care as opposed to other areas. The Bill’s principles must therefore extend across sectors to reflect the complexity of people’s lives in which there are nearly always interdependent aspects of need, such as healthcare, employment and housing. For example an individual might choose to use part of their Direct Payment to purchase support relating to employment, education or leisure.

It is extremely pertinent that the Bill’s intention to give more choice and control to people should be focused more widely on health services as well as social care services. The current health and social care integration agenda aims to
ensure that care and support is organised around people’s needs. People with long term conditions are therefore set to benefit from SDS if its principles are applied to healthcare provision as well.

Additionally, in order to achieve positive outcomes for people with long term conditions, SDS should have an extensive range and wide a reach as possible. Thus the Bill’s suggested regulations in relation to the four options of SDS must ensure that they widen access to SDS rather than narrow it and help to ensure maximum take up. This includes improving people’s access to greater choice and control even if they chose an SDS option which did not require them to manage a budget. Such an option should still ensure people receive personalised services tailored to their individual needs. People desire to be treated as active citizens who contribute and enjoy the right to live high quality, independent lives in which they are in control. This will have significant implications for the way in which the landscape of support and services is designed in local areas. The work currently underway to develop joint strategic commissioning will be essential in supporting implementation of the SDS Bill.

**Support**

LTCAS welcomes sections 1(3), 5 and 8 of the Bill which highlight the provision of support, assistance and information to people directing their own support. However, the Bill is relatively unclear about the level of support that should be provided. For example section 5(3) places a duty on the local authority to assist the supported person to make a choice by taking ‘reasonable steps’ to provide this support. The use of the word ‘reasonable’ here is ambiguous and the required high level and quality of assistance should be made more explicit in the Bill. LTCAS would urge the inclusion of a duty on local authorities to provide advocacy (similar duties exist in relation to mental health, and to additional support for learning).

Making decisions about, applying for and receiving SDS can be a complex and tiring process, especially for frail, isolated people including older people who lack informal support. These people may lack the everyday back-up that others can count on to make the process work. From case study evidence from people with debilitating conditions, one woman remarked on the hurdles when applying for Direct Payments in Scotland: “normal, well people looked at it and blanched – “I couldn’t do that.” How anyone could think that anyone who is ill enough to need care could do that is beyond me…”

Where people lack the capacity to speak up for themselves or where fear holds them back, independent advocacy support and peer support can assist people to achieve personalised care. The Bill should therefore emphasise the key role that other support organisations can play in providing the necessary support.

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2. Ibid.
3. Ibid.
support to empower the individual to make informed decisions and choices for themselves.

**Monitoring and evaluation**

For SDS to make a real positive impact on people’s choice and control over their support, and ultimately on their lives, it is essential that the Bill requires local authorities to carry out regular monitoring and evaluation of SDS in their area and adopt a robust framework to ensure this happens. In identifying outcomes and assessing progress against them, it is important that we examine a person’s journey along the SDS path and measure success by whether the range and combination of support and services with which they interacted resulted in a positive outcome as defined by the person themself.

Regular monitoring and evaluation of SDS should include gaining feedback and the perspectives from people who use SDS, (which should involve their active participation in this process), as well as analysing take up numbers of SDS and reporting these back to the Scottish Parliament. This will require the development and use of effective and efficient monitoring and evaluation tools. LTCAS therefore recommends that all local authorities engage with the range of support currently being funded to help implement the National Self-Directed Support Strategy, including the newly formed *Changing Support, Changing Lives* initiative (comprising of LTCAS, Scottish Consortium for Learning Disability (SCLD), ENABLE Scotland, In Control Scotland and the Institute for Research and Innovation in Social Services (IRISS))

4. This partnership has come together to drive forward SDS in Scotland. As part of its mission to ensure action is taken to implement SDS across Scotland, the group will work in partnership with providers to monitor and evaluate SDS in Scotland to ensure different models of SDS are improved upon and people move towards truly personalised services.

A key aspect of monitoring SDS must be to undertake effective equality impact assessment, reflecting the concerns that certain groups of people will experience greater barriers to accessing SDS and will require support such as advocacy.

**About LTCAS**

*LTCAS’ vision is for a Scotland where people with long term conditions enjoy, not endure, full and positive lives, free from discrimination and supported by access to high quality services, information and support.*

LTCAS is the national third sector intermediary for a range of health and social care organisations. LTCAS has over 220 members including large, national support providers as well as small, local volunteer-led groups.

Long Term Conditions Alliance Scotland
24 April 2012

Loretto Care

1. Are you generally in favour of the Bill and its provisions?

Loretto Care is wholly in favour of the SDS Bill and the provisions contained because they are informed by sound principles of personalisation. This Bill is intended to improve services at a time when economic resources are limited; and a major driver is in repositioning supported people from being passive recipients of publicly funded services towards becoming active partners in their care provision. This is a commendable goal particularly in terms of our engagement with vulnerable individuals and groups who are frequently marginalised. Reforming public services should be aimed at improving the life opportunities for all of our citizens.

General principles underlying the Bill

Section one of the Bill proposes three principles, which are described as "the general assumptions under which professionals and individuals should operate." (Policy Memorandum, para 17). The principles encourage "involvement", "informed choice" and "collaboration". Local authorities would have a duty to have regard to these principles when carrying out their functions under the Bill.

2. What are your views on the principles proposed?

As described, the key principles are perfectly acceptable. However, we would suggest that more work is needed on those "general assumptions under which professionals and individuals should operate."

For example, 'involvement' is not immediately obtainable, particularly whenever an individual lacks capacity or is otherwise uninterested in engaging with the process, or where complex health or social factors constrain involvement. On this basis we would caution against 'assuming' involvement and instead urge a range of measures and safeguards are in place for promoting involvement, with independent advocacy as one way to achieve this.

Empowering vulnerable adults with complex health and social needs is a truly skilled activity and often requires a considerable time commitment - promoting and supporting involvement in the SDS process will be equally time consuming; however, as a Social Care Provider we already endeavour to encourage the people who are supported by services to be actively involved in their own lives by adopting Person Centred Practices. We recognise a corollary of this is whenever an individual has an active involvement in deciding on the level of paid support, and how support should be provided and by whom, and while these goals are all commendable, in reality, they can be quite difficult to achieve in the normal operations of organised services particularly as we aim to limit overheads. However, by working together towards these objectives we believe genuine
coproduction approaches should enable improved outcomes for each individual including achieving cost efficiencies.

The attitude of others, particularly professionals, is crucial in enabling people to be involved in a manner that best suits their needs, preferences and aspirations. In order to ensure this actually happens, ‘informed choice’ is another key principle which when handled skilfully ensures people understand their rights and responsibilities, and all of their options, and most importantly are also aware they can change their opinions. The Scottish Government have provided assurances that ‘SDS will be available to all and imposed on no-one’ so it is vital this undertaking is carried forward by Local Authorities particularly when introducing Personalisation alongside budget cuts.

At the heart of this is the fact that, in the current financial climate, continuing to fund services at current levels is not financially sustainable in the longer term. A genuine approach to collaboration and coproduction are now required in order to realise financial efficiencies in how individual outcomes will be achieved. Instead of imposing budget cuts on the most vulnerable members of our communities, we would urge a genuine partnership approach as the most effective way forward.

Options for self-directed support

Sections 3-4, 6-12 and 17 of the Bill contain the core self-directed support provisions. Included are that the local authority must offer an individual four options in how they would like to direct their support - "direct payment"; "direct available resource"; "mix of approaches"; or, "local authority arranged support". The provisions would relate to adults assessed as requiring community care services, and also children and their families where a local authority decides to provide services under the Children (Scotland) Act 1995. Other provisions include that individuals must be provided with information and advice to help them make that choice, and those who may have difficulties in making informed choices are provided the necessary support to do so.

3. What are your views on the four options for self-directed support proposed in the Bill?

We note that the Bill now includes four options including Direct Payments, and this builds on earlier experiences where previous legislation for Direct Payments did not result in significant numbers choosing to take control of their own care and support requirements. We would support the idea of four options as it provides people with choice and we particularly welcome the obligatory duty in which Local Authorities ‘must offer’ these choices to everyone who is eligible with community care needs.

The most important consideration is how LA workers interact with people to ensure they are suitably and accurately informed and can therefore exercise ‘informed choice.’ It is probably true that for many people who already have circles of support and family networks, this may not be a major difficulty, and
SDS may work well, but for many others, arguably the most vulnerable people in our communities, it is clear that other safeguards will be required to avoid individuals being exploited.

4. Do you have any comment on the proposal that the self-directed support options should be made available to children and their families, together with the proposal that the degree of control a child may have over the process should vary with age?

We believe that self directed supported should be open to children and their families, giving consideration to any legal restrictions which may be in place within any one family unit.

The idea that any child having control over the process is linked to age may not necessarily enable safe and productive decisions to be made, given the individual health, social and educational issues they may be experiencing. As for all individuals who are protected under legal status, promotion of choice must be balanced with effective safeguarding measures within the SDS process.

5. Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

The provision of information and advice to individuals, particularly the most vulnerable individuals with complex needs, will need to be resourced. As the Scottish Government have already declared that Self Directed Support will be ‘cost neutral’ it is difficult to see how the necessary investment in time and resources can be brought to bear on the neediest individuals. Practitioners already have a sense of insufficient resources within current arrangements for Community Care and that Care Managers’ caseloads do not always allow sufficient time to attend Reviews or to engage with Providers and the people they support.

We think it is vital that the provision of information and advice about SDS is underpinned within relationships that are founded on trust, respect and understanding. If current resources do not facilitate this process, it is difficult to envisage how it will achieve those positive outcomes without further targeted investment.

The principles are sound, but how this will work in practice will continue to be dependent on the quality of advice, information and support for the most vulnerable people.

Direct payments

The Bill seeks to modernise and consolidate current legislation on direct payments, in order to make it more flexible to respond to individuals’ needs. Whilst local authorities would retain a range of duties and powers, the Scottish
Government does not wish these to impinge on people's ability to determine their own support. However, section 13 of the Bill would seek to do this through secondary legislation by granting Ministers powers to introduce regulations, rather than setting this out on the face of the Bill.

6. Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?

This raises a number of issues, and once again presents us with the fact that Local Authorities have a statutory duty to conduct Community Care Assessments, while SDS is predicated on the notion that individuals should be involved in Co-Production (e.g. through Self Evaluations). In terms of this innovative new Bill, we continue to confront the dilemma of how the role of the state interacts within the personal lives of vulnerable citizens. On this basis alone, we realise there is potential for some confusion so Regulations and Ministerial guidance will be critical in providing clarity, unity of purpose and achieving favourable outcomes.

In relation to Section 13, some brief responses now follow, which we hope will contribute to the debate:

- ‘The Scottish Ministers may by regulations make further provision about direct payments.’

- We think this will be essential especially to avoid regional variations which could arise from local interpretations of the new Act. Wherever someone with community care needs lives in Scotland, they should have a clear understanding of Direct Payments and full confidence that they can access this arrangement.

- ‘Regulations under subsection (1) may in particular make provision for or in connection with-
  - specifying descriptions of persons who are ineligible to receive direct payments.

Also essential in our view; we would recommend this should be produced in clear and compact guidance, appropriate to the audience, to avoid ambiguity. Thus far, there’s been some confusion about eligibility criteria, so further guidance would be particularly welcome, along with information on appeals, change of circumstances etc. One particular area of concern with eligibility is addictions, with the question being - what about people who are in recovery?

- (b) specifying circumstances in which a local authority is not to be required under section 4, 6 or 7 to give a person the opportunity to choose-
  - Option 1 of the options for self directed support, and
  - So far as relating to that option, Option 4
This would be helpful, and we again urge that Ministerial guidance is reproduced in Easy Read formats and accessible for the general public.

(c) specifying the circumstances in which a local authority may require a person to contribute to a direct payment,

We believe that specifying the circumstances for personal contributions is desirable as part of those measures enabling people to make an ‘informed choice.’ We would urge that when calculating such charges they are fair (i.e. affordable), proportionate and transparent, and do not add to the anxiety of the poorest and most vulnerable people or otherwise detract from the most needy receiving the care and support packages which are necessary to maintain good health and wellbeing.

(d) enabling a local authority to assess or reassess a person’s ability to contribute to the cost of securing the support to which a direct payment relates,

In our experience, we have found that many vulnerable people’s support needs do vary from month to month, and for most the personal income from benefits does not vary widely, usually remaining at a fairly low level. Thus, we would ask for a light touch in this regard. Practice wisdom suggests a simple and uncomplicated reassessment, but one which does not impact on long standing support arrangements in the short term, enabling adjustments to match longer term outcomes (e.g. securing paid employment) would be preferable in these circumstances.

It is arguable that the stress of debt can act as a tipping point. Any change should be clear and transparent and should take into account each person’s health and social circumstances including each person’s true level of disposable income after arrears, debt repayments and fines are deducted.

(e) specifying the ways in which direct payments may be paid or repaid

This is an important consideration and one for which concerns are frequently raised. We think some essential safeguards are needed because Direct payments are public funds, often for very considerable amounts, which will be handled within the personal support arrangements and the private sphere.
• Should financial improprieties be detected, regulations must specify how the funds will be recovered and from whom. Thus, we recommend that personal accountability should be established at the outset.

• *(f)* specifying circumstances in which a local authority may, must or may not terminate the making of a direct payment.

• For all of the reasons given previously, we would agree that regulations are needed. We would assume this is an important stipulation in relation to those circumstances of financial impropriety, or where it is found that Direct Payments are not in an individual’s best interests, so, specifying the reasons why termination is taking place, along with an appeals process if applicable, will be helpful.

• *(g)* specifying circumstances in which a local authority may pay all or part of a direct payment to a person other than the person to whom the direct payment relates,

• If we understand correctly the new Bill will not debar individuals who lack capacity, or people in residential care, so it is important to specify the arrangements in which a named person, appointee or financial guardian can receive DPs on another person’s behalf, and the monitoring arrangements that should be in place, particularly in relation to *(e)* above.

• *(h)* specifying descriptions of person to whom direct payments may not be made under paragraph *(g)*

• We would agree wholeheartedly, this is a vital safeguard. There have been considerable debates around PVG and the accreditation of suitably qualified and competent persons. Within the regulated workforce these arrangements are already firmly established and open to scrutiny, however, the question arises in relation to unregulated Personal Assistants. In terms of the ethos of SDS and Personalisation, the Bill is about removing some of the professional veneer from a supported person’s life (giving each person a life, not a service; reducing reliance on paid support in favour of circles of support etc) and all of these arguments are compelling. However, we firmly believe that the introduction of Direct payments must be matched with appropriate safeguards and monitoring arrangements in order to avoid abuse and exploitation of vulnerable
individuals and, when it is found that an individual is no longer suitable, to intervene accordingly.

- (i) specifying descriptions of person who are prohibited from providing support to which a direct payment relates other than in such circumstances as are specified.
- As with (h) above. Within organised services the issue of criminal records (from unpaid TV licences to speeding tickets, to BofP, etc) which were disclosed both at interview stage, and at repeated intervals during employment,
- has consistently tested the judgement and values of individual recruiting managers, so the introduction of PVG and individual listing was a most welcome development. We would suggest that individuals who are prohibited from working with vulnerable adults, or with children, in regulated services should also be prohibited de facto from providing support to which a direct payment relates, and we can foresee no reason why an individual’s discretionary judgement should apply in this regard.

- (j) specifying conditions which must be satisfied by persons before they may provide support to which a direct payment relates.

We would agree with this. As the regulated workforce must provide evidence of competence to practice, including continuous professional development (PRTL/SSSC) it is difficult to envisage how Personal Assistants can operate to similar standards, without additional resources or formal organisational support. This is therefore an area for further examination, in relation to the capacity which might be available from Providers who are already providing their own workforces with practitioner training (Epilepsy, First Aid, Moving and Handling, etc etc) and can include PAs in that process.

Adult carers

Currently, adult carers of other adults or children are entitled to have an assessment of their needs. However, section 2 of the Bill proposes that local authorities should have the power to provide support to a carer on the basis of that assessment. Where a local authority decided to provide such services, section 6 would require it to offer a choice of the four self-directed support options to the adult carer.

7. Do you have any views on the provisions relating to adult carers?

Section 2 quite rightly acknowledges the significant contribution that adult carers make in the lives of supported adults and children, and we agree that an assessment of their needs should ensure any change of circumstances which might impact on support arrangements should be acted upon. This will have
particular relevance for older carers whose own health and/or ability to cope will continue to be a factor. Since these arrangements already save the economy billions of pounds, according to recent research, it is in everyone’s interests to maintain carers with appropriate support measures.

We therefore agree that the 4 options should enable continuity within the caring and support arrangements without jeopardising relationships or compromising any individual's health and wellbeing.

**Individuals’ responsibilities and risk enablement**

The proposals in the Bill could place a significant amount of responsibility on individuals and their families, particularly in managing risk. The Policy Memorandum (para 26) accompanying the Bill makes particular note of the current ability of people to employ personal assistants through the use of direct payments (option 1 in the Bill). Whilst the Bill does not place any restrictions on the categories of people that may be employed by an individual, the Scottish Government would publish statutory guidance which would cover ensuring individuals are aware of their duties as an employer and the risks in not adopting safe employment practices.

8. Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?

No – for the reasons given previously in (i) above, we are not particularly comfortable with this particular approach, although we can understand why this has arisen.

We would recommend instead that PVG is brought to bear as a necessary safeguard. As stated previously, professionals have been challenged by many of the ethical issues particularly in deciding on the criminal records checks, so ‘listing’ has provided much needed clarity. We can think of no reason why supported individuals when acting as Employers will not benefit from the same level of clarity when recruiting their PAs.

**Financial Memorandum**

The Financial Memorandum accompanying the Bill sees much of the Bill being cost-neutral in the long term. However there is an acceptance there will be transitional costs associated with transforming the culture, systems and approaches to social care provision as a result of the Bill and the Government's wider strategy.

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?
As an organisation we have benefitted with some funding for capacity building, and we are very grateful for that. We expect this funding will raise awareness of staff, and provide training in order to promote and develop Personalisation in the future delivery of cost effective and outcomes-focused services. We also plan to collaborate with other smaller providers in order to develop capacity within the sector.

However, in respect of the cost neutral nature of this ground breaking innovation, we also note Ministerial comments that the Scottish Government has no plans at present for the individualisation of health budgets, so this does raise some further questions about the longer term strategy vis-à-vis the integration of health and social care, for which we offer no comment at present, but which should be considered alongside the current experiences of budget cuts in existing social care provision.

Effects on equal opportunities, human rights, island communities and sustainable development

The Policy Memorandum (para 52-63) accompanying the Bill outlines the assessments made by the Scottish Government on the potential impact, if any on equal opportunities, human rights, island communities and sustainable development.

10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?

No further comments.

Other matters

11. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

No further comments.

Loretto Care
24 April 2012
Social Care (Self-directed Support) (Scotland) Bill

Macmillan Cancer Support

Q1 Are you generally in favour of the Bill and its provisions?

Macmillan Cancer Support welcomes the opportunity to respond to the Scottish Government’s proposed Self-Directed Support Bill. Macmillan has tracked the Self-Directed Support legislative debate and consultations with interest. The statutory role for Self-Directed Support is a timely development given the growing needs of people affected by cancer and their carers across Scotland. Cancer is recognized by law as a form of ill health and disability with all the inherent legal protections against discrimination.

There are currently 190,000 people in Scotland living with cancer. By 2030 this figure will have reached 360,000. Cancer will affect one in three people in the course of their lifetime. Increasingly cancer is a long-term condition with many of the complexities and care needs associated with managing multiple health issues and disadvantage. The improvements in cancer survival rates thanks to earlier detection and more effective treatments are achievements worthy of celebration. The challenge is to make sure the quality of life enjoyed by cancer survivors and their carers deserves equal celebration. For people affected by cancer and their carers this means the focus of services has to move beyond the acute hospital sector into our communities. It means that all services have to be part of an integrated approach to care and treatment based on care planning which has the patient at the centre of decision making.

Given the Scottish Government’s clear view that integration of health and social care is a positive objective it is perhaps disappointing that the Self-Directed Support Bill does not try to make delivery of Self-Directed Support a more shared or joint enterprise between local authorities and the NHS. A shared mutual obligation to make Self-Directed Support a reality for all those eligible for support and services would have been an important signal for collaboration and allocation of resources.

There are clear linkages between the development of Self-Directed Support and the work of the Scottish Cancer Taskforce on transforming care after treatment, in which Macmillan is key partner.

Macmillan supports the Bill and its general principles.

Q2 What are your views on the principles proposed?

The principles are clear and we welcome that they are core principles linking to the law.

We support the intention in to empower the individual to tailor services and support specific to their needs. It should also allow the individual to take control of their care and not the providers of that care. Giving people affected
by cancer choice and control should help to secure the best outcomes. This is important for people with a cancer diagnosis and also for those with palliative care needs.

We welcome that the principles take into account the highly personal nature of providing care for an individual and acknowledge that by giving people informed choice and aspects of control, dignity and freedom of choice will be protected.

We are pleased to see the expertise of the carers recognised as an integral part of care delivery. Carers should be fully included in discussions about the cared-for person’s needs.

The success of Self-Directed Support will depend on the quality of information, advice and support available to people to make good choices. The Self-Directed Support Bill emphasises the duty of local authorities and NHS to make this happen and this is welcome.

A shift towards coherent Self-Directed Support practice will enhance the opportunity to promote better integration of care across health and social work and procure more effective use of shared resources across agency boundaries and budgets.

This last point is significant given existing and future pressures on budgets from changing demographic patterns of need and service capacity. Macmillan looks forward to working with all local authority partners and the NHS to maximise the potential application of Self-Directed Support to people affected by cancer and their carers.

**Q3 What are your views on the four options for self-directed support proposed in the Bill?**

We agree with the options proposed. It must be clear how the legislation will apply to the changing circumstances and care needs of people with cancer and other long term conditions. There should be an acknowledgement of the requirement for swift change which may be required in a relatively short timescale. This may be particularly problematic in end of life situations where 24 hour care is required within a short timescale. There should also be a provision for regular needs assessment to see if the individual budget is still appropriate for the person.

**Q4 Do you have any comment on the proposal that the self-directed support options should be available to children and their families, together with the proposal that the degree of control a child may have over the process should vary with age?**

No

**Q5. Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that**
should be offered to those who may have difficulty in making an informed decision?

The Self-Directed Support Bill sets out clearly the importance of access to good information and advice and stipulates the duty on local authorities to engage everyone who should be involved in decision making about Self-Directed Support. The explanatory and financial memoranda highlight the difficulty of predicting demands and capacity to deliver the quality of advice and support needed to implement Self-Directed Support. This needs to be tested more fully against the range of groups who might wish to secure access to Self-Directed Support options.

Q6 Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?

Self-Directed Support is about more than Direct Payments. It is one way of securing better involvement and choice. The proposals on Direct Payments are reasonable. There will be much debate about when to apply charging/cost contributions. The key principle must be the ease of application for the individual service user. If this can be combined with an efficient administrative system for local authorities and providers then take-up will be enhanced.

Q7 Do you have any views on the provisions relating to adult carers?

It is important to recognise the unique needs of carers and their role in contributing to the wellbeing of those they support. A number of the Bill’s provisions will assist carers directly and this is welcome.

Q8 Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?

This part of the Self-Directed Support Bill is an ambitious step in reshaping the balance of shared responsibility between families and the state. Families and carers will welcome this shift offering them some compensation for the limitations their caring roles place upon their economic chances. Of course, it means that good advice and information around the interplay between earned income, taxation, and benefits has to be available.

Q9 Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

The Financial Memorandum includes a presumption towards cost neutrality. Self-Directed Support of itself does not introduce new rights of entitlement to service or support. It changes the way support and services are arranged for people by giving them a direct voice and more control over the use of resources. It could be argued however that this vital shift towards ‘tailored support’ will encourage additional demand by ‘new groups’ and this will be on top of the acknowledged demographic changes that will lead to more need of social care and support.
Much of the reasoning for the Government’s cost expectations was drawn from studies which are fixed by historical patterns and use of Direct Payments. The numbers of service users and cases involved were rather limited. The initial allocation of resources announced by the Scottish Government reflects this bias.

People affected by physical and learning disabilities have always been the highest proportion of users of Direct Payments and other Self-Directed Support models of provision. The recognition that other groups should have access to Self-Directed Support is helpful.

It is Macmillan’s contention that the present resource allocation does not give proper weight to the reasonable expectation that people affected by cancer and many other long term conditions will meet the eligibility requirements of assessed community care needs and if service arrangements driven by Self-Directed Support developments are available, patients and their carers will be encouraged to pursue support and services. This will be the case if newer groups of users and carers can use individualised arrangements to change the context of strategic commissioning of services and support organisations with a proven track record of delivery and expertise in specialist fields.

It is often contended that Self-Directed Support or Direct Payments are best suited to people with stable conditions and circumstances, such as physical disability. Another ground for excluding people with variable conditions or terminal ill health is that Self-Directed Support /Direct Payments take time to work through. These are not just causes to exclude people and their carers affected by cancer. The investment in workforce development, training, and joint work with the NHS has to include an emphasis in widening access to Self-Directed Support to groups such as people affected by cancer.

Macmillan would also contend that the national resource allocation to deliver access to good quality information, support and advocacy services does not demonstrate a proper understanding of the costs required and the cover available across Scotland. Macmillan and other charities provide excellent information and support services which will be able to aid the delivery of Self-Directed Support.

Macmillan is keen to work with the Scottish Government, Cosla, ADSW and key local authority partners to study the implications of Self-Directed Support for people affected by cancer and their carers. Principally this would mean pilot work to estimate levels of care and support needs that would be eligible for Self-Directed Support approaches and estimates of the care and information costs involved to support users and carers in following Self-Directed Support options.

Our assumption would be that reviews of initial funding allocations could be influenced by additional research and experience of the outcomes for users and carers.
Q10 Are you satisfied in the assessments that have taken place in regard to these matters and the conclusions reached by the Scottish Government?

The general point should be noted that access to Self-Directed Support options will depend greatly on the corporate enthusiasm, skills, and informed awareness of assessment and care planning practitioners within local authorities. The Scottish Government has tried through conviction and resource allocations to highlight the importance of ensuring people are supported to exercise Self-Directed Support options.

Macmillan Cancer Support
24 April 2012
Social Care (Self-directed Support) (Scotland) Bill

McCarthy & Stone

About McCarthy & Stone

Established in 1963 McCarthy & Stone provides 70 per cent of all private retirement and Extra Care accommodation (marketed as Assisted Living) for older homeowners in the UK. The company has built 50,000 dwellings across 1,000 schemes in the UK, which together house approximately 70,000 older people.

Across Scotland, McCarthy & Stone has developed more than 80 retirement developments providing more than 3,600 homes.

McCarthy & Stone is currently the only UK provider of Extra Care Assisted Living accommodation for older owner-occupiers with additional care and support needs in the private sector.

Extra Care accommodation is a very specialist form of purpose-built, well-located, specially designed accommodation for older owner-occupiers who have additional care and support needs. It’s designed to offer companionship, comfort and security, while allowing people to remain independent.

It is an affordable alternative to a residential care or nursing home - residents own their own home and access domestic and personal care and support services on a need-by-need basis.

Currently, McCarthy & Stone have two developments under construction, Cults in Aberdeen and Giffnock in Glasgow, and a further development in Barnton, Edinburgh about to go to planning.

The Social Care (Self-directed Support) (Scotland) Bill – hereafter referred to as the SDS Bill – will ensure that residents in our developments are able to exercise choice of the care they receive.

RESPONSE TO QUESTIONS

1. Are you generally in favour of the Bill and its provisions?

McCarthy & Stone fully support the SDS Bill and what is seeks to achieve. We feel that empowering people with choice and control over their support is crucial to a care service that seeks to treat people as partners in the care they receive rather than the recipients of care.

Scotland is facing unprecedented demographic change with more than one million people already aged over 65, with the proportion of this sector of Scotland’s population expected to grow by 62% by 2031.¹

¹ British Geriatric Society (Scotland) 2011 Manifesto
The Christie Commission rightly noted there is a need to deliver care services to meet the rising expectations and aspirations of the public. The same is true in housing. The vast majority of older people consistently say they want to remain in their own home as they age.

McCarthy & Stone’s Extra Care Assisted Living developments offer older people the opportunity to retain their independence safe in the knowledge they can access domestic and personal care and support services.

2. What are your views on the principles proposed?

McCarthy & Stone is supportive of the general principles of ‘involvement’, ‘informed choice’ and ‘collaboration’.

These principles describe how the care service aims to interact with people and seeks to help define self-directed support. However, they could also be used to describe how McCarthy & Stone seek to engage with older people and local authorities.

McCarthy & Stone’s Extra Care Assisted Living accommodation is designed and built to meet the specific requirements and rising aspirations of older owner-occupiers who need additional care and support.

In the coming four years, we are seeking to invest up to £100 million in Scotland, across our Retirement Living and Extra Care Assisted Living accommodation, as a complement to, not a replacement of, local authority housing for older people.

3. What are your views on the four options for self-directed support proposed in the Bill?

McCarthy & Stone are supportive of the four options for self-directed support outlined in the Bill. We believe that giving people choice over how, when and from whom they receive their care is a vital part of a care service that aims to be more flexible and responsive to people’s needs.

Question 4- 7. N/A

8. Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?

McCarthy & Stone fully agree with the choice not to place restrictions on who may be employed by an individual. The overall policy aim of the Bill is to provide people with choice and control over their support. To place restrictions on who may be employed would be contrary to this.

McCarthy & Stone Retirement Lifestyles Ltd work in partnership with Somerset Care to provide support for people in our Extra Care Assisted Living developments. To that end Yourlife Management Services Limited (the Joint Venture Company) has applied to the Scottish Care Inspectorate for registration to provide Care at Home and Housing Support Services to the
residents of the Extra Care developments it is building in Giffnock and Aberdeen. This Bill will enable residents, of the soon to be built, Extra Care Assisted Living developments in Scotland to choose for themselves who should provide their care and support in later life.

Working in partnership with Somerset Care, McCarthy & Stone ensure that all staff are qualified above minimum standards.

**Question 9-11.** N/A

**Concluding Remarks**

McCarthy & Stone would like to reiterate our support for this Bill and our commitment to ensuring that upon implementation it delivers on its aim to provide people with choice and control over their support.

To this end, we would like to offer to appear before the Committee during the oral evidence sessions should the committee decide this would be beneficial.

McCarthy & Stone
24 April 2012
1. Are you generally in favour of the Bill and its provisions?

The Moray Council welcome the SDS Bill and are in favour of its provisions. The Bill gives more scope for citizens to design their own support and services.

Carers’ now being able to access SDS in their own right allows us to recognise the support that they provide and the impact that this may have on their lives.

Councils will need to have clear guidance when appointing a person with ‘interest’ in the supported person where no attorney or guardianship is in place.

2. What are your views on the principles proposed?

The Moray Council agrees with the three principles proposed in the Bill, allowing individuals to have greater control in the design of their support package. It gives clear assumptions on how the Bill should operate and be interpreted.

3. What are your views on the four options for self-directed support proposed in the Bill?

The Moray Council agrees with the four options of SDS. In relation to option 2, this may have an impact on the commissioning of services. Citizens would greater choice over what services they want and would not be restricted to services commissioned by the local authority.

4. Do you have any comment on the proposal that the self-directed support options should be made available to children and their families, together with the proposal that the degree of control a child may have over the process should vary with age?

The Moray Council agrees that SDS options should be available to children and their families and children should have their views and opinions heard.

5. Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

The Moray Council is satisfied with the provisions relating to the appropriate person but councils need to have equity and strict guidelines on who is deemed to be an appropriate person. In this section the Bill indicates the appropriate person can assist the service user, but the appropriate person may not be merely assisting but will be making the decisions and choices as
the supported person may not have capacity. Assist has connotations that the person still has a degree of capacity and this may not always be the case.

6. Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?

The Moray Council agrees that Direct Payments should be modernised and the Bill seeks to address this. Direct Payments empower individuals, carers and families by providing more choice and control. Practitioners need to promote the flexibility of direct payments and not restrict direct payments to “time and tasks” and the Bill needs to reflect this. Practitioners need to give the direct payment option the same promotion as the other three options.

7. Do you have any views on the provisions relating to adult carers?

The view of the Moray Council agrees with the principle that the carers should be made eligible to receive SDS and direct payments in certain circumstances.

There would need to be clear eligibility criteria and guidance as to what the payments could be used for. The outcomes for carers will differ from the outcomes for the supported person.

8. Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?

The view of The Moray Council is that the employment of close relatives should still be prohibited unless the person satisfies the criteria under exceptional circumstances. The Moray Council supports the discretionary powers local authorities have in deciding whether a close relative could be employed.

However, The Moray Council feel that the regulations regarding the employment of close relatives should be robust with clear guidelines.

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

In principle, The Moray Council agree that implementing SDS - transforming the culture systems and approaches to social care will have a large financial impact.

However, at this stage, predicting accurate costs would be difficult.

10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?
The Moray Council is satisfied with the assessments and the conclusions reached.

11. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

No further comments.

Moray Council
20 April 2012
Social Care (Self-directed Support) (Scotland) Bill

Multiple Sclerosis Society

1. Are you generally in favour of the Bill and its provisions?

The MS Society welcomes the Bill on Social Care (Self Directed Support). We believe that legislation is needed to reflect the changes in policy towards person-centred and outcomes-based social care. Self Directed Support is a vital part of independent living; allowing people with MS to fulfil their potential and to fully contribute to their communities. We welcome, therefore, any attempt to increase choice and control for people with MS.

Whilst new legislation is an important step forward, previous legislation on direct payments has shown that legislation alone will not meet the government’s policy aims to make social care more person-centred. It is important then that this legislation is supported by other activity.

As it stands, the Bill lacks clarity on a number of issues which will be crucial if meaningful choice and control is to be delivered to people affected by MS. It may of course be out of the Bill’s scope to address such issues but in our experience these factors will play an important role in ensuring people with MS are given real control over their support.

- **Training**: Will training on SDS be compulsory and who will be trained? Many local authorities in England have trained only their senior managers, rather than professionals who work directly with supported individuals and who often inform and influence decision-making. It is also important that training on SDS is consistent across all local authorities. We have noted that in England local authorities have interpreted SDS differently and incorporated these differences into their training. This has lead to inconsistency across local authorities where an individual in one local authority area has the flexibility to use SDS in a way which might differ to somebody in a different area. It may be worth thinking about a national programme to ensure consistency and fairness.

- **Service users as employers**: Support packages for individuals must contain a contingency fund to cover additional costs such as insurance, recruitment and emergency cover. People cannot take on the responsibility of being an employer without this in place. It is important that contingency funds are accompanied by clear guidance on when they can be used. It may also be worth considering including the ability for the fund to be used flexibly to cover unexpected changes in condition. This is particularly important to people living with MS, which is a fluctuating condition. It is also important to ensure that there is sufficient assistance available to an individual to understand their liabilities as an employer and take the right steps to cover themselves.

- **Consistency**: Will the variation in charging be addressed? Will the assessment process be the same across the country? Will support packages be transferable across local authorities? These concerns can have a significant impact on where a person can live and work. Allowing
packages to be transferred across local authorities, for instance, is important in terms of social mobility and equality. We of course, understand the importance of local democracy but when does acceptable variation become inequality? A caller to our helpline recently asked, “Where is the best place to live in Scotland if you have MS”?

- **Monitoring:** We would like some assurance that the enforcement of the Bill will be monitored. We believe there are opportunities to work with the voluntary sector in this area. If support is to be outcomes-based, SDS must be implemented flexibly. We believe, for instance, that people with MS should be able to use their direct payments for short breaks. It is important that local authorities see short breaks in a flexible manner, allowing people with MS and their carers to take breaks in the same way as the rest of the population do. Short breaks are a very important mechanism for supporting carers and enabling them to continue in their caring role.

**2. What are your views on the principles proposed?**

The MS Society strongly believes that individuals should be able to choose the support that is right for them, at the right time. This is particularly important for individuals living with MS since MS is a fluctuating and unpredictable condition; some people with MS may require support sporadically and sometimes perhaps quite suddenly. People with MS then require a social care system that is responsive and flexible; one that enables them to decide what support they need, when it is to be delivered and by what means. It is crucial to this process that the individual receives quality information about what choices are available to them and that they receive the necessary support to maintain the chosen support option. We agree, therefore, with the general principles outlined in the Bill.

We believe, however, that it would be worth making reference to how SDS options should be applied with flexibility and creativity. We also note that an individual must be provided with assistance that is “reasonably required”. We are concerned that the term ‘reasonably’ may be interpreted differently by local authorities. Assistance that is required for an individual to express their views or make an informed choice should be provided.

**3. What are your views on the four options for self-directed support proposed in the Bill?**

The MS Society agrees with the Bill’s assertion that the status quo cannot continue; that is, people should not be subject to the traditional ‘default’ of a local authority arranged service or a decision-making process which is ‘state-owned’. We also strongly support the assertion that individuals should expect choice and control over the support they receive – including the choice to have their support arranged by their local authority if they wish (option 3).

The MS Society fully appreciates the value of direct payments (option 1) and understands the positive impact they can and have had on the lives of people living with MS. Many of our members have described how direct payments
have enabled them to take-up employment, education or social opportunities that would previously have been unavailable to them. Our members have also described how direct payments have allowed their close relatives and friends to become family and friends again – rather than unpaid carers. Direct payments then can have a huge impact on the quality of someone’s life and their ability to participate in society.

Increasing the take-up of direct payments in itself, however, will not provide genuine choice for all. For direct payments to work in the way the government intends, local authorities must apply this option in a truly flexible way.

We are concerned that the language used in the Bill does not adequately express this desired flexibility. At present, direct payments are defined in the Bill as “a payment...for the purpose of enabling the person to arrange for the provision of support by any person (including the local authority)”. The Bill’s accompanying policy memorandum, however, states that “money can be spent however the individual chooses provided it meets the agreed outcomes in their care and support plan”. This latter definition appears to us more flexible than that in the Bill itself, which seems to imply that a direct payment will be used to fund a personal assistant. We would argue that this will not and should not always be the case.

We would advocate a similar approach when applying options 2 and 4. It is key that local authorities interpret these options in a flexible manner. In addition, it is crucial that the very idea of flexibility and what that entails is delivered in a consistent way across Scotland. At the moment, what a direct payment can be used for is interpreted differently across local authorities. For instance, in one local authority it is currently acceptable to use a direct payment to pay for costs associated with keeping a canine partner. In another local authority, however, using a direct payment for this purpose is deemed inappropriate. Our members in England are experiencing similar issues – what is deemed acceptable in a care plan often comes down to the views of individual social workers. We believe this is unacceptable.

It is important to remember that there may be occasions where care plans will change until the right combination or balance of support services in place. People should be given the opportunity to try packages and change their mind if necessary.

We would also be interested to know how the choices outlined in the Bill could be accessed by current recipients of support. A number of our members have not heard of Self Directed Support and believe it would be ‘a hassle’ to find out about and arrange. We are interested to know, therefore, how local authorities will actively promote these options with existing service users.

4. Do you have any comment on the proposal that the self-directed support options should be made available to children and their families, together with the proposal that the degree of control a child may have over the process should vary with age?
The MS Society believes that SDS options should be available to children and their families. We also feel that young people should be encouraged and supported to manage their own support as early as feasible for that individual. This enables the young person to be able to make their own decisions on the type of support they want and how they want that provided. There would of course need to be someone to oversee such decisions (probably the parents) and ensure that the young person’s needs are being met. However being able to manage their own support package is a big step towards independence for many disabled people.

5. Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

The MS Society believes that for choice to be meaningful individuals must be provided with clear and objective information about the various possible support choices. We also agree with the Bill’s assertion that local authorities must promote self directed support options. We are interested, however, in how this provision would be monitored and what would be deemed quality information and promotion? Only when individuals are given clear, quality information will choice be truly genuine.

Both promotion and information provision will require ‘cultural change’ from local authorities. Some people with MS have not heard of SDS and some of our members have told us that they have never been offered a direct payment, despite local authorities having an obligation to do just that. Other people with MS have told us that their social worker advised them that direct payments “are not right for you”. Some people with MS told us that they received information on direct payments through searching on the internet or approaching voluntary organisations. Others have told us that they had to ‘fight’ or ‘struggle’ to access direct payments. Often the information available has depended on the enthusiasm of the local authority or the enthusiasm of individual social workers.

Training of all staff, therefore, will be crucial to the success of SDS. It might be useful to include some guidance around minimum training for staff. In addition, it would be useful to set out what support individuals can expect from their local authority once they have chosen a support option. Experience from our members in England has shown that in the main the best support comes from organisations of disabled people – such as the Centres for Inclusive/Independent Living.

There is also a need to ensure proper support systems for individuals who are having difficulty in retaining information either temporarily because of their condition, such as during a relapse, or who need ongoing support to make informed choices. Advocacy is crucial to ensure that all people are able to have access to services which enable them to make informed choices in how their support is provided. Such support and advocacy should be provided as a right not as an optional extra if the LA want to provide such a service.
6. Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?

The MS Society agrees with the need to reform current direct payment law. However, as previously stated, legislation alone will not necessarily effect the change in social care that the government seeks. Real change will come from how the local authorities interpret direct payments and how flexible they are in applying direct payments. This flexibility must be applied consistently across the country.

In this section, it is also important to make reference to the employment of personal assistants. We know that many people using direct payments experience some anxiety about becoming an 'employer' and the responsibility that this entails. Whilst it is of course important that individuals are aware of their responsibilities it is equally important that they understand support is at hand.

Such support for direct payments should not only be available for 'setting-up' the arrangement but should be available to individuals on an ongoing basis. People should have the ability to 'dip into' support services as and when they feel they need it. People will be less inclined to take up direct payments if they do not feel that the support services are adequate or available to them in times of need. It would be helpful if minimum criteria is established to ensure that all people taking up this service have access to support and services that would enable them to have real choice and control over their support.

Importantly, people with MS have suggested that for them to have genuine choice and control over their care, there must be appropriate services for them to choose from. In some parts of Scotland, for instance, there is limited choice for those who wish to access short breaks.

7. Do you have any views on the provisions relating to adult carers?

The MS Society believes that carers make a huge contribution to Scottish society and agrees with the Bill’s assertion that without unpaid carers Scotland’s health and social care systems would be unsustainable. We support the provision to allow SDS to apply to carers. We believe this is sensible and just. We would ask for clarity, however, on what this will work in practice – how will a direct payment for a carer differ from a direct payment paid to the person they care for. Would they be paid through the same budget?

We would also stress again that for the Bill to effect genuine change, the carer must be provided with quality information prior to making a choice and effective support once that decision has been made. SDS options for carers, like the cared for person, must be applied with flexibility if they are to provide genuine choice and control.

8. Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?
Many of our members have suggested to us that SDS options would have a positive effect on their personal relationships by allowing their close relatives or friends to become just that again – e.g. they would use their SDS to employ a personal assistant in place of their relative being an unpaid carer. However, we are aware that in certain situations – perhaps due to culture or geography or where privacy and intimacy is paramount - it may be preferable for an individual to use their direct payment to employ a relative. For instance, in rural communities where there may be a lack of suitable employees, or where an individual needs end of life or respite care. We are aware of course that this is a complicated issue. There is the issue of benefits that are affected if a family member living with the individual is paid for the caring and also the issue of control and pressure. One might argue, for instance, that it is very difficult to fire your mother! Employment of family members therefore must be an arrangement then that both the individual and carer are happy with.

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

The MS Society agrees that service re-design is essential in the face of demographic changes and financial pressures. The Society is not in a position to comment fully on the investment laid out in the Financial Memorandum and how this might feasibly fit with the changes to be made by local authorities. We agree with the Memorandum’s assertion that some local authorities will have to make more changes than others, meaning the financial implications for authorities could vary considerably.

The MS Society of course, appreciates the difficult financial position of local authorities, particularly in light of the UK government’s changes to welfare and benefits. We believe this situation, however, offers an opportunity to think and act differently with regard to health and social care. It is more important than ever that resources are used as effectively as possible. We agree that Self Directed Support provides better outcomes for individuals and as a result provides better value for money. Whilst SDS is not about cutting costs, in some instances it can directly reduce costs for local authorities. For instance, one member described how prior to direct payments, they were forced to use respite centres providing 24 hour care in set blocks of time. However, the member might only require overnight care meaning 12 hours of care was effectively ‘wasted’. With direct payments the member was able to arrange support when she needed it – meaning either a saving for the local authority or double the amount of care for the member.

A cultural change within local authorities will be vital if genuine change is to be effected. It is important then that adequate resources are allocated to provide training to all those who need it – including those professionals who have direct contact with supported individuals.

10. Are you satisfied in the assessments that have taken place in regard to equal opportunities, human rights, island communities and sustainable development and in the conclusions reached by the Scottish Government?
We are satisfied with the conclusions reached by the government. We agree with the assertion that Self Directed Support may not address all of the challenges faced by those in Island or rural communities. However, we are supportive of the government’s belief that SDS offers the opportunity for flexible and creative solutions. We also believe the opportunity to employ family members, where appropriate, may offer an alternative where there is a lack of suitable carers.

11. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

MS does not adhere to department boundaries. MS can cause symptoms which require medical treatment but these symptoms will also impact on services beyond health. MS can lead to mobility issues, for instance, which may require housing adaptations, or mean that the individual needs assistance to carry out day-to-day tasks. Similarly, mobility factors may make using public transport difficult which could affect an individual’s ability to work or to study. It is vital that needs are looked at holistically and that support is based on outcomes and not service-provision. Achieving this will require professionals to work together across bureaucratic boundaries. It is important to people with MS that those professionals have the specialist knowledge necessary to assist them in making the most informed choices and supporting them in doing so. We, of course, realise that this Bill has limited scope and we support the effort to promote SDS across different services. This is particularly important as closer integration of health and social care services is envisaged. A project involving people with MS in NHS Lothian may provide evidence as to how successful health outcomes can be achieved through SDS. An evaluation of this test site is expected to show the positive impact of SDS for those with complex needs.

About MS and the MS Society

- Multiple sclerosis (MS) is the most common disabling neurological condition affecting young adults, and more than 100,000 people in the UK have MS.
- The MS Society is the UK’s largest charity dedicated to supporting everyone whose life is affected by MS and exists to help people living with MS across the UK by funding research, providing high quality information and support and raising standards of care.

Multiple Sclerosis Society
24 April 2012
Social Care (Self-Directed Support) (Scotland) Bill

NHS Ayrshire & Arran

1. Are you generally in favour of the Bill and its provisions?

Fully supportive - the intention to involve clients and their family offering them choice about how they want their support is applauded.

2. What are your views on the principles proposed?

The options proposed in terms of how clients would be supported in making choices are clear and helpful.

However, consideration should be given to the cultural change which will be required to implement the principles, i.e. training for staff, services users, carers and the general public. The changes may also have a knock-on effect on other providers within the NHS and it is important that they are included in the change process.

3. What are your views on the four options for self-directed support proposed in the Bill?

The options are sensible and carefully crafted to ensure clients personal abilities can be maximised if they choose. For example, those with no mental impairment may choose Option 1 and take total control of the support they require making arrangements for their support and dealing with the payment. Other clients may find dealing with the arrangements for their support difficult, and Option 2 may suit them best, but maintains their involvement/decision-making. Options 3 and 4 may be required for less able/less confident clients.

4. Do you have any comment on the proposal that the self-directed support options should be made available to children and their families, together with the proposal that the degree of control a child may have over the process should vary with age?

Fully supportive of this proposal.

5. Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

The need to provide information and advice is clear, however, further information may be required in relation to evidencing that those
responsible for giving the advice/information have provided clarity to those less able clients.

6. Are you satisfied that the method of modernising direct payments in the Bill will result in the change that the Government seeks?

Satisfied that it will demonstrate collaboration, involvement and the options of choices for those who require support of Local Authorities.

7. Do you have any views on the provisions relating to adult carers?

The approach described is clear and sensible.

8. Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?

Some clear commitment may be required to ensure Local Authorities have some power to ensure that the client will be supported in their choice of “adult Supporter”, however, there is provision made to meet the requirements of protection of vulnerable adults/children.

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

No views.

10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?

Yes.

11. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

No.

NHS Ayrshire & Arran
23 April 2012
NHS Education for Scotland (NES) welcomes the opportunity to contribute to this consultation on the Social Care (Self Directed Support) (Scotland) Bill and acknowledges the work that has been undertaken to date. NES are committed to supporting the health and social care integration agenda in order to provide holistic quality care for the people of Scotland and their carers.

NES is a special Health Board with specific responsibilities for supporting the workforce in healthcare in terms of the delivery of effective and safe healthcare. We also have additional responsibilities associated with supporting workforce development and in identifying the workforce needs in specific professional areas. We work in partnership with a range of Social Care and Voluntary Service organisations including Scottish Social Services Council, Care Inspectorate, Alzheimers Scotland. Currently NES in partnership with SSSC are supporting a number of Scottish Government strategies: Dementia Strategy, Carers Strategy and Reshaping Care for Older People related to education and supporting the workforce. In submitting our responses to this consultation we have considered it appropriate to make general comments and those related to education and the workforce.

General Comments
The Act does genuinely focus on shifting the control to implement self directed support. The immediate risk that occurs is the granulation' of care 'provision / purchase may result in uncontrolled variation in service quality / expectations which place new pressures on both the care recipients and those whom are playing a part in service delivery either as new care givers or those in established care roles.

Implications regarding educational and developmental support to those who provide such self directed support may fall between two stools and may even lead to an uncoordinated response which may be ineffective or inefficient. Responsibility and locus regarding identifying knowledge, skills and appropriate attitudes to meeting needs will be required to be considered or even mandated. A mixed sector / agency response may be suitable, but will need to be coordinated and governed in an appropriate way.

Similarly, the care giving / coordinating shift will have an impact on practice again with a requirement for governance responsibilities across health and social care sector. Importantly, education will require to see a shift in teaching, learning and development for not only existing staff but also new students. This will also be required to coordinated / supported and decision taking by whom.

Evidence from Think Local, Act Personal Partnerships publication ‘Personal Budgets: Taking Stock, Moving Forward’ (October 2011) (p3) identified ‘there is an emerging consensus about the importance of the quality of relationships and communication between people and social care staff and how this can be
developed through training and information sharing’. The challenge for some was the ‘employing and managing personal assistants’ (National Audit Office and the Ipsos MORI survey). The Carers Strategy and addressing learning and development requirements will need to be cognisant of the personalisation agenda and the move to self directed support.

All these further add evidence to support the workforce and education of providers by linking with accredited systems, apprenticeships and vocational training schemes. The impact on roles and jobs will be significant as the move to greater flexibility requires a different way of working in the future.

NHS Education for Scotland
23 April 2012
1. Are you generally in favour of the Bill and its provisions?

- Yes – the name of the Bill should however not be just called Social Care (Self-directed Support) as this does not embrace one of the Bill’s objectives of breaking down institutional barriers and focusing on the wider health and wellbeing of the individual. If reference to Social Care removed, provides more flexibility for future guidance on links between SDS and health boards particularly as integration agenda progresses.

2. What are your views on the principles proposed?

- These principles are very much supported and underlie existing NHS policies and practice such as those promoted by the Quality Strategy agenda.

3. What are your views on the four options for self-directed support proposed in the Bill?

- The four options will provide greater flexibility and hopefully better outcomes for the individual. Their effectiveness however will be underpinned by the quality of advice on choice and clarity of information provided to the individual. Key workers, in local authorities and potentially in health, will require training and support in advising on these options alongside care providers, advocacy agencies and relevant third sector organisations. It will be essential to provide consistent and accurate information across all sectors.

- Providing appropriate support to make an informed choice is of central importance.

4. Do you have any comment on the proposal that the self-directed support options should be made available to children and their families, together with the proposal that the degree of control a child may have over the process should vary with age?

- This is in line with GIRFEC and complements well established child/family centred planning approaches practiced by integrated children’s services.

5. Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

- Agree that the provision of information and advice should be given a high priority and importance in the Bill however believe that more
detailed guidance should be provided on how this should happen based on current good practice.

6. Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?

No response

7. Do you have any views on the provisions relating to adult carers?

No response

8. Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?

- NHS Fife does not agree with this approach. There are unresolved difficulties with the Protecting Vulnerable Groups (PVG) Scheme, targeting empowerment and control at people who, by definition require support services, without resolving the issues around vulnerable people becoming employers is unadvisable.

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

- With such a transformational change, consider it wise to extend projected costs into 2015/16 as proposed measures to facilitate change will require time and resources to be implemented and importantly reviewed

10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?

No response

11. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

- We think the SDS Bill should link in more strongly with agenda for integrating health and social care for older people. As joint budgets are established for this growing sector of the population, clear guidance needs to be given on how and who to manage SDS for these individuals. As there are many synergies between the SDS and integration agenda, there is an excellent opportunity for both policies to enhance each other if implemented in a co-ordinated and integrated way. There will clearly be a role for health boards in this which is not reflected in the draft Bill as it stands.
• Close links should also be established between the implementation of SDS and the Christie Commission’s recommendations relating to the importance of services moving towards early and preventative intervention. From all the SDS test sites, findings have shown that if resources available SDS can be an effective mechanism for implementing early intervention/preventative approaches.

• More mention should be made of the role of health boards in promoting joint working and SDS. Links between social and health care referred to in the draft bill and accompanying memorandums, should refer to and reflect findings of the two NHS led SDS test sites (i.e. NHS Lothian and NHS Fife) due to be reported on in Spring 2012.

• Following the initial findings of the two NHS led SDS test sites, more research should be commissioned to:
  
  • review the longer term health benefits of the impact of SDS for individuals who have participated in the test sites.
  
  • extend the testing of SDS to examine how this approach could be extended to relevant areas of the health service in the longer term without additional short term funding.

NHS Fife
24 April 2012
1. Are you generally in favour of the Bill and its provisions?

Yes and many areas within NHSGGC are taking forward the implementation of reforms based upon the principles in the Bill. For example, In Glasgow City personalisation been introduced in parts of learning disability and work is underway to extend this to physical disability and mental health clients.

2. What are your views on the principles proposed?

Involvement, informed choice and collaboration are sound principles and we would support these.

3. What are your views on the four options for self-directed support proposed in the Bill?

Service user and/or carer preferences, capacity, and circumstances, will naturally vary and it is important that this is recognised. The four options reflect this variation and offer a suitable range of choices for individuals. It is important that individuals receive a similar level and quality of services across each of these options.

4. Do you have any comment on the proposal that the self-directed support options should be made available to children and their families, together with the proposal that the degree of control a child may have over the process should vary with age?

We support the introduction to children and families and the principle that children can make informed choices, which is in line with the ethos of the Children’s Act. The degree of control a child is given should, however, not be based purely on age but on maturity and capacity.

The process could be of considerable benefit to children in transition to adult services. If they go through this process as children and receive an individual budget, this should be able to be carried forward through to adult services, making their transition smoother.

5. Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

Yes.
6. Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?

Yes.

7. Do you have any views on the provisions relating to adult carers?

This offers real benefits for carers as their assessments will require to be supported by resources, although practical challenges may arise in implementation given resource constraints and the need for funding and eligibility thresholds. It is important, however, that carers’ assessments are encouraged at an early stage to predict and prevent problems rather than reacting to crisis.

8. Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?

This approach will give individuals greater flexibility in whom they can employ. However, it needs countered by checks and balances, through for example, a requirement for systems to be put in place for monitoring quality and safety, and for responding to potential protection issues and possible exploitation of carers/employees.

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

Not directly, however we would wish to note the potential impact on demand for NHS and other services should the transition to SDS fail to deliver the expected benefits in terms of improvement to individual outcomes, particularly where a move to SDS is associated with targeted reductions in support costs.

10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?

Yes.

11. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

Support given to clients and their carers in assessing their needs is vital but needs to be fair and not based on the professional’s fear of perceived and/or actual escalating organisational costs. There is an argument that this support might be best provided by an independent agency. We would also have concerns about any approach to the implementation of Self Directed Support which assumes and applies
savings targets associated with a move to SDS per se rather than as a result of improved efficiency and responsiveness to assessed needs.

NHS Greater Glasgow and Clyde
24 April 2012
1. Are you generally in favour of the Bill and its provisions?
I am in favour of the Bill and its provisions.

2. What are your views on the principles proposed?
I fully support the principles, but would prefer to see those principles enhanced with regard to the responsibility of the local authority, or agency with delegated responsibility, to ensure that the individual is provided with support and information appropriate to them to facilitate engagement and informed decision making.

I would wish to see further clarification of the application of delegated powers under the proposed health and social care partnerships in order to ensure that access to services using SDS is applicable to services provided by the partnerships.

In addition, I recognise there will be services which will not be appropriate to be delivered through all of the SDS options. However by encouraging “involvement”, “informed choice” and “collaboration” individuals should be fully involved to the appropriate degree in decision making.

3. What are your views on the four options for self-directed support proposed in the Bill?
I agree that the range of options offers a high degree of flexibility and choice and takes into consideration the degree of control an individual may wish to take and their willingness or capacity to manage that option. The inclusion of Option 4 may be most instrumental in increasing the uptake of the Options 1-3 as it allows individuals to tailor the degree of control they wish to take.

However, providing appropriate support to make an informed choice is of central importance.

4. Do you have any comment on the proposal that the self-directed support options should be made available to children and their families, together with the proposal that the degree of control a child may have over the process should vary with age?
I agree that the SDS options should be made available to families. The child or young person should be engaged in any decision making regarding their care package as appropriate to their age & capacity. GIRFEC principles must be applied to ensure that the young person is involved in full and informed planning regarding their transition to Adult Services.
Specialist Independent advocacy for children would ensure that the child’s views are heard, to ensure protection of their views, particularly where the wishes of the child differ from those of the parent / carer in terms of how their care is delivered.

The UN Convention on the Rights of the Child defines ‘child’ as a person under the age of 18, and encourages countries that have a lower age of majority to increase their level of protection until age 18. The promotion, protection and fulfilment of children’s rights under the Convention should be visibly obligatory in this bill, and incorporated into any monitoring framework.

In relation to the Bill, attention to equality in children’s rights should specifically consider issues of gender and ethnicity, freedom of expression, and ‘respect for the views of the child’.

In addition, I suggest that Section 21 in the delegated powers memorandum, where it describes the power to disapply SDS to certain services for children and / or adults, should be revisited. The statement claims that Ministers do not consider that it is not necessary that this power is applied to services to carers. However, there may be cases, particularly in regard to young carers, where the needs of the young carer may well be complex and involve an element of child protection.

Therefore, I suggest that whilst it may be inappropriate for direct payments to apply to all services, the principles of engagement and empowerment, plus the remaining 3 SDS options may well be absolutely fundamental in providing the individual with the flexibility and services they require to continue with their caring role, should they choose to do so.

Again the provision of independent advocacy for the young carer would be fundamental to this process.

5. Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

I agree that an individual's capacity should not limit their ability to engage in these processes. Therefore, information re the SDS options should be made available in the appropriate way to enable the individual to engage.

Adults and children who require support to make decisions on the options should not be disadvantaged by this. The Bill notes the importance to self-directed support users of investment in advice and advocacy services. This is in line with guidance on the Patient’s Rights Act (2011), “Patients are provided with such information and support as is necessary to enable them to participate in decisions regarding their health & wellbeing”, therefore, as noted earlier, if / when the application of SDS is applied to services provided via the integration agenda and the health and social care partnerships, it is
recognised that the principles of engagement should be ones that are already embraced by the original agencies.

In addition, I suggest that it may be helpful to reinforce that the information needs not only to ensure that the individual is informed to make choices and act on those choices in relation to their chosen SDS option, but that they or their proxy are clearly informed of their rights for review etc, and that where necessary this is revisited within times frames that are supportive to the individual.

6. Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?

I am concerned that the Bill makes no provision to create a mechanism to enable a Direct Payment to be made from the NHS to the individual, therefore excluding those individuals whose care package is solely funded by health from that SDS option.

For example, those individuals whose care is the responsibility of NHS Scotland, as guided by the NHS Continuing Healthcare CEL 6 (2006) may appropriately direct their own care should the SGHD choose to extend SDS to individuals whose service is provided from within this framework.

7. Do you have any views on the provisions relating to adult carers?

I recognise the impact of caring on an individual’s health & wellbeing; and agree that enabling an SDS package to be made available to carers will go someway toward alleviating that impact. This could be agreed through the mechanism of existing carer’s assessments. Provision of advocacy to carers could be enhanced to support carers in considering how services via the SDS options could support them in their caring role.

8. Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?

I do not agree with this approach.

There are unresolved difficulties with the Protecting Vulnerable Groups (PVG) Scheme, targeting empowerment and control at people who, by definition require support services, without resolving the issues around vulnerable people becoming employers is unadvisable.

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

I am concerned that although the evaluation of the Local Authority SDS test sites highlighted the need for leadership to drive SDS forward, there has been no resource allocated to Scotland’s Health Boards in–line with the funding
provided by Scottish Government to Scotland’s local authorities, providers & user groups in 2011.

I, therefore, suggest that a significant investment in the NHS by Scottish Government is required to enable the transformation of culture, systems and approaches towards SDS. I would suggest that paragraph 135 of the Explanatory Notes which suggests no costs to NHS Boards for the release and backfill of the estimated 22,000 staff is unrealistic.

In addition, I suggest that if Scottish Government wishes to provide information and culture across the NHS in Scotland there needs to be recognition that 1 day training per staff member is entirely insufficient to enable the required understanding or embracing of the complexities of SDS.

Perhaps there may be an opportunity through the rolling out of the training and awareness of the Patient Rights Act (2011), to add linkages between the principles of involvement and engagement, and begin to introduce SDS as a concept to NHS staff nationally.

10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?

I am satisfied with Scottish Government’s assessments, but would suggest that further work in this area is informed by the findings on the data being collected by the Health Analytical Services Division in respect of evidence on how this might work for the population groups mentioned in section 59 of the memorandum as the EHRC and other bodies in Scotland and England have published reports and evaluations that raise concerns about the universal applicability and equal outcomes for this model of care.

Scottish Government must ensure through training of staff and information & advice that everyone is aware of SDS and can make an informed choice regarding which of the 4 SDS options best meets their needs.

A robust monitoring & evaluation tool will identify gaps in uptake, and underlying issues of inequality, and enable organisations to adjust how information is made available to ensure a wider awareness of SDS.

11. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

The title Social Care (Self-directed Support) (Scotland) Bill clearly places the emphasis on Local Authorities, and not the NHS.

I suggest that for SDS to be implemented fully and have maximum benefit for the adults and children supported by our respective systems the same duty placed on Local Authorities must be placed on NHS Scotland, not merely as a delegated power in regard to social care duties as stipulated in the Bill.
There is recognition that this will require a significant investment by Scottish Government in Health Boards to support training and systems change, and therefore also suggests that the forthcoming and evolving integration agenda perhaps offers a vehicle to make the duty of SDS more explicit on the proposed Health and Social Care Partnerships.

NHS Lothian
19 April 2012
Outside the Box

1: Are you generally in favour of the Bill and its provisions?

Yes: we strongly support the Bill and its provisions. Legislation is needed to ensure that the arrangements are implemented and are available to people throughout Scotland. It is also important that people have access to Self-directed support as a right and not at the discretion of staff in local authorities.

2: What are your views on the principles proposed?

All 3 of the principles that are outlined are essential for the fair and effective implementation of Self-directed support and as the basis for people in Scotland receiving social care.

Those that are listed are all important. We would also like to see additional principles added, to ensure that the links with other recent legislation and polices are reinforced: the human rights principles that underpin the Adult Support and Protection (Scotland) Act 2007 and the understanding of support to maximise people’s capacity that was initially set out in the Adults with Incapacity (Scotland) Act.

3. What are your views on the four options for self-directed support proposed in the Bill?

We agree with the range of options proposed in the Bill. Many of the people we know would however have more confidence in Option 3 if the additional principles we suggest were supporting the legislation. The choice of the right option, and then the choices that are made around particular types of support to achieve the outcomes that each person wants, will also depend on people having access to good, independent information and advice.

4. Do you have any comment on the proposal that the self-directed support options should be made available to children and their families, together with the proposal that the degree of control a child may have over the process should vary with age?

We think this is a good proposal. It will do much to give children and their families the flexible support that will enable them to have a good life. It will also give young people the experience that will help them get the best support arrangements when they become adults.

The independent advice and information arrangements will also have to take account of the needs of children and young people and their families.
5. Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

We would like to see a provision which ensures that the information and advice provision is independent of local authorities, NHS Boards and of the organisations providing care services at least in that local authority area. We would also want to see an explicit requirement that information and advice is available to all people using social care services within the scope of this legislation, and so includes a clear standard around equality of access.

We also think that there should be a right of access to independent advocacy, for those situations where people need additional help to get the advice they need, or to explain what option and services they have chosen.

6. Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?

We agree with the changes that the Government is seeking, and agree that these are necessary. The ways in which the current arrangements have been implemented have resulted in many people getting good care and support, but there are still too many instances of people not getting the support they know they need and of people having little or no real choice and control around the support they receive and how it is provided. We think the methods outlined in the Bill will go a long way to achieving the changes, but there are still other aspects of access to social care that need to be strengthened such as the assessment and care management functions. The additional principles and other arrangements we have suggested are all aimed at making the overall arrangements stronger by reinforcing and complementing the methods to modernise direct payments.

The use of secondary legislation to achieve the change will be effective provided the Bill has the clear, strong framework provided by the principles and links to other legislation.

7. Do you have any views on the provisions relating to adult carers?

We are pleased that the support adult carers receive is also part of the provisions in the Bill.

8. Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?

We understand the reasons for not introducing a high level of additional bureaucracy and for recognising that many people are well able to make and see through sound judgements about who they want to employ. We are also aware that this can be dealt with as part of the implementation arrangements. But we think there are advantages in minimum requirements to help
safeguard the wellbeing of the people involved, especially in situations where someone has few friends and family around them to help keep an eye open for potential risks. We think this will provide reassurance and address some of the concerns that are being raised about potential risks. We would be interested to hear the views of the Committee and of the Government on whether this can best be met by a provision in this Bill or clearer links with the existing Adult Support and Protection arrangements.

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

We are aware of the experience in other countries that the long-term impact of developments like those outlined in this Bill has been to make better use of public funds as well as improving the outcomes and choices for people who use services. We hope that the concerns of any organisations about the short-term financial impact – generally or for them – will be considered in the context of the significant longer-term benefits.

10. Are you satisfied in the assessments that have taken place in regard to equal opportunities, human rights, island communities and sustainable development and in the conclusions reached by the Scottish Government?

We welcome the full consultation that preceded this Bill and the work done by the Government to consider all aspects carefully. Overall, we think that the assessments are right. We think that the human rights aspect can be strengthened further. We are confident that these matters will continue to be reflected in the implementation arrangements. However, we would like to see progress reports to Parliament on the implementation and impact of SDS that specifically includes the way these aspects are being achieved.

11. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

We think the scope of the Bill could be clarified or extended, to make sure that care such as nursing home provision that is paid for by NHS Boards is also included and people in these circumstances have the same level of choice around how services are arranged as do people where that care is paid for through other routes.

We also think that the arrangements here could be extended to some of the health care services that are used by people who have long-term conditions. For many people, it is a mix of health care and social care services that keep them well and able to have a good life. They understand that some services are part of the NHS and free at the point of delivery, and some are organised through the local authority and can have financial contributions. What they want is a high and consistent level of choice and flexibility around how these services are delivered. They also see opportunities for more provision within
the voluntary sector that could complement health care services and make better use of specialist skills and resources within the NHS.

We have heard that some other people and organisations believe that the provisions of this Bill should be restricted and that some groups of people should not benefit, or some forms of care – such as residential care and nursing home care – should not be included. We believe this course would be very unfair and would be inconsistent with the principles and values that are reflected across other parts of life in Scotland. The principles of choice and having the possibility of greater control over the care and support we receive – even when we choose not to use it for the moment – are being introduced because people need this in order to have the quality of care and choices in our lives that we all deserve.

There are concerns about the overall level of resources available for social care services in Scotland, as in other parts of the UK. The people whom we talked to share many of these concerns. We also know that some local authorities are using the introduction of direct payments, and now of SDS, as an excuse or mechanism to make significant reductions in the level of resources they spend on social care. We hope that the Committee will follow this up and take a lead in the national debate on these matters. However, we hope that the fears people have about adequate resources do not complicate the debate around this Bill, which is about how people have choices around the use of whatever resources are available.

People we work alongside are concerned about the potential unintended impact of the implementation of SDS on services that have a preventative aim and help people have a good quality of life. Often these services are quick and easy to access and can be used in flexible way, and often have a strong peer support element. People who use and work within these services are worried that these services will no longer be available as local authority resources are moved to different budgets as part of the implementation of SDS, and/or will need a longer assessment process before someone can use them. We believe that this type of preventative service is essential to complement other services and arrangements, and to help achieve both the impacts for individuals and the best use of the available resources. We know these issues are part of the discussion around the role or publicly-funded services and around the links between health and social care services. We hope that the Committee will encourage the links between the policies and take account of the overall impacts of changes.

The current social care system in Scotland is dependent on good assessment and care management by social workers. This will continue under the proposed changes. We are aware that some people get excellent support from the staff taking on the care management role. Other people are not so lucky – they have care managers who appear to have poor skills and training, and/or who have heavy case loads, and/or who are starting from a viewpoint that is not supporting choice and inclusion. There are other programmes that are intended to improve the quality and availability of care managers in Scotland. It would be helpful if the Committee asks the Scottish Government
what progress is being made on these and looks at ways to hold both central bodies and local authorities more closely to account for the quality and availability of care management. Our concern is that without this the impact of this Bill and the very important benefits it will bring will be lost for some people.

Outside the Box
24 April 2012
Response from PAMIS

PAMIS is a voluntary organisation that supports people with profound and multiple learning disabilities (PMLD), their families and carers.

People with profound and multiple learning disability have profound learning (intellectual) disability, the majority will have physical disability (lifelong wheelchair users), sensory impairments and very complex health care needs. Health difficulties include: severe epilepsy; chronic respiratory difficulties; gastro-intestinal difficulties; problems with eating and drinking, and many more. Their communication is usually non-verbal.

Views on the Bill as a whole

1. Are you generally in favour of the Bill and its provisions?

Yes we are in favour of the Bill and its provisions. The Bill is a positive step in bringing together and extending legislation in relation to self-directed support and in ensuring there is greater clarity and easier access to direct payments and other delivery mechanisms.

General principles underlying the Bill

Section one of the Bill proposes three principles, which are described as “the general assumptions under which professionals and individuals should operate.” (Policy Memorandum, para 17). The principles encourage “involvement”, “informed choice” and “collaboration”. Local authorities would have a duty to have regard to these principles when carrying out their functions under the Bill.

2. What are your views on the principles proposed?

The principles proposed seem to be very positive on paper. However, as an organisation that supports people with profound and multiple learning disabilities (PMLD), we would want to stress the high level of medical and personal support that a person with PMLD needs on a 24 hour basis. Because of their complex needs and limited understanding, families with relatives with PMLD are usually the ones responsible for ensuring that their relatives’ needs are met and that appropriate services are in place for them.

Because of this, families need to be assured that there is clarity in their informed choices to ensure an outcome for their relative with PMLD based on their level of need, and that this is reflected in the budget they are set so that the appropriate care they need can be “purchased”.

We are encouraged by the principles that promote involvement and collaboration. Unless these principles are maximised by local authorities people with PMLD will not benefit from SDS.

With this in mind, carers must be included throughout the SDS process. Involvement, collaboration and inclusion are particularly important to people
with PMLD and their carers because packages of support are so specialist and at times very complex in their delivery.

**Options for self-directed support**

Sections 3-4, 6-12 and 17 of the Bill contain the core self-directed support provisions. Included are that the local authority must offer an individual four options in how they would like to direct their support – “direct payment”; “direct available resource”; “mix of approaches”; or, “local authority arranged support”. The provisions would relate to adults assessed as requiring community care services, and also children and their families where a local authority decides to provide services under the Children (Scotland) Act 1995. Other provisions include that individuals must be provided with information and advice to help them make that choice, and those who may have difficulties in making informed choices are provided the necessary support to do so.

**3. What are your views on the four options for self-directed support proposed in the Bill?**

We feel that it is very good that local authorities now have a duty to offer four options, thus providing a variety of approaches to service provision.

The four options provide a better balance in allowing people to determine how much involvement they want in the design and management of the services they use. While direct payments provide an opportunity to extend choice and control to service users and carers, it is also important to recognise that many people are satisfied with their current provision and that wanting to retain existing arrangements is a legitimate choice.

However, we want to ensure that each option, and its pros and cons, is clearly laid out to service users – or to families, as they will generally be the people needing to organise services and make decisions for their relatives if they have PMLD. We also want to be sure that these families are fully involved in the process, and that they are properly informed, so that they can make a clear choice on which option is best for their relative.

Families may also need help and support to make the best decisions, so we want to see organisations who can provide this support highlighted to them as early on as possible, so that they are not left to struggle with planning/decision making alone.

One thing we feel should be highlighted to families who have a relative with PMLD is that, if they go for the option of recruiting a PA for their relative, there will be a need to train that PA – because of the specialist health and medical needs of people with PMLD.

Families should also be made very aware that they can change between options if their chosen option isn’t working for them and they want/need to try an alternative approach eg if they try managing a direct payment and it doesn’t work for them etc.

Families must feel supported throughout all stages of this process, particularly while trying to adapt to the changes involved. Personalisation and self directed support should, after all, be about adapting to a person’s needs, rather the person having to adapt to services that are available.
4. Do you have any comment on the proposal that the self-directed support options should be made available to children and their families, together with the proposal that the degree of control a child may have over the process should vary with age?

PAMIS supports families who have a relative with PMLD of any age, so many of these are children ie under 16 years of age. However, because of the limited capacity of most people with PMLD, these children are unlikely to be able to exercise the type of control referred to here. However we would welcome this opportunity for other children with learning disabilities who may be more able.

5. Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

The principle of providing information and advice proposed here is an essential one. Clear and appropriate information is vital to anyone needing to understand the concept of self directed support, as well as the intricacies of the self directed support process, and what decisions to make.

In addition, as we have mentioned previously, the organisations that can help provide support to families with regard to SDS, need to be highlighted to them as early on in the process as possible.

We also want to see consistency in the provision of information and advice across all local authorities. We believe that families in all areas should have access to the same level of support and advice, to make the best possible decisions for their relative, so that the best possible services are provided for them.

At PAMIS we focus on training, consultation and inclusion for the families we support, and would be encouraged if local authorities focused on frequent training of their staff in order to support service users in the many changes ahead.

Direct payments

The Bill seeks to modernise and consolidate current legislation on direct payments, in order to make it more flexible to respond to individuals’ needs. Whilst local authorities would retain a range of duties and powers, the Scottish Government does not wish these to impinge on people’s ability to determine their own support. However, section 13 of the Bill would seek to do this through secondary legislation by granting Ministers powers to introduce regulations, rather than setting this out on the face of the Bill.

6. Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?

Modernising direct payments and allowing close family carers to be recruited as PAs for their relatives seems to us a positive step forward with regard to extending the level of appropriate support a person with PMLD receives.

At present, the majority of people with PMLD are supported by their parents for the majority of their day, resulting in isolation for both the ‘cared for’ and
the carer. The isolation can occur from the high level of support the person with PMLD requires, and the lack of training that an ‘outsider’ can bring, thus creating a lack of trust in using outside agencies/PAs. So the possibility of recruiting another close relative to shares this understanding and experience to help in this care role is very welcome.

Rather than making it difficult for carers to get this type of support, we should be rewarding and valuing the knowledge and care skills they can bring to their relative with PMLD.

There is a need, however, to stress to families the importance of tracking and managing direct payments, and the level of input required by carers to manage appropriately this method of service provision. Account needs to be taken of the amount of time and commitment needed by a carer to manage a direct payment. Full support needs to offered by local authorities and supporting agencies on a regular basis to make this a viable, and successful, option for families.

**Adult carers**

Currently, adult carers of other adults or children are entitled to have an assessment of their needs. However, section 2 of the Bill proposes that local authorities should have the power to provide support to a carer on the basis of that assessment. Where a local authority decided to provide such services, section 6 would require it to offer a choice of the four self-directed support options to the adult carer.

**7. Do you have any views on the provisions relating to adult carers?**

We want to see the provision of services for carers, following a Carers Assessment, as a duty for local authorities, not just a power or recommendation. At present a Carers Assessment is often requested by a carer but it does not automatically lead to any provision of support for the carer, or any increase in support if this is required. Families with a relative with PMLD on average provide at least 10 hours a day of personal care for their relative, on top of day to day care, so carers desperately need support and respite if they are to continue with this role. Many of the families we support have a limited quality of life and many health-related issues as a direct result of the care they are providing for their relative on a day to day basis.

We would also want assurance that carers will always be offered a Carers Assessment, as we still hear of situations when one has never been offered, or one has been requested or offered, but never provided.

We also want to see consistency in the provision of services for carers across all local authorities. We believe that families in all areas should be able to receive the same level of support, as befits their needs, regardless of where they live.

**Individuals’ responsibilities and risk enablement**

The proposals in the Bill could place a significant amount of responsibility on individuals and their families, particularly in managing risk. The Policy Memorandum (para 26) accompanying the Bill makes particular note of the current ability of people to employ personal assistants through the use of direct payments (option 1 in the Bill). Whilst the Bill does not place any
restrictions on the categories of people that may be employed by an individual, the Scottish Government would publish statutory guidance which would cover ensuring individuals are aware of their duties as an employer and the risks in not adopting safe employment practices.

8. Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?

Yes. We think there is merit in individuals being able to choose to employ a family member as their PA. By being able to employ a family member, who usually has the specialist knowledge/training and a positive relationship with their relative, effective support can be provided.

But again, the Government needs to be very aware that, because of the high level of medical, specialist and personal support, required over a 24 hour period, that greater costs will almost always be incurred, whether recruiting a worker from an agency, or a PA. Both will be carrying a high level responsibility for specialist care, and will need to be appropriately trained in moving and handling, as well as sometimes in the use of epilepsy medication, gastrostomy feeding, specialist communication etc. Many PAs and caring organisations are ill equipped to take on board the level of care this group must receive, without specialist training. In many cases, a person with PMLD will require the care of 2 workers at the same time, which obviously comes with an additional cost.

Financial Memorandum
The Financial Memorandum accompanying the Bill sees much of the Bill being cost-neutral in the long term. However there is an acceptance there will be transitional costs associated with transforming the culture, systems and approaches to social care provision as a result of the Bill and the Government’s wider strategy.

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

We have concerns over the Transformation costs allocation of funding for local authorities. £24 million is to be granted over 3 years, peaking in year 2 and then declining. The evidence from the test sites project run by the Scottish Government was of a much slower scale development over the 2-3 years that it ran for. Only a small number of people in each local authority (50-100) were enabled to take up Self Directed Support options, despite funding of £0.5 million per year being made available to each local authority. The amount proposed is less than this, if the £24 million is split evenly between local authorities.

As a result we believe the expectations of this policy and Bill need to be clearly stated as significantly less than full scale transformation - or the amount of funding made available to support the change process needs to be increased.

We think it is a mistake for the Financial Memorandum not to look at what will happen with the Independent Living Fund (ILF). The existence of the ILF has been important is supporting the move towards SDS. For individuals
managing this contribution to their care, it has helped them become more confident in managing the local authority contribution in Direct Payments.

The ILF is closed for new applications but the latest statement on the Fund has guaranteed a degree of security to it for the remainder of this session of the Westminster Parliament (expected to be 2015). In Scotland in 2009 ILF spent £60 million.

A long term proposal to transfer ILF funds to local authorities may be put out for consultation shortly. This will be aimed at the English proportion of the fund but will have implications for Scotland. For Scotland the fund is likely to be transferred to the Scottish Government to manage, who would then be able to decide the appropriate placing within a Scottish context. They may be able to choose to transfer it to local authorities or not.

We have a number of real concerns over such a transfer to local authorities:

- The value of additional funding may be lost amongst the much bigger pot of social care spending
- There is no statutory right to “independent living” so the money will be directed towards basic care needs
- There may be reductions in the level of support enjoyed by recipients as there will no longer be a necessity for a minimum care package to be in place for ILF eligibility
- The ILF money may eventually be lost entirely to the social care budget as it may not be ring-fenced.

Our view is that the ILF should continue to exist as a ring-fenced fund, managed by the Scottish Government, and use its resources to complement local authority spending on social care services. The ILF is a relatively small contribution to social care. In 2009 local authorities spent £840 million on social care for people with learning or physical disabilities – 14 times as much as the £60 million contributed by the ILF. Its funds would be better used to support people who already received a social work service but were in need of further support to improve their quality of life. Funds could be allocated following assessment by ILF assessors to meet quality of life outcomes, perhaps guided by the Talking Points model.

This would mean that, where people were having their basic needs met by the local authority, they could apply to get additional help from the ILF to:

- Live safely and securely in their own home
- Have meaningful things to do in their lives
- Make, keep and sustain friendships
- Keep in good health and well being.

The Policy Memorandum (para 52-63) accompanying the Bill outlines the assessments made by the Scottish Government on the potential impact, if any on equal opportunities, human rights, island communities and sustainable development.

10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?
It is very positive that the Bill will give as much information to service users to make informed choices, and we hope that the core values and principles of the Bill will enhance service users’ lives.

However, we must take into account the amount of support a person with PMLD requires, and we assume that the necessary Equality Impact Assessment took into account this widely unrepresented group.

**Other matters**

11. **Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?**

With regard to how actual budgets are worked out for individuals, we feel that if a RAS (Resource Allocation System) is to be used by a local authority for this, then it should include medical and health needs, which are a large part of the support required to people with PMLD.

We also feel that all local authorities should use the same calculating measures/techniques when allocating budgets, so that people with PMLD and their families can receive the same level of service in all parts of the country.

PAMIS
24 April 2012
Penumbra

Penumbra is an innovative Scottish mental health charity, working to improve mental wellbeing across the nation. We provide a wide range of services which offer hope and practical steps towards recovery. Penumbra campaigns to influence national and local government policy, and to increase public knowledge and understanding about mental ill health.

We work to PROMOTE mental health and wellbeing for all, PREVENT mental ill health for people who are ‘at risk’ and to SUPPORT people with mental health problems.

Penumbra is seen as one of the most significant mental health voluntary organisations in Scotland. It is known for the quality of its work, its creativity and ability to work in partnership with a range of organisations and groups. Penumbra is a founding partner in national programmes like ‘see me’ and the Scottish Recovery Network (SRN).

Our comments relate principally to our experience of supporting adults with mental health problems.

1. Are you generally in favour of the Bill and its provisions?

We are strongly in favour of the Bill as it will increase opportunities for people who use social care services. They will be able to exercise choice and control over the services and activities they require to support them to lead a fulfilling life.

2. What are your views on the principles proposed?

The principles cover the key elements of the Bill. There is always a temptation to tinker with the actual wording as we feel the language could be simpler and more empowering, however the essence and meaning behind the principles is understood.

3. What are your views on the four options for self-directed support proposed in the Bill?

The four options cover what we understand to be the choices available to people. The range of options gives people the opportunity to make informed choices and to take as much control as they would like. The fourth option also allows for a ‘mix and match’ which will be attractive to some people. These options must all be offered equitably by local authorities. Self directed support is not an opportunity to cut the level of support provided to people simply because they choose one option rather than another.
Our main concern in Section 3 of the Bill is that the current wording could lead to someone being offered differing financial amounts or value of support for each option. The reason for this is that the description of a ‘relevant amount’ only seems to be applied to a ‘direct payment’ (Option 1). Whilst we are not proposing that each option should be subject to a calculation of an individual budget we do feel that in some circumstances some local authorities will seek to price the support in Option 1 at a different (lower?) level from what might be offered in the other options (particularly option 3).

People must not be disadvantaged or have a reduction in choice simply because they choose a direct payment. Therefore we feel that some rewording is required so that ‘relevant amount’ applies to all options.

4. Do you have any comment on the proposal that the self-directed support options should be made available to children and their families, together with the proposal that the degree of control a child may have over the process should vary with age?

We see no reason why self directed support should not be available as widely as possible. Using chronological age to determine the degree of control is not in itself a measure of capacity or understanding. We will leave it to others more experienced in these matters to comment on this.

5. Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

It is very important that people have the support and information they need to make any choices. Enabling and empowering people to take control and to exercise choice helps to build skills, confidence and resilience that can lead to greater independence. The bill gives a good outline of what local authorities will have to provide. We expect that guidance will give further detail to this.

6. Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?

This seems to be a sensible approach to ensuring that any provisions remain in touch with the realities of people’s experience. It would seem to enable a degree of discretion to be exercised at a later date once the Act has been introduced.

7. Do you have any views on the provisions relating to adult carers?

We are content with the provisions in the Bill.
8. Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?

It will be important that the statutory guidance provides robust and clear guidelines on who can/cannot be employed. Currently service providers are subject to extensive scrutiny via the Care Inspectorate and staff are regulated by the Scottish Social Services Council. Neither of these bodies will have jurisdiction over personal assistants and some of the services purchased by people. The guidance will need to be clear about the checks and balances any person employing personal assistants must have in place prior to recruiting their own staff. However we must not let an overly risk averse culture to dominate and any guidance must be proportionate to the particular circumstances of people.

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

Whilst it is difficult to quantify some of the cost impacts of this legislation we feel that the Scottish Government have allocated a reasonable sum of money to the implementation. The unknown costs relate to how providers will manage the process of collecting monies from individuals as opposed to receiving payments from local authorities. In our case this could potentially see us move from issuing 16 invoices a month to local authorities to issuing invoices to up to a thousand people. However we are aware of this issue and have already taken steps to model this process and identify and mitigate risks.

10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?

We are content with the statements in the Policy memorandum.

11. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

We would like to highlight that a significant ambition for this Bill is that there should be more of a focus on achieving better outcomes for people. The Bill should enable a more creative environment in which people can develop and personalise the support they receive beyond the confines of current service definitions.

Penumbra
24 April 2012
1. Are you generally in favour of the Bill and its provisions?
   Yes.

2. What are your views on the principles proposed?
   While these principles – involvement, informed choice and collaboration – are fundamental to the underpinning values of social work, they have been compromised by the service led model of provision which has developed during the 20 years since the National Community Care Act was implemented. This Bill is a welcome change in direction and will promote a greater leaning towards person centred planning models and personalised solutions to support the achievement of agreed outcomes.

3. What are your views on the four options for Self-directed Support proposed in the Bill?
   3.1 Option 3 of local authority arranged support is, to all intents and purposes, the status quo, excluding people who opt for Direct Payments. The inclusion of this as an option implies that this is Self-directed Support. While it is necessary to ensure a full range of options for people and their families, and while the principles of involvement, informed choice and collaboration may be incorporated to a certain extent, its inclusion creates confusion.

   The culture shift required to embed the model of working which the Bill aims to promote is considerable. The workforce needs a clear message of a fundamentally new direction which this dilutes.

   Perth and Kinross would like to see this option as a fall back position to ensure local authorities can carry out their statutory duties where people eligible for support are unable/refuse to make choices for whatever reason and who have no-one to take these decisions for them. A separate section encouraging application of the principles to “traditional” care packages would provide for those who effectively are unable or chose not to opt for Self-directed Support. Clearly it can still be used together with options 1, 2 and 4 when required.

   3.2 The “direct available resource” or managed package as referred to in other guidance, while necessary to promote choice and control raises some problematic governance and auditory issues. The local authority’s liability in commissioning personalised, one-off, non regulated resources, where PVG cannot be enforced raises safety and
protection issues. The purchase of individual items e.g. computers to promote independence and equipment to support independent living is indicated by the Bill but raises issues of safety. Some clarity around the intentions of the Bill committee is necessary to ensure consistency of implementation across Scotland.

3.3 The employment of personal assistants by local authorities under option 2 imposes duties in relation to continuing employment. How can this be resolved? Perth and Kinross has the view that the range of options available under options 1 and 2 should be as near as possible the same.

7. Do you have any views on the provisions relating to adult carers?

In Perth and Kinross a resource allocation system for carers is being developed which is seen by the carer consultation group as a positive step.

Individual budgets for carers will offer greater choice and control, however there are some challenges in relation to the application of charging/contributions policy. To date, the cared for person has been charged, following financial assessment, for residential short break to give their carer respite. If carer respite is seen as part of the carer support package for which they are allocated their own budget, to be managed according to the options under the Bill, the responsibility for financial contribution transfers to the carer. What is the view of carer organisations on this matter?

8. Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?

Perth and Kinross would seek clarification on whether this means that family members can now be employed, and what the definition of family member in this context would be. If the family member is also managing the direct payment they would, in effect, be paying their own wages. This introduces contractual complications and conflict of interest. Liability insurance is also problematic. While Perth and Kinross welcomes the greater flexibility some clarification is required around these matters.

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

The Financial Memorandum to the Bill anticipates that implementing SDS thereafter will be cost neutral. Although the assumption that SDS may deliver savings over the longer term it is clear that both changes to culture and associated infrastructure will take time to emerge. It is likely that there will be additional costs for Councils in the first period of the 10 year SDS Strategy. It is clear that we have the same view of
most other Councils that the level of additional costs anticipated will be significantly higher than those estimated by the Scottish Government.

Acknowledging that our Council is at an early stage of developing SDS it is difficult to express any evidence based comment on the calculations within the Financial Memorandum which have been developed from Research and also involvement of COSLA.

Perth and Kinross Council

30 April 2012
Social Care (Self-directed Support) (Scotland) Bill

Quarriers Adult Disability

1. Are you generally in favour of the Bill and its provisions?

Yes, we are generally in favour of the Bill. We see self-directed support as a natural progression to the work we already undertake with the people we support, to promote individual choice, control and independence. As a provider organisation, we are currently developing our own thinking, vision and strategy to take this forward.

2. What are your views on the principles proposed?

We believe that the principles of involvement, informed choice and collaboration provide a robust value base for the legislation.

3. What are your views on the four options for self-directed support proposed in the Bill?

We believe that these four options provide an appropriate level of choice for individuals. We particularly welcome the recognition that self-directed support should not be imposed on any individual and hope that this will be adhered to by all.

There are, however, implications for providers, particularly for option 2, where it may be necessary for providers to develop new processes and procedures to hold and manage budgets on behalf of individuals. This has not only cost implications but will require new guidance to ensure robust governance.

It would be useful for providers who are currently developing such procedures to support current demand, to share learning, experiences – both positive and negative - and good practice.

It is unclear whether the cost of holding and managing an individuals budget will be considered a legitimate care cost by local authorities or whether providers will be expected to absorb this increased cost themselves. For a provider such as Quarriers, we anticipate this could be considerable, given the number of individuals we could potentially be expected to support.

4. Do you have any comment on the proposal that the self-directed support options should be made available to children and their families, together with the proposal that the degree of control a child may have over the process should vary with age?

We agree with this proposal, but this will require new commissioning models and, more effective partnership working. This means that ‘choice’ becomes a key principle with ‘expressing views’ being a specific standard.
We believe that self-directed support could have a particularly beneficial impact on the transition process, which can be a stressful time without adequate and appropriate support.

However, we have concerns about the rigidity of registration requirements, and the impact this may have on enabling flexible and responsive self-directed support to be developed during the period of transition from children’s to adults’ services. Consideration needs to be given to addressing the way in which providers are registered with the Care Inspectorate and a more flexible attitude developed which gives priority to the best interests of the individual, rather than bureaucratic processes.

Self-directed support will also ensure compliance with the provisions of UNCRC, particularly article 12, and will strengthen the right of children to have their views heard and taken into account.

5. Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

We believe that this is particularly important in view of the need of many people for support to make choices, and this could be strengthened by the inclusion of the right to an independent advocate for the person using services and the duty of the local authority to provide one.

We are concerned that there may be a conflict of interest where the Local Authority is the guardian and is also making decisions around assessment, resource allocation and options for self-directed support.

6. Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?

We support the policy objective of ensuring that choice and control is transferred to the individual. The powers of local authorities to stop or require direct payments would appear proportionate, although it should be noted that in our experience the majority of people will underspend their budget, so we do not feel that a significant focus on the bureaucracy associated with auditing will necessary.

7. Do you have any views on the provisions relating to adult carers?

We feel that this area of the Bill should be strengthened. There is a right for carers to an assessment of their needs but no legal duty on local authorities to provide the support that has been assessed as being required. This fails to take into account the interdependency between carers’ support needs and those of the person for whom they care and is, in our view, a serious omission.
8. Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?

Yes, but guidance needs to include the issue of risk management, developing and sustaining good practice, and the rights of the individual and their employee. Clear guidance needs to be given on the role and responsibilities of Local Authorities, of providers and of families in managing risk, including less tangible risks such as social isolation.

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

We do not believe that sufficient account has been taken of the likely increase in costs for providers, particularly in establishing and maintaining the systems and processes necessary to manage a significant number of individual budgets, and the support that may be required.

10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?

We believe that the omission of the right to support for carers may have an adverse impact on women, as 58% of women are carers.

We also feel that it may not be possible for individuals in some rural areas to access all four options, due to difficulties in, for example, public transport for support workers.

11. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

The issue of appeals has been omitted from the legislation and, whilst it may be planned to address this in regulations, we believe that it would be helpful for this to be included on the face of the Bill.

In addition, the Bill is silent on the issue of eligibility criteria and resource allocation, both of which will have a significant impact on the way that self-directed support is implemented in practice. Regardless of the model adopted, we believe that a formal rights-based approach should be used, which is particularly important when determining levels of support for people with complex needs who may have no family to advocate of their behalf.

I hope that the above is helpful but would be pleased to provide further information about the work of Quarriers and the people we support if that were useful.

Quarriers Adult Disability
24 April 2012
Question 1: Broad Principles of the Bill

It is the view of Renfrewshire Social Work that the Self-Directed Support Bill is in keeping with the Changing Lives agenda, and as such, we would broadly welcome the Bill. We would agree that, wherever possible, individuals should be involved in the assessment of their needs and the provision of services and supports to address any identified area of need.

Question 3: Four options for Self-Directed Support

In relation to the four options for self-directed support, Options 1 and 3 are consistent with current models of service delivery, in that the local authority currently makes direct payments available as per Option 1, and provides the bulk of services as per Option 3. We recognise that Option 2 bridges the gap between direct payments and local authority service provision and welcome this as vital to empowering service users and promoting individual choice, particularly for those individuals who are unable or unwilling to assume full control over the supports and services they require.

Option 1 will require additional resources to assist individuals with the management of their support, in terms of informing them of their responsibilities. However, we anticipate that Option 2 is the most likely to require additional resources. There may be a requirement for additional resources required:

- To assist individuals in managing the supports they purchase
- To manage an increased number of contracts which result from individuals opting for services and supports not covered by block contracts
- To provide increased levels of independent information and advice on available options and on managing supports
- For staff training to enable them to promote individual choice and support service users through the decision-making process
- The administrative infrastructure to properly support the process.

We welcome the Scottish Government’s financial support in terms of training costs and the provision of information and advice. Our views on the financial assumptions of the Bill are detailed in Section 6 below.

Further clarity would be welcomed in relation to the implications for social care services provided by, or in partnership with, the NHS.
Question 4: Inclusion of services and supports for children

We support the inclusion of provisions for children and their family members, and the duty to take account of the views of children where appropriate. We already seek to include the views of the children and young people we work with across social work services, and see this as a natural extension. We would not be in favour of provisions which would seek to limit the right of children to have an appropriate level of involvement in decisions which affect their care needs. It is not unreasonable to expect that the degree of involvement would vary with age and maturity. We anticipate that additional specialists resources may be required to support a smooth transition to adult services.

Question 5: Persons in need of assistance with decision-making

We would welcome some clarification in relation to Section 5 of the Bill, which states that the local authority must take reasonable steps to identify a third party with an interest in the care of the supported person, where the supported person would benefit from assistance in making a decision in relation to self-directed support. Clarification in relation to the duties of the local authority (for example, in relation to advocacy) where there is no relevant third party would be helpful, as there would be a potential conflict of interests where local authorities directly provided advocacy in such cases. It is unclear whether the absence of appropriate friends or family in such cases would render the supported person ineligible.

Question 8: Absence of regulations governing employment of certain groups of individuals

We are in favour of the approach not to place restrictions on who may be employed by an individual through the proposals of the Bill. We feel this allows for local discretion in the matter, both in terms of the local authority’s power to develop a local policy on this, and in terms of social workers exercising professional judgement in the manner. Whilst we would not anticipate approving the employment of individuals who would fall into broad categories that would likely be covered by any regulation, we would like to retain the option to widen the definitions of unsuitability and would be concerned that any national regulation would supersede local discretion.

We believe there are benefits to having arms-length arrangements between the cared-for person and any personal assistants employed by them in terms of the legal obligation of the former to the latter. It is also important that the distinction between formal and informal supports does not become blurred.

Question 9: Costs and assumptions outlined in the Financial Memorandum

We welcome the Scottish Government’s intention to cover the cost of staff training and to provide additional funding to cover initial transformational costs including changes to IT systems and the development of information material.
We agree with the assumption that increasing the availability of self-directed support will result in a greater number of individual contracts and a shift away from block purchasing of services and supports. We would also agree that it is not possible to quantify the financial impact of this as there is no means of forecasting how many individuals will opt for a direct payment and how many within that group will opt for providers not covered by existing block contracts. However, it is clear to us that additional staffing resources will be required to implement the provisions of the Bill, and there will be an ongoing staff resource required to maintain it, both in terms of the numbers of individual contracts to be managed and the increase in invoice processing that will result. Experience from other local authorities indicates that invoice processing has increased exponentially as a result of greater levels of self-directed support. These will be permanent cost increases and therefore resources will be required to support these beyond 2014/15.

We are concerned that, should the transformation funding not be sufficient to cover the costs of implementing the provisions of the Bill, there is not enough capacity within the existing local government financial settlement to accommodate any additional funding requirement. It is widely acknowledged that demographic pressures are already squeezing local government finances. Whilst studies indicate that implementing self-directed support is cost neutral in the longer-term, this has not yet been demonstrated in Scotland on a large scale (though we acknowledge the findings of small-scale pilot studies which have been shown to deliver improved outcomes at a reduced cost). Paragraph 74 of the guidance outlines the demographic pressures and rising expectations of service users; given these demand-led pressures, a cost-neutral approach, whilst offering benefits for the individual, does not address the cost pressures facing local authority services. We are concerned that budgets in other areas of the service would be affected in the medium-term in order to fund self-directed support to the point where it becomes cost-neutral. It would be helpful if the guidance made it clear that assessments of need and care plans would consider both formal and informal supports.

Question 11: Implementation

We accept the assumption that there is unlikely to be a 'big bang' following implementation and that, initially at least, only a small number of service users will opt for self-directed support in the form specified in Options 1 and 2. However, one of the consequences of this may be that the front-loading of transformational expenditure will be inefficient. For example, rolling-out an extensive programme of training to staff may be wasteful if most of those staff then have little or no involvement in self-directed support in the short-term. Nonetheless, we accept that services must be prepared should take-up of self-directed support be more rapid than expected.
Training would be a high priority given the changes to assessment and commissioning of care, and as noted above, we welcome the Scottish Government’s funding assistance in this respect.

We have some concerns with regard to managing supports chosen by individuals, where this support takes the form of employing an individual. The local authority has no role in managing individual employees but would have a role in ensuring the cared-for person has access to appropriate advice on relevant employment law, and is clear on their roles and responsibilities as an employer. The guidance accompanying the Bill needs make it very clear that the local authority has no employer relationship in such cases.

We anticipate there will be a need to de-fragment some services as demand grows for self-directed support, particularly in those cases where certain budgets are tied up in buildings and in-house provision. There may be a cost implication for individual service users arising from the use of individual contracts, since individuals will lack the purchasing power of local authorities. We would be concerned that increased unit costs might lead to either a reduction in the hours of service purchased or an increase in the total cost of maintaining the same level of service previously provided by the local authority.

There may also be implications for local authority employment. Whilst there may be little short term impact on demand for local authority services, we would expect this to fall to some degree over time, as more individuals opt for personalised services. We do not expect there to be a significant local impact on our day services but a reduction in demand for local authority care at home is more probable. Whilst we expect that any drop in care at home provision would be absorbed within natural turnover for the service, it should be acknowledged that there is the potential for displacement of staff. It does not necessarily follow that any displaced staff would find re-employment with individual service users or as a result of service redesign brought about by increased focus on self-directed support.
Social Care (Self-Directed Support) (Scotland) Bill
Royal College of Psychiatrists

1. Are you generally in favour of the Bill and its provisions?

The College is generally in favour of the bill and its provisions. The bill will help people to decide on the sort of support that they might want and has the potential to help improve the person-centeredness of services. The College does have significant concerns about the vulnerability of people who are disadvantaged by mental health problems but who retain capacity to make decisions about their affairs. More needs to be said about the support available to them to make direct payments and to fully understand their position as employers. There is insufficient information relating to how safeguards will be implemented for those with capacity but requiring assistance with communicating their wishes.

2. What are your views on the principles proposed?

The College is generally in favour of the Principles proposed with the following specific concerns. There should be more emphasis on vulnerability across all the principles. In relation to principle 2, more information is required on the specific nature of how assistance will be provided. This should include the nature of assistance, how assessments will be made and how the provision of advocacy will be ensured. In principle 4, the nature of collaborative assistance and what form this collaboration will take should be expanded on.

3. What are your views on the four options for self-directed support proposed in the Bill?

If option 1 is to be used then the person requiring support (or their guardian or representative) needs to have total involvement. Risk management and responsibility for this should be considered alongside risk enablement. For many, there would need to be continuing support available to allow them to make use of the direct payment option.

4. Do you have any comment on the proposal that the self-directed support options should be made available to children and their families, together with the proposal that the degree of control a child may have over the process should vary with age?

The Mental Health (Care and Treatment) (Scotland) Act 2003 gives a right to all individuals covered by the act to access independent advocacy regardless of age. This
right should also be extended to individuals of any age not covered by legislation, when considering their options for self-directed support. The degree of control must take into account the level of understanding and maturity of the individual child. Where capable, the child must be involved as much as possible.

5. Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

The College does not believe that the provisions relating to information and advice are adequate. Advice and information should be readily available in forms other than written, advice may also need to be given in a number of ways. There should be checks to ensure that the most vulnerable have been able to understand the advice.

There is already a lack of communication and a lack of mental health service provision for BME communities, asylum seekers and refugees. This social isolation, lack of networks, and barriers in terms of language and cultural differences, combined with sometimes extremely difficult circumstances for seeking asylum should not be worsened by insufficient provision of advice.

The College believes there should be a comprehensive assessment made of how the increase in demand for advocacy services is to be met. This should include a mechanism to ensure a consistent standard of advocacy advice is given.

6. Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?

Due to a lack of ongoing support in operating direct payments this option may not be open to many people with Mental Illness. The experience within our membership thus far is that the use of direct payments is driven mainly by service users themselves and that the uptake of this option has been low. The Government must consider that a change in the legislation may not deliver the change that is required. If this is the outcome, then the default position must be considered (i.e. what is the effect of defaulting to Option 3 – arguably the status quo - rather than Option 1, 2 or 4?)

7. Do you have any views on the provisions relating to adult carers?

The proposals in the Bill could place a significant amount of responsibility on individuals and their families, particularly in managing risk. Risk aversion, particularly from older service users, must be taken into account. The Policy Memorandum (para 26) accompanying the Bill makes particular note of the current ability of people to employ personal assistants through the use of direct payments (option 1 in the Bill). As stated previously, the uptake of direct payments has been low and the change in legislation may not deliver the change that is required.
8. Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?

The College does not agree with this approach, there needs to be some way of assuring the quality of support. A robust and accountable mechanism of assuring quality standards will need to be rigorously maintained. There also needs to be some form of agreed risk management in place to ensure vulnerable people are protected.

There is insufficient information given in relation to how the duties placed on individuals as employers will be managed. The Scottish Government publishing statutory guidance which advises individuals of their duties as employers, and the risks in not adopting safe employment will not be enough to protect service users from the possibility of action being taken against them by employees. The difficulty of how to communicate this information effectively needs to be addressed.

There is a significant danger of conflicts of interest where a welfare or financial guardianship order is in place. This may place people with mental illness at significant risk. The College would like to draw attention to the recommendations made in the Mental Welfare Commission report on Powers of Attorney and their Safeguards.

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?

Unless all people with mental illness, learning disability and personality disorder are supported correctly in relation to this bill, it may not have the desired impact for them. This may disadvantage them in relation to the use of direct payments and the four options for self-directed support. Many people may wish to use varying forms of self-directed support but would need more support than others around their duties and the execution of these as well as ensuring the suitability of those supporting them. They may also need extra support in understanding the trade off in losing or using one type of support versus another. A concern would be that unless this is addressed people without families to support them would be more likely to fall into option 3 as a default position.

11. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?
Much work will need to be done with health professionals to ensure that they understand the changes in people’s support. This may change the input of support into care packages that allow people currently to live in the community and result in readmission to hospital unless the changes are intimated and risk management plans changed. The effect of decommissioning and rebuilding traditional, core and low level services should be monitored closely.

The College believes that the Bill should include more information about people subject to compulsory treatment or compulsion orders under the Mental Health (Care and Treatment) (Scotland)Act 2003. Specifically, what is the realistic scope for personal involvement where someone may be legally required to accept some form of support against their wishes?

In line with the requirements of the Equalities Act 2010 there must be an elimination of discrimination in provision of services to individuals with mental illness, learning disability and personality disorders. This will promote and support a rights based model in respect of the treatment, care and protection of individuals with mental illness, learning disability and personality disorders. This is of particular importance in relation to comparative under resourcing of services for older people.

Royal College of Psychiatrists

22 May 2012
Views on the Bill as a whole

1. Are you generally in favour of the Bill and its provisions?

I welcome the Bill and am in favour of its provisions. It has the potential to improve parents’ and children and young people’s experiences of support, to give children and young people more choice and control over the services they use. It could also increase their social inclusion, allowing them to enjoy mainstream, community-based activities (Stalker & Moscardini forthcoming 2012)\(^1\).

At the same time I would like to emphasise the fact that there is little evidence about the long-term effectiveness of self-directed support and little information about any potential negative outcome of its implementation. Monitoring the implementation of the Act and seeking evidence of its impact on children and young people and their families is therefore going to be key in determining its usefulness and taking any corrective action needed (Stalker & Moscardini forthcoming 2012).

I agree with the views expressed by other organisations that the self-directed support could, and should, cover services in other areas, for example health, and would allow for better integration of health and social care. I hope the Committee would consider the most appropriate scope of the Bill.

2. What are your views on the principles proposed?

I am satisfied with the proposed principles in the Bill. I would emphasise that proactive efforts will be needed to ensure the principles apply equally to children and young people. I hope that during the Bill’s transition in the Scottish Parliament, the Scottish Government will elaborate on how it will ensure these principles will apply to children and young people.

3. What are your views on the four options for self-directed support proposed in the Bill?

In my view, the four options provide a sufficient range of choices. It is important that they are available to all eligible children and families (see below).

4. Do you have any comment on the proposal that the self-directed support options should be made available to children and their families,

together with the proposal that the degree of control a child may have over the process should vary with age?

I welcome this proposal and would like to seek assurances that children and families will be supported in enabling the child to exercise the appropriate degree of control. I am aware of some poor practices existing at the moment, where:

- local authorities are not always aware of their duties and obligations to advise families with disabled children about the full range of options available to them;
- some families have been refused direct payments for their disabled child on the basis that the budget has already been allocated, and told they can only be offered services provided by the local authority;
- at the other extreme, there is evidence that some families felt rushed into accepting direct payments, with little or no sense of choice or control (Stalker & Moscardini forthcoming 2012).

I am also aware of a “strong cultural resistance to SDS within children’s services in Scotland, with some staff concerned about quality of care and risks to vulnerable children being exposed to the largely unregulated private market which is personal assistance” (Stalker & Moscardini 2012).

I would therefore urge the Scottish Parliament to seek assurances from the Scottish Government that it will take steps to ensure that the full range of options of self-directed support proposed in the bill are going to be available to all eligible children and families in Scotland no matter where they live and will work to raise professionals’ awareness of the benefits of self-directed support.

While I welcome the fact that young carers will be able to receive support under the Bill as children covered by Section 22 of the Children (Scotland) Act 1995, I would like to see them explicitly mentioned as a group that would benefit from the Bill, given their special position of both being children (some of them may be looked after themselves) and carers.

Transitions from secondary school to college and generally to adulthood are a crucial period when the arrangements for self-directed support can make a difference. Young people across Scotland are experiencing serious problems because of the way transition planning is currently managed. Part of the problem is that the existing transitions planning guidance is not being implemented, but the underlying problem may be that there is no single agency responsible for coordinating transitions planning. I hope the committee will consider the implications of self-directed support for transitions planning and will seek assurances from the Scottish Government that those involved in transitions planning are aware of the support available under this Bill. Amending existing guidance documents on transitions planning once the Bill is adopted may also be useful.

5. Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that
should be offered to those who may have difficulty in making an informed decision?

While I am satisfied with the wording in Section 7, I could not find a corresponding text in Section 8 that would ensure the implementation of Section 7 (5), (6) and (7). Parents and persons will parental responsibility will need support in enabling their child to express their views and will need support and encouragement in order to find ways to have regard to those views. Section 8 (3) should include a provision for the authority to provide the information under 8 (2) in a child friendly language if it concerns support for a child or a young person.

6. Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?

The proposed method has the potential to significantly change the landscape of service provision in Scotland. While most of the outcomes are expected to be positive, the commodification of service provision and the opening up of the market for new, possibly smaller and more flexible service providers also carries some potential risks related to the quality and the monitoring of the quality of the services provided as well as to the sustainability of such services.

I have concerns about the coincidence of the introduction of self-directed support with funding cuts leading self-directed support being seen or used as a way of reducing funding for services. These concerns need to be addressed throughout the implementation of this legislation and assurances to that effect need to be provided in Parliament.

7. Do you have any views on the provisions relating to adult carers?

I share the concerns expressed by other organisations around the fact that support for adult carers in the Bill is optional, i.e. local authorities do not have a duty to provide support to adult carers even if they have been assessed as having needs. This will lead to a significant variation of provision across Scotland and in the majority of cases support is unlikely to be offered to adult carers in the current financial situation.

8. Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?

In my view the Bill should refer to the Disqualified from Working with Children List on the face of the bill.

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

N/A
10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?

N/A

11. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

In conclusion, I welcome the Bill and would be happy to arrange for young carers to give evidence to the committee in May. I hope their perspective would help inform the views of Committee members.

Scotland’s Commissioner for Children and Young People
27 April 2012
1. **Are you generally in favour of the Bill and its provisions?**

Our members are overwhelmingly in favour of the Bill, its overarching principles and outlined provisions. However, a sizeable minority are concerned that there is still inadequate information available for them to be able to positively respond to this question. We acknowledge that the success of the Bill will be considerably dependent upon the guidance issued to support its provisions and duties. Members are eager to ensure that this guidance properly reflects not just the principles of the Bill but evidences how the duties and provisions will be enacted, particularly to ensure equality of treatment regardless of age, local authority residence or the nature of support and care which is chosen.

2. **What are your views on the principles proposed?**

We welcome and applaud the principles which underpin the Bill and which are reflected throughout. The “involvement” of individuals in the arrangement of and delivery of their social care support is central to personalised services. Equally we believe that individuals need “informed choice” rather than the all too frequent deficiency of information which currently exists and further we agree that “collaboration” must lie at the heart of the relationship between the individual, commissioner and provider. These three principles are reflected well within the Bill and its duties. We are pleased that these principles are to be evidenced in the duties which local authorities will have placed upon them.

Members are, however, concerned about how these principles will be evidenced in practice and in particular about the element of choice an individual would have available to them if there is inadequate independent information and support provided for them.

3. **What are your views on the four options for self-directed support proposed in the Bill?**

The overall response from our members is a generally positive one to the four options outlined. However, some of our members have particular concerns about individual options.

The first option of direct payments is considered by many of our members as currently too restrictive. It is unclear if option 2 includes the ability for an individual to be allocated an Individual Service Fund (ISF) – we consider this should be more explicit and want to support the use of ISFs as central to a successful SDS. We would also strongly argue that each of the options should have a budget allocated to it and that this should not be the same as direct payments. In other words, the Bill needs to be much clearer about the process of budget allocation and choice for each option.
A majority of respondees to our consultation are unhappy or unconvinced about the option offering the LA to arrange support. Whilst we recognise the central role of the Las, and that many individuals will want to pass significant control to the LA, members argue that there needs to be transparent accountability in this regard. Can a LA be both a provider of care and a facilitator of independent choice? Our consultation reflected the fear that there will be inadequate independent information and independent brokerage.

We are pleased that the provisions will be made available to adults assessed as requiring community care services. This rightly acknowledges the importance of treating all with equality and equity regardless of age or condition.

It is important that care homes are recognised as providing a 'homely setting' which some older people will choose as a support option rather than remaining in their own homes. In principle, people entering residential care should have the same level of choice over their care package as people receiving care in their own homes. Our members are already working in ways which ensures that residential settings are inherently person-centred and are able to offer the greatest degree of flexible choice and support to those who choose to opt for them. We recognise the need to offer a variety of care and support provision which are dynamic and responsive in nature but which retain their person-centred focus.

SDS, in whatever form, requires the local authority to have a resource allocation system that often means eligibility and need is measured and then divided into the available budget. We hope that guidance will ensure that the principles of the Bill are at the heart of such systems of allocation.

Members have underlined the importance of the provision of independent information and advice to help individuals to make the best informed choice for themselves. The possibility of ensuring a right to independent advocacy would enable such transparency and ensure equal treatment across all LAs.

We believe that it would be beneficial if all LAs had a common information brochure on SDS and also who to contact if individuals are having problems with any aspect of their application. In addition, we are concerned that the Bill has removed an explicit role for a ‘named person’ as this would potentially alleviate considerable distress from families in exercising choice in cases of non-capacity.

Scottish Care would be cautious about the creation a network of brokers; how would they be regulated; who pays those providing brokerage and information? How can brokerage be considered to be independent?

4. Do you have any comment on the proposal that the self-directed support options should be made available to children and their families, together with the proposal that the degree of control a child may have over the process should vary with age?
Most of our members have indicated general acceptance of the proposals in relation to children and young people and the progressive age varying degree of control. In addition, some members have suggested that an independent agency should be available for advising older children/young people and that mental capacity should be an important determinant in exercising control. Greater emphasis also needs to be placed upon those in transition, what are the choices for these groups and what are the discretionary charging policies, assessment and ability to contribute?

5. Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

Less than a third of our members responding to this consultation were satisfied with what the Bill says on the provision of advice and information. The issue is not solely about support for those who may have difficulties in making an informed decision, but for all those who may have difficulties in accessing local information and the developing markets. Such advice must be independent and ideally divorced from providers, including the LA. There are also concerns that there is limited capacity within the current structures to provide such independent information and advice.

6. Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?

We recognise the need to make direct payments more flexible, widely available and more responsive to need. The powers expressed in the Bill to grant Ministers the ability to introduce regulations will be critical for the success of SDS.

Over half of our members responding to the consultation expressed concern or the need to know more about the practical outworking of proposed direct payment changes. Others in the sector see direct payments as risky, unconventional or “untested” which increases the reluctance to uptake. This is especially the case for older people and those with dementia. More work needs to be undertaken to provide models to ensure a dynamic, competent, consistent assessment when working with people towards a decision about their care and through their care journey. We hope that greater emphasis on direct payments and individual service funds will result in a reduction in block and volume contracting activity and a reduction in current in-house/traditional service models.

7. Do you have any views on the provisions relating to adult carers?

Scottish Care members agree strongly that adult carers should have an assessment of need and access to the four SDS options. The involvement of carers in a supported and informed manner is essential to ensure real informed choice and control for the supported person. We recognise the thousands of informal family carers who suffer ill health as a direct result of
lack of support in the care they offer. The exercising of this power by LAs needs to be audited to ensure that a carer postcode support lottery does not result.

However, whilst members approve in principle there is concern that such provision should be closely monitored to ensure equity of access and ability to meet need within current fiscal conditions.

8. **Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?**

Scottish Care members have expressed considerable concern about the lack of restrictions within the Bill for Personal Assistants (PAs) and the employment of family members. Such a lack risks the creation of a two-tier workforce within social care with diverse, perhaps conflicting, models of training, supervision and terms and conditions. The Scottish Government and Scottish Social Services Council’s (SSSC) regulations and requirements for the registration of the social services workforce seem to be compromised if we create a two-tier, partly unregulated workforce. Having more choice and control should not require that we accept an untrained workforce as a consequence. We are not convinced that the Bill has adequately achieved the balance between choice and control and risk and harm. At a time when there is increased transparency in access to information on individuals who may present a risk to the most vulnerable, we would suggest the lack of any safeguarding requirement for PAs and others is unhelpful in managing risk and enabling risk engagement. We would hope that the statutory guidance would make explicit the requirements upon those employing others, not only their duties as an employer but significantly the issues relating to adult protection and safeguarding. There is a potential for supported individuals becoming more restricted in their lives as a result of overly risk averse practice by family members and PAs.

9. **Do you have any views on the assumptions and calculations contained in the Financial Memorandum?**

Our members do not consider that the memorandum has convincingly evidenced a cost neutral calculation. Indeed, over two thirds of those taking part in our consultation considered that there would be higher than anticipated costs in the short term, not least as a result of significant systems and culture change.

The creation of a responsive and diverse market will not occur overnight and care must be taken to ensure real, adequate and meaningful choice is available where there is a limited market, especially in geographically isolated areas.

10. **Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?**
Members considered that the Policy Memorandum was broadly acceptable and applaud the work undertaken to ensure that human rights are at the heart of the SDS provision and principles. However, there was some concern expressed that the impact upon rural and island communities is at present hard to determine. What will the true level of choice be for isolated communities? Will there be sufficient encouragement for independent providers to become established in such communities?

11. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

- There remains a risk without statutory guidance that we will have 32 local authorities with varying commitment and resources to SDS and thus promote the creation of a postcode lottery. There needs to be clear and strong guidance to stop any conscious or unconscious protection of traditional in-house services.
- A national model framework with agreed ranges of rates will assist local authorities to take SDS forward and to achieve the desired outcomes. Scottish Care members are keen to explore a national model framework open to all registered care services with a range of rates for service delivery.
- Some of our members are concerned that local authorities may continue to have too much power as not enough is said within the Bill around challenging eligibility, unmet need or what families might do to challenge. The right to independent advocacy and the explicit right to a review would help this.
- Why is it only social care and local authorities with duties? We would have liked a greater and more explicit indication of the role of health. Joint commissioning is becoming a welcome feature of older people services and we would argue the strides being made through the Change Fund process need to be evidenced in SDS practice at local level. Individuals who use services do not recognise that provision comes from different sources. For SDS to become successful there needs to be a developing perspective which sees support as centering around the individual rather than being directed by whichever source of funding pays for that support, whether health or social care. Integration has to focus on the individual not the system.

Scottish Care
24 April 2012
Social Care (Self-directed Support) (Scotland) Bill

Scottish Council on Deafness

The Scottish Council on Deafness represents over seventy organisations working with and on behalf of Deaf Sign Language users, Deafblind, Deafened (Acquired Profound Hearing Loss) and Hard of Hearing people in Scotland; and individuals who have an interest in deaf issues or are deaf themselves.

Our membership provides an effective working partnership between the Voluntary Sector, Social Work and Education Departments, NHS Trusts, Health Boards and the Government.

Background to Contribution

One in five of the population in Scotland has a hearing loss. This means there are over one million people in Scotland with a hearing loss, from the profoundly deaf to those who are hard of hearing. They have different communication needs.

There are approximately 6,000 deaf people whose first or preferred language is British Sign Language (BSL).

Many deaf people who need and use social care and health services will apply for and receive SDS. Many of our member organisations provide the specialist support that deaf people require as the majority of local authorities have “mainstreamed” social work services for the deaf – see SCoD’s Social Work Skill Audit –[http://www.scod.org.uk/Research-i-46.html](http://www.scod.org.uk/Research-i-46.html).

Contribution

SCoD is generally in favour of the proposed Bill, but there needs to be more information on how the Principles will be monitored and what will be put in place for the occasions where they are not adhered to.

SCoD is particularly concerned about the need to respect and provide communication support for Deaf, Deafblind and Deafened people as well as deaf people with minimal language skills; for example, Deaf people who have a Learning Disability or severe and enduring mental health issue or physical disability such as paralysis and aphasia from a stroke/brain haemorrhage and cannot use standard British Sign Language.

The general principles, as outlined in para. 7 of the Policy Memorandum, focus on the 3 issues of “involvement”, “informed choice” and “collaboration”. In each of these areas, the reality of experience of deaf people is that none of these principles is being properly applied by the appropriate authority. For example, in some local authorities deaf people are not able to access independent advocacy in order to be fully involved in the process of accessing SDS; in others, the local authority is not involving the deaf person in the process and is not providing the deaf person with all the information they need.
in an appropriate accessible format so that they can make an informed choice. In fact, if the deaf person has additional and often complex needs, they are given so little information that the whole process of applying for and managing SDS becomes a danger to their mental health as the deaf person struggles to understand what it means to have to manage their own budget.

In terms of “involvement”, the majority of care managers/social workers with responsibility for overseeing the care arrangements for deaf people have little or no skills in communicating with deaf people and many are not even ‘deaf aware’. See SCoD’s Social Work Skill Audit - http://www.scod.org.uk/Research-i-46.html.

Under the previous system of Regional Local Government, all the Scottish Councils had a recognised service for deaf people, which employed staff with an acceptable level of communication skills. Today, the majority of Councils have no specialist services and no staff with adequate communication skills. It is these staff members who are carrying out the SDS assessments and making recommendations for support. What this means in practice is that many deaf people with complex support needs are being told that they should be able to access support from mainstream services that are cheaper than specialist deaf services, but are not appropriate to the deaf person’s needs and staff in mainstream services cannot communicate directly with the deaf person so support packages break down, leaving already vulnerable people even more vulnerable.

There is also a problem with BSL/English interpreters have had no training in working with deaf people with minimal language skills, so that the provision of such interpreters for deaf people with additional and often complex support needs is not always an appropriate solution. All these issues taken together lead to a reality in which the notion in which the principle of “involvement” for deaf people with other communication skills is merely tokenistic. For example, one of our members Hayfield Support Services with Deaf People have already had examples of care managers using BSL/English interpreters when meeting with their deaf service users about SDS assessments and funding, and then later finding out that the service user has no understanding of what had taken place.

Informed choice

Such choices can only be made when an individual has the knowledge and understanding themselves, or has the support and advice of an independent advocate. Many Deaf and Deafblind people have little literacy skills and may also have few numeracy skills. There are Deaf people with additional and complex needs who have no reading or writing skills and are completely innumerate, and who have little grasp of their first language – BSL. These deaf people have little understanding of how the benefits system works and how their existing care packages are funded. It is unlikely that they could fully grasp the issues involved with the change to SDS or what choices they might have to make. At the same time, they are hampered by the fact that there are NO independent advocates with skills for communicating directly with deaf people in Scotland, and so they cannot
access help or advice from this source. In many circumstances, care managers wish to involve carers in the decision-making process even when the deaf person does not want this.

Collaboration

There has been little in the way of support or advice from many of the local authorities that our members work with – contact seems to be limited to repeated demands for more information and for cuts in fees. Two of our members, Hayfield Support Services with Deaf People and Deafblind Scotland met with staff from the Scottish Government SDS Bill team to raise the issues with them, but this meeting did not provide any solutions for supporting their service users in having a “good” SDS experience.

In terms of authorities ‘collaborating’ with deaf individuals, experience to date has been that authorities give limited time to meetings or appointments when, in fact, all deaf people should be given more time so that they can ask questions while there is communication support present. Communication support for deaf people is booked for a minimum two hour period no matter how short the appointment might be. If the deaf person has complex needs including complex communication support needs then a longer appointment will allow the person’s communication support worker to help the person understand what is being asked of them.

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There have also been occasions when interpreters or communication support workers are not available and care managers have used family members to assist with communication without seeking the deaf person’s permission or irrespective of how capable the family member is at communicating with them. There may also be a conflict of interest if the family member is also one of the care givers.

There are also problems with local authorities not collaborating with our member organisations’ care staff who have the best overall view of an individual’s needs and abilities having the necessary skills to work with and communicate with the individual on a one-to-one basis and who might have been working with the deaf person for a long time. Where this is the case, “collaboration” is tokenistic, without any real commitment to ensure the best outcomes for the deaf people involved.

Information and advice

These issues have already been addressed above, but it is important to stress the fact again that deaf people in general, and deaf people with minimal language skills in particular are not having their rights protected and their needs met by the present way that SDS is being introduced.

Although SCoD produced an accessible DVD on SDS for deaf people, many mainstream care managers are unaware of this resource. It would also appear that the Scottish Government are also unaware that this resource exists as a consortium bid was put in by four deaf organisations and one of the outcomes was to produce accessible information about SDS for deaf people.
Safeguards for people who access SDS

The Scottish Government should look at what safeguards can be put in place to ensure that deaf people and deaf people with complex needs have the same equality of access to SDS as their hearing peers, otherwise the proposed Bill will not effect the changes the government seeks to Direct Payments.

In fact, early indications show that local authorities are taking a very restrictive, non-specialist view of service provision, which could limit and possibly endanger the future of specialist deaf services in Scotland. This in turn would lead to deaf people receiving inappropriate, inaccessible care packages or having to be placed in hospital/mainstream care settings at considerably more cost to the Government. For deaf people with complex needs there is only one organisation that provides the specialist care and support services that these people need and that is Hayfield Support Services with Deaf People. Hayfield is a unique service for deaf people with complex needs in Scotland, whose future can only be assured by a formal recognition of the need for appropriate funding.

Care services need good communication that is appropriate

All care and support services in Scotland should be based on good and appropriate communication. Where there is a barrier to such communication, such as deafness, there must be recognition that accessible and appropriate support needs to be available to safeguard the needs and aspirations of the deaf individuals involved; and where the deaf person has additional complex needs, there needs to be specialist deaf support services to meet the needs of these people. Once these specialist support services are no longer there, there is no getting back the expertise and experience that they provided.

Example of specialist deaf support service for deaf people with complex needs

Hayfield Support Services with Deaf People works with deaf people with multiple, complex needs. All staff receive training in a range of communication and care issues, and as such they are a unique resource in Scotland. Hayfield staff are not registered interpreters, but through their day-to-day contact with the people they work with they have learned the most appropriate ways of communicating with each individual, whether it is through the use of idiosyncratic signs (which would not been known to BSL/English interpreters), mime, and/or pictorial and graphic mediums.

Finally

SCoD is disappointed that, due to a lack of understanding of the needs of deaf people with complex needs, the assessment process has led to these people being slotted into the category of “physical disability”, irrespective of what their complex needs are and what effect they have on the deaf person’s life and care needs.
Instead of trying to ensure that the deaf person can make an informed choice about how they would like to live and who can support them, it would appear that by labelling these deaf people as being "physically disabled" they can be mainstreamed into cheaper support services. This is not equity and parity with their hearing peers, rather this is discrimination based on cost of service. Is this what the Scottish Government wants for some of its most vulnerable citizens?

Deaf people in Scotland have physical and mental illnesses that are the same as those of their hearing peers, but have the additional disability of not being able to hear in a hearing world. If the person then has additional communication support needs, surely in this day and age, it is appropriate for these to be met by people who have the expertise and knowledge that has been gained over the course of many years of working with and supporting deaf people rather than by people who may be excellent carers but have no knowledge of how to communicate with deaf people.

Scottish Council on Deafness
23 April 2012
Social Care (Self-directed Support) (Scotland) Bill

The Scottish Disability Equality Forum (SDEF)

The Scottish Disability Equality Forum (SDEF) works for social inclusion in Scotland through the removal of barriers and the promotion of equal access for people affected by disability.

We are a membership organisation, representing individuals with any type of impairment, disability organisations and groups who share our values. It aims to ensure that the voices of people affected by disability are heard and heeded. SDEF promotes access in its widest sense, including access to the built and natural environment and access to the same opportunities as are enjoyed by other people in our community.

1. Are you in favour of the Bill and its provisions?

SDEF members support the Bill and are hopeful that it will lead to Self-directed support (SDS) improving the lives of disabled people in Scotland. General comments from SDEF members include:

‘If the ideals incorporated in the Bill are maintained in practice then it can only move closer to enabling disabled people to exercise greater choice and control over the community care they receive.’

‘Handled right, it will go a long way towards increasing choice and control over care, but at the same time people must have the option to go only as far as they want and at the speed they want.’

‘On paper, the idea sounds great but it needs regular, rigorous monitoring to ensure that the aims laid out are actually being met.’

2. What are your views on the principles proposed?

One of the most welcome aspects of the Bill is the use of the principles. Having a guiding statement of purpose within the legislation itself will hopefully focus the minds of Local Authorities on respecting and upholding a disabled person’s choice of support. The principles should have the effect of making the legislation adaptable to the needs of individuals, avoiding the situation where someone could ‘fall through the gaps.’

Our members expressed the following views:

‘The principles are a great and innovative idea and should at last allow the person needed assistance and care to make their own decisions as to what the need, when they will need it but to also decide if there is an alternative rather than as has been for so long in the past all the decisions made for them.’
'These principles treat the individual as someone who knows what he wants and needs, not as someone in a stereotyped category. They allow for choice by the individual, not by the service providers only. They create room for negotiation, while emphasising openness by the providers. This honesty and respect for the individual would, if truly honoured, lead to trust in providers by the people requesting services.’

However, as with the other provisions of the Bill our members feel that the principles will only be realised with proper training, support and resource from the Local Authorities.

‘They [principles] require integrity and sensitivity from the local authority and workers involved. Thorough training and understanding of the issues would be necessary.’

‘I think these sound very laudable but can see that lack of funding will result in insufficient support being available to individuals.’

SDEF suggests that more of the language of independent living could be used within the principles. For example redrafting to include the words ‘freedom, choice, dignity, and control’ would be welcomed and would help demonstrate a commitment to upholding a disabled person’s right to independent living under Article 19 of the UN Convention on the Rights of Disabled People (UNCRPD)\(^1\).

3. What are your views on the four options for self-directed support proposed in the Bill?

Similarly to the principles our members also expressed enthusiasm for the four options.

‘I think each of the four options will be very favourable to a person depending on their needs and wishes. The greatest flexibility of choice and control must be offered to allow disabled people to live full and dignified lives.’

‘I think these are good option enabling the person to have as much flexibility as they can realistically handle. Some are more able to do this than others and the needs of the individual can then be met.’

However, although the Bill provides strong statutory language to ensure that ‘a duty to give effect to preferred option’ [s.9(2)], ‘SDS must be promoted’ [s.17], and reasonable steps must be taken to support people make choices [s.5 and s.15], many members were concerned how this would translate on the ground. Regrettably much of the concern relates to front-line social workers. There is a real perception that social workers do not respect disabled people’s dignity and capacity to choose and control their own lives.

\(^1\) A similar view is expressed in the submissions by our colleagues at Independent Living in Scotland (ILiS) and Inclusion Scotland.
‘This is great so long as your social worker isn’t scared of applying for or biased against applying for direct payments.’

Furthermore there were concerns that there would be a conflict of interest for the social worker involved, leading to disabled people being ‘steered’ away from direct payments or having a different option ‘foisted’ on them.

It was also recognised that different people will require different levels of support and our members were pleased that the bill aimed to address this. (Through the range of options, the principles and the support provisions)

5. Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

The response from SDEF members was broadly consistent, with many making similar points. The overriding principle was well expressed:

‘At the heart of these matters, is the individual and they should be well informed and supported.’

Appropriate provision of information, advice and support is absolutely crucial for the Bill to make the best possible impact.

‘I think it is essential that the person is given all of the options, and that it is valuable to have an independent person, that can highlight or give some info on the reality of the choices available.’

The first requirement is to ensure the genuine independence of an information and support provider from the Local Authority. Secondly all information must be fully accessible. Hopefully given the nature of the organisations that are likely to be providing support this should not be a particular issue; however inaccessible information, both format and language, is a constant concern for disabled people.

It is also important that there is transparency in how, by whom and why particular support organisations are chosen, funded and promoted. This should address any concerns there may be in the independence (from the Local Authority) of the organisation. It will also help disabled people hold decision makers accountable. For example it will highlight how many, if any, disabled people’s organisations (DPOs) are involved. This is important as DPOs are best placed to know what disabled people need from a service. The Bill could be improved to put more of a disclosure requirement on a Local Authority in terms of which information services are promoted. There could be a specific mention of the desirability of using DPOs as support organisation. There could also be an explicit recognition of the role of advocacy services.
Regarding support for those who may have difficulty our members were pleased that this was recognised and that the Bill sought to address it. The main negative comment was questioning the interpretation of the phrase ‘reasonable steps’ [as in s.5(3), s.15(3)]. Most members that expressed concern in these terms went on to reserve their position on these provisions until there was more evidence of what steps would be considered reasonable.

11. **Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?**

We will use this section as general comments reflecting different areas raised by our members.

Many members are hopeful that the Bill will lead to the increase in uptake of direct payments and indeed see this as one of the measures of success for the Bill. Again, there is concern about front-line social workers acting as gatekeepers against people receiving direct payments. This is often linked to concerns around Local Authority budgets and cuts. One member stated that:

‘It’s obvious that cost cutting measures are in place and to be put quite bluntly “if you tell them about it, they’ll want it” So the advice appears to be “don’t tell them” Taking into account the misinformation from social work staff, (and the fact that SDS in all its forms is not widely advertised) and the incredibly difficult task of filling out the appropriate forms with very little appropriate guidance, it’s no wonder the uptake numbers are tiny.’

However, many members believe that with the correct information and support in place then many disabled people across Scotland will have the chance to take more control over their lives.

Another issue is that many important rules that will govern SDS are still to be set out in regulations. Of particular importance will be regulations on people who are ineligible to receive direct payments. It is crucial to ensure that Local Authority discretion is correctly constrained within suitable limits. Statutory guidance will also play an important role in the implementation of SDS and has the opportunity to make SDS a reality for disabled people. To best achieve this disabled people and their organisations should be closely involved in the design of the regulations. We ask the committee to recognise and reflect this in the stage 1 report.

Scottish Disability Equality Forum
25 April 2012
Social Care (Self-directed Support) (Scotland) Bill

The Scottish Human Rights Commission

The Scottish Human Rights Commission was established by The Scottish Commission for Human Rights Act 2006, and formed in 2008. The Commission is a public body and is entirely independent in the exercise of its functions. The Commission mandate is to promote and protect human rights for everyone in Scotland. The Commission is one of three national human rights institutions in the UK, along with the Northern Ireland Human Rights Commission and the Equality and Human Rights Commission.

Introduction

The Commission welcomes the opportunity to submit the following comments on the Government’s Draft Social Care (Self Directed Support) (Scotland) Bill (the ‘Bill’).

The Commission recognises the ideals behind the legislation of increased choice, control, independence and dignity but considers there may be areas where the Bill, or implementation of the proposals, could be strengthened to reflect human rights based principles and standards. The below offers a summary analysis of some of the key issues identified.

Legal framework

Relevant human rights instruments referred to in this submission include:

- Scotland Act 1998
- Human Rights Act 1998
- European Convention on Human Rights, particularly Articles 3, 5.6 and 8
- European Social Charter
- UN International Covenant on Civil and Political Rights
- UN International Covenant on Economic, Social and Cultural Rights, particularly Articles 11 and 12
- UN Convention on Rights of Persons with Disabilities, particularly Article 19

Issues identified

The Commission regards the introduction of Self-Directed Support (‘SDS’) as a positive step towards increased choice, control, independence and dignity of those assessed as requiring social care support. In furthering these principles however it is essential that levels of accountability and responsibility for human protections are not lost.

The human rights protections under the Human Rights Act (‘HRA’) 1998, the Scotland Act 1998 and the international human rights treaties ratified by the UK set out both positive and negative obligations and the threshold standards
of public service provision. The state and public authorities, or those performing public functions, retain responsibility for meeting these human rights obligations, regardless of the means of service delivery, and it is essential that functioning accountability mechanisms are in place for the protection of the rights of all individuals.

General Principles of the Bill

As drafted the General Principles in the Bill encourage “involvement”, “assistance” and “collaboration” which are, in the Commission’s view welcome. The principles, however, are drafted as process principles as they relate to SDS mechanisms, rather than the underpinning values and context in which SDS sits and the lens through which all of the provisions in the Bill, and additional recommendations we set out below in relation to involvement, assistance and collaboration, should be read.

The Commission recommends the General Principles should take a broader approach which sets the currently drafted principles in the context of participation, accountability, non discrimination, empowerment and legal human rights protections. It is suggested, for example, that pre-ceding the current General Principles, the Bill could set out a statement of intent that the mechanisms in the Bill are to enable all persons to have an equal right to live and participate in the community, with equal choices to others, and that accordingly individuals should be provided with the assistance and support that is reasonably required to enable them to make informed choices and lead independent lives and that authorities must have regard to this in exercising their functions under the Bill.

This recommendation is based on the obligations under Article 19 of the UN Convention on the Rights of Persons with Disabilities (UNCRPD) which asserts the right to living independently and being included in the community. A general principle of this nature sets the context for all provisions of the Bill and subsequent statutory instruments. This may also reframe the provisions of the Bill, in that, for example, involvement is regarded not solely as an obligation around involvement in the assessment of the person’s needs and provision of services, but is linked to the broader objective of participation in the community and empowerment to make choices. Similarly the principle of assistance should be viewed not only as being about support to make choices as to self directed support options but support and assistance to independent living.

This recommendation reiterates the view of the UK Joint Committee on Human Rights Report on Independent Living which stated that “The right to independent living (as defined by Article 19) should be added as an outcome in any forthcoming Bill on adult social care in England”. The Commission believes that this Bill represents and opportunity for Scotland to enshrine the right to independent living in this core piece of social care legislation.

1 Human Rights Joint Committee - Twenty-Third Report Implementation of the Right of Disabled People to Independent Living, February 2012. para. 65
Information, Advice and Support

As “choice” is a core underlying principle to the Bill it is considered that the Bill must reflect a right to support for decision making at every stage. The Bill as drafted appears to offer assistance to express views and make informed choices as a general principle where “reasonably required” at section 1(3) and provision of information and signposting to assistance at section 8(2). It would be helpful if there was a clear legislative basis and right for support to be provided to individuals and it is considered essential that in practice such advocacy and support is available to individuals in order to ensure the exercise of choice and control is realised.

The Commission notes that section 5 and 15 of the Bill are aimed at providing support to certain individuals with “mental disorder or difficulties communicating” in order to empower them to make use of the provisions under the Bill. However it is recommended that the full implications of the provisions be carefully considered.

According to the European Court if Human Rights case law there should always be a presumption in favour of capacity, support for capacity, and positive measures to enable decision making while people have capacity. Any interference with the right to autonomy must be carefully justified as a necessary and proportionate means of achieving a legitimate aim.2

Article 12 (4) of the Convention on the Rights of Persons with Disabilities states that “States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.”

The Commission wishes to raise a number of potential areas of concern regarding these provisions of the Bill.

Firstly, there may be a risk that such provisions are put into effect where the individual in fact lacks capacity. It must be made clear that where an individual is deemed to lack capacity, that the Adults with Incapacity Act 2000 (AWIA) provisions would apply with the appropriate safeguards.

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2 E.g. Evans v UK, 2007 (Application no. 6339/05); Pretty v UK, 2002 (2346/02), Shtukaturov v Russia, 2008, (Application no. 44009/05), Storck v Germany, 2005, 61603/00 (2005) ECHR 406
Secondly, where an individual is assessed as having capacity but requiring assistance, safeguards should be considered to protect against any misrepresentation or abuse of those who may have difficulties in communicating their wishes.

While sections 5 and 15 of the Bill offer support for capacity and decision making rather than removal of capacity it would nevertheless appear necessary that where steps are taken by an authority under sections 5(4) or 15(3) to identify and involve a supporting individual that this should be done with certain safeguards in place. Safeguards could reasonably include, at a minimum, a requirement on the local authority to allow the supported person to identify the supporting individual, a further requirement that the authority should satisfy itself that the person identified to provide assistance is not exercising undue influence and is acting in the best interests of the individual at all times and the option for additional supports to be put in place such as the option of independent advocacy.

Finally, it is considered that there must be provisions for reassessment of an individual’s situation where support has been put in place but capacity is later lost. In such instances it would be essential for the provisions of the AWIA to apply.

**Self-directed support options**

It is considered that there must be a right of review of choice of options for individuals. The provisions in section 11 provide the option that an individual can make a further choice of options under the Bill only where there has been a “material change of circumstances”, or in “other circumstances as must be agreed between the person and the local authority”. It is recommended that a right of review should exist on the initiation of the individual without such potentially limiting criteria of a “material change of circumstance”. This will provide a safeguard where an individual, for a range of reasons, no longer wishes, or cannot appropriately manage the responsibilities that come with a direct payment, and ensure individuals are not left in situations without appropriate supports and without a right to review their choices.

**Individuals’ responsibilities and risk enablement**

While the operation of the Bill will inevitably place greater responsibility on individuals in directing their own support, it must be noted, that from a human rights perspective, the responsibility of safeguarding vulnerable individuals, whether supported individuals or privately employed assistants, remains with the state and therefore all necessary measures of safeguarding and protection must be taken.

**Human rights assessment**

As outlined above, the Commission has some concerns about the operation of the Bill related to the need for supported decision making, the right of review and the rights of persons who may benefit from assistance but have capacity
for decision making. While the Policy Memorandum accompanying the Bill outlines the assessment by the Scottish Government of the potential human rights implications of the Bill the Commission believes that the development of a human rights impact assessment (HRIA) as a means of systematically identifying the human rights impacts of legislation throughout the legislative cycle and post enactment would be a helpful mechanism for future development.3

Other matters

In order for the broader policy objectives of this Bill, as outlined in the Policy Memorandum, to be achieved in ensuring “services and support become more flexible and responsive to people needs” and to “drive a cultural shift around the delivery of support that views people as equal citizens with rights and responsibilities rather than people who receive services” it is considered that further issues must be addressed in the implementation of the system change that the Bill provides. This points to a need for both the mechanisms and implementation of SDS to be underpinned by an outcomes led, human rights based approach.

The issue of eligibility criteria and barriers to access support must be carefully considered to ensure levels of support do not fall below acceptable human rights thresholds leaving individuals in circumstances of destitution or hardship which could breach their right to respect for private, home and family life (Article 8 ECHR) or amount to inhuman or degrading treatment (Article 3 ECHR).

The Joint Committee on Human Rights has reported that the experience in England has been that “in many cases personalisation had not meant an improvement in choice and control over their lives for disabled people but instead a rationalisation of services and a reduction in care funding allocated.”4 The Committee recommends in this regard that the there should be monitoring of “the extent to which choice and control is being diminished or increased by the roll out of personal budgets” and that action should be taken “if the goal of increasing choice and control is not being realised.”5

To assist with the realisation of the policy objective goals it is also considered that a cultural change by authorities and services is essential. Independent research based on evaluation of the Scottish Human Rights Commission’s “Care about Rights” capacity building project demonstrates the value that a

4 Human Rights Joint Committee - Twenty-Third Report Implementation of the Right of Disabled People to Independent Living, February 2012. para. 165
5 Ibid. para 168
human rights-based approach can bring to care and support services. The research strongly indicates that using this approach assists social care workers to involve service users and families in their decision-making and deliver more personalised services, thereby helping to shift the power dynamic in relationships between services and the people they for whom they work.

It is recommended that this human rights based approach and understanding should become a core competence of all of the health and social care workforce and profession to deliver the cultural shift necessary to realise the potential of this legislation to deliver choice, control and dignity to all individuals.

**Conclusion**

In summary, the Commission considers that the Bill must take into account all of the obligations under the domestic and international framework of human rights and give consideration to the fact that obligations to protect, respect and fulfil the human rights of the individual may not necessarily be fulfilled in and of themselves by virtue of the SDS mechanisms alone without further safeguards, support and assistance.

The Scottish Human Rights Commission
24 April 2012

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6 Care about Rights Project Evaluation, Phase 2 Report to the Scottish Human Rights Commission, GEN, the University of Bedfordshire and Queen Margaret University, October 2011- [http://www.scottishhumanrights.com/careaboutrights/evaluation](http://www.scottishhumanrights.com/careaboutrights/evaluation)
Social Care (Self-directed Support) (Scotland) Bill
Scottish Independent Advocacy Alliance

1. Are you generally in favour of the Bill and its provisions?

The Bill should include specific reference to access to independent advocacy for people offered Self Directed Support. An effective Independent Advocate will work to ensure that an individual’s rights are upheld, that they make informed decisions, that they understand the consequences of their decisions and that they are fully involved in decisions that affect them (see case study).

2. What are your views on the principles proposed?

The principles need to be more clearly defined making it clear that under Self-directed Support: the person’s views will be taken fully into account, their rights will be upheld, any support provided will be informed by what is most important to the person, and that the person will be empowered to have control over their life and the support and care they receive. Independent advocacy is an integral part of this process and therefore a right of access to independent advocacy should be included as a principle in the Bill. We believe that Principles should be amended to reflect the Millan Principles\(^1\) of non-discrimination, equality, respect for diversity, informal care, participation, respect for carers, least restrictive alternative, child welfare, reciprocity and benefit, upon which the Mental Health (Care and Treatment) (Scotland) Act 2003 is based.

3. What are your views on the four options for self-directed support proposed in the Bill?

There needs to be greater clarity around the meanings and potential implications of the four choices.

4. Do you have any comment on the proposal that the self-directed support options should be made available to children and their families, together with the proposal that the degree of control a child may have over the process should vary with age?

All individuals covered by the Mental Health (Care and Treatment) (Scotland) Act 2003, regardless of their age, have a right to access Independent Advocacy, and therefore many children and young people affected by this Bill will already have a right of access to Independent Advocacy. Independent Advocacy can also be an important source of support for individuals who are

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\(^{1}\) [http://www.scie-socialcareonline.org.uk/repository/fulltext/mharev.pdf](http://www.scie-socialcareonline.org.uk/repository/fulltext/mharev.pdf)
not covered by any current legislation. We believe that children and young people should always have their views and wishes fully considered when establishing how their support is managed and must be supported to do so. This should include access to Independent Advocacy (the importance of Independent Advocacy to informed decision making is covered in detail under question 5). Any child commenting on their options under SDS should be referred to Independent Advocacy. The variation of degree of control suggested should not simply be dependent on age but should take account of the level of maturity and understanding of the individual child. Account should also be taken of the fact that most children will be able to understand and express some level of choice which should also be considered.

5. Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

In order to ensure that people’s views and wishes are taken fully into account the Bill should include specific provision of independent advocacy as distinct and separate from provision of information and advice. It will also be necessary to ensure a clear understanding of what Independent Advocacy is and how it differs from information and advice.

An independent advocate helps people express their views and make informed decisions. An advocate helps people to find out information, explore options and decide for themselves what they want. An advocate can be a voice for the person and encourage them to speak out for themselves. Advocates do not tell or advise someone what they think they should do. For more information about Independent Advocacy please see the ‘SIAA Principles and Standards for Independent Advocacy’.

Independent Advocacy organisations are free from conflicts of interests as they provide only Independent Advocacy. We believe this independence is particularly important with regards to the implementation of SDS as the individual may be making decisions around the payment of care and support services and therefore service providers or other relevant people who are supporting or caring for the person may have a potential conflict of interest.

The need for access to Independent Advocacy was recognised by the recently published report, ‘Counting the Cost of Choice and Control: Evidence of the Costs of Self Directed Support in Scotland’.

We believe that the Bill should be amended to include a right of access to Independent Advocacy as defined by S259 of the Mental Health (Care and Treatment) (Scotland) Act 2003. This right should be available to all who are offered SDS under the legislation, including adults, children and young people (see response to question 4) and carers.

Independent Advocates who are already supporting people through direct payment decisions have raised concerns regarding the quality of information sometimes provided to people making decisions around whether they should use this method of personalising their care. In some instances they have noted that the person has not always been made aware of the responsibilities connected with direct payments and have only been informed of the benefits, and on occasion they have been concerned that the person has not been made aware that they did not need to move to direct payments but could keep existing arrangements. We believe that to ensure that the person is assured of an informed choice the legislation should specify in detail the information that should be provided to a person making a choice under SDS including information about local Independent Advocacy services in addition to advice and information services.

6. Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?

We are unable to comment on this question as the Bill as it stands contains insufficient information.

7. Do you have any views on the provisions relating to adult carers?

The Scottish Government strategy ‘Caring Together: The Carers’ Strategy for Scotland (2010-2015)’ confirms the importance and value of advocacy for carers in their own right and it encourages support for the development of carer advocacy. This should also apply to adult carers in this situation.

Carers have an essential role, and need support to help them address their own needs in addition to those of the person they care for. They should also have the right to the same level of advice and support around SDS including the right to Independent Advocacy.

8. Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?

SIAA is not in a position to comment on this.
9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

In this evidence to the Committee we have highlighted the important role that Independent Advocacy must have in the implementation of the Self-directed Support Bill. We believe that the Financial Memorandum should consider the particular role of Independent Advocacy and the demands the Bill will place on the movement both in the short term and how this can be sustained in the long term. This should be included within the costs associated with the implementation of the Bill (table 1 of the Financial Memorandum).

The SIAA’s most recent report, ‘More for Less?’, on the impact of the recession on Independent Advocacy, has shown the steady increase of demand for independent advocacy in response to cuts to support services. These raises the concern that, in the current economic climate, rather than being cost neutral, the implementation of SDS will be seen as a further opportunity for cost savings and therefore have a negative impact on the support offered.

10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?

There will be a need to be vigilant to ensure there is no inadvertent discrimination arising following the implementation of this Bill as experience in other situations has shown that often certain groups or sections of society benefit more from changes to services than others. A right of access to independent advocacy will help in ensuring equality of access to SDS for all.

11. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

The Bill should include a right of access to independent advocacy to ensure that the views, wishes and concerns of all affected are taken fully into account and that people are as fully involved as possible in the decisions made about them and their lives.

Case study:
Our first contact with Advocacy Orkney was when we applied to be re-homed by the council to a suitable accessible property. Advocacy Orkney helped us with the application and communicated with the council for us. Their

http://www.siaa.org.uk/images/books/1112sia08_moreforless.pdf

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understanding of the processes enabled us to explain why our house was unsuitable for our needs and how the situation was affecting our health.

After this I attempted to deal with and get services and help for my wife and myself alone. I am afraid I failed drastically, as much as we tried to communicate with Health professionals and other organisations it felt like no one was ever listening and the stress of it was affecting my ability to care for my wife.

Eventually we went back to Advocacy Orkney and requested help and were assigned an advocate. It’s hard to describe the effect that this had on our lives. A weight was lifted and we had someone we could trust who was able to put our views across. It also makes a difference having someone who understands why we act like we do and is happy to communicate in a way we find comfortable.

In a couple of months our Advocate managed to help us achieve more and gain more help than a year of trying to work with a Social Worker. With help from our Advocate we have been able to access specific medical personnel and services. This has improved both mine and my wife’s quality of life, physical and mental health. It can still be a struggle, but we know we have an independent person who will put our views across. It gives you great confidence knowing that they won’t impose their ideas upon you and what they are communicating to others are your wishes not what they think you want.

The Advocate does far though than help us communicate on medical matters though. We have help sorting out general things that people without mental health issues would find straight forward. We have had help with dealing with various bodies from the council to private firms and of course Doctors and other medical professionals.

As we have a lot of ongoing issues that we need assistance with, the help that the Advocate provides is a service we could not do without. I cannot praise all the staff enough and especially our Advocate and the ongoing change that they have helped make in our quality of life.

Scottish Independent Advocacy Alliance
18 April 2012
The Scottish Social Services Council (SSSC) was established in October 2001 by the Regulation of Care (Scotland) Act. We are responsible for registering people who work in social services and regulating their education and training.

Our work will increase the protection of people who use services by ensuring that the workforce is properly trained, appropriately qualified and effectively regulated. Our aims are to protect people who use services, to raise standards of practice to strengthen and support the professionalism of the workforce, and to improve the outcomes and experience of people who use social services.

Our vision is that our work means the people of Scotland can count on social services being provided by a trusted, skilled and confident workforce. And our purpose is to raise standards and protect the public through regulation, innovation and continuous improvement in workforce planning and development for the social service workforce.

The SSSC welcomes the opportunity to provide evidence to Committee on this important piece of legislation. The SSSC supports the Bill and its underlying philosophy of personal choice and empowerment, and we agree that people should be able to exercise their own personal choice when employing personal assistants, free from unnecessary limitation.

The principal issue on which we have a view is one on which the Bill is silent, but which is likely to be of interest to Committee Members and others. That is the question of regulation. We understand the Bill is silent on this issue because it is not within scope; the relevant legislation being the Regulation of Care Act.

At present there is no regulation of people working as personal assistants, nor of the employment agencies that increasingly provide them. On the latter, the SSSC is clear that it is unacceptable that such employment agencies are not regarded as care services and therefore do not fall within the responsibilities of the Care Inspectorate. Employment agencies come under generic UK regulation from the Department of Business, Innovation and Skills. Its primary purpose is to protect vulnerable workers, having been established in response to the tragedy of the Morecambe Bay cockle pickers. That regulation does not concern itself with the people with whom those personal assistants work. Employment agencies are increasingly used by local authorities and other providers to source temporary social service workers, including social workers, and are increasingly being used to source personal assistants.

People accessing personal assistants from agencies should be fully informed of the status of agencies and the protections they do, or don’t, have. If agencies remain unregulated, that leaves a loophole which allows people or organisations to by-pass regulation. It is the SSSC’s view that those agencies should be regulated as care services.

Our first recommendation is therefore that agencies providing personal assistants, and indeed other social service workers should be regarded as care services and required to register with the Care Inspectorate.
The issue of individual personal assistants is more complex, and is one which has vexed officers and Members of the SSSC more than any other over the last 10 years. As an organisation, supported by Scottish Government, we are committed to providing protection to the public through registration, and ensuring high quality care through qualifications. Research clearly demonstrates that skilled, confident and qualified workers offer the safest, best quality care, with the best outcomes for people who use services. We believe that neither the people who receive social services through self-directed support, nor the people who deliver it, should be denied protection or access to core skills.

We recognise that personal choice to employ whoever you want to care for you, including members of your own family or friends, is fundamental to the philosophy of self-directed support and we whole-heartedly support that. We also recognise that people requiring care can be very vulnerable and need to be equipped to make informed choices. It is important to remember that while many people who will employ personal assistants, particularly those with physical disabilities, will be more than capable of making informed choices, others will not.

In most important aspects of life, our choices are limited by regulation; we don't have the choice to be treated by unqualified doctors or taught by unqualified teachers. It is counter-intuitive to argue that public money should be spent on a service which has no accountability to the public. Why would that be different in care?

It is important that any form of regulation is appropriate and proportionate, and we do not propose a full registration model for this group. In our view, the local authority providing the funding should ensure that a qualified social worker assesses the service user (and their carers if appropriate) to establish their capacity as a potential employer, and their level of need. We welcome the fact that the Bill sets out a role for local authorities in ensuring people are properly assessed and equipped to make informed choices, including the option of regulated care.

We recommend that all personal assistants should be made aware of the Code of Practice for Social Service Workers and encouraged to adhere to them, and all employers of personal assistants should be made aware of the Code of Practice of Social Service Employers and encouraged to adhere to them.

We also recommend that minimum induction training is made available to personal assistants, and their employers, covering things like rights-based care as has been produced by the Scottish Human Rights Commissioner in the Care About Rights programme, and professional boundaries guidance.

We appreciate that the Committee takes very seriously the question of protection of the vulnerable and their right to high quality services and finds a model that can deliver that whilst staying true to the right of individuals to make choices about their own lives. We recommend that complex care and care for particularly vulnerable service users is provided by workers regulated by the SSSC. Those terms would need careful and consistent definition so as not to be used to limit personal choice unfairly.

The challenge of being an employer should not be under-estimated. The Scottish Government should ensure there is a communications policy accompanying the
Bill when it comes into force that addresses what service users need to do when employing personal assistants, and what the personal assistants need to do in fulfilling their role. The SSSC will have a valuable contribution to make to that based on our extensive experience in the sector.

In our view this is a very complicated issue that cannot be decided by Government, regulators or lobbying groups alone. There should be a public debate on how much risk we are prepared to tolerate; that may well be very different from person to person, community to community. It is inevitable that something will go wrong, as it does in any care context, and under the current system it is clear that accountability ultimately rests with the providers and with regulators. Under an unregulated system of self-directed support, that accountability rests with individuals. That may be the right option, but it needs to be considered very carefully in an informed way. We understand that Scottish Government is satisfied that the extensive consultation which took place in advance of this Bill being published sufficiently aired that debate and that the public are as conversant as they can be with the issues.

In particular, like our colleagues in Scottish Government, we are committed to ensuring that the views of service users and carers are central to this Bill and its successful implementation.

As Committee will be aware, personal assistants form part of the footprint of the Sector Skills Council, Skills for Care and Development and the SSSC is the Scottish arm of that partnership. We are therefore looking carefully, with our partners in England, Wales and Northern Ireland, at the development needs of this part of social service workforce and also workforce planning for the future. Personal assistants can be in an isolated and unsupported role; they have their own development needs. The SSSC is already engaged with officials in relation to addressing the development needs of personal assistants, and we would be happy to contribute to work on the core skills and attributes they require. We are also working on the skills and qualities required by the existing workforce to address the new ways of working and thinking that will be required by an increasingly personalised care agenda, to the benefit of service users and carers.

We recommend that the Scottish Government accesses the resource available through our sector skills council to explore workforce development and planning for personal assistants.

Conclusion

The question of whether or not personal assistants should be regulated, and if so what the model should be, requires proper debate. The SSSC welcomes the opportunity to participate in that debate.

Scottish Social Services Council
23 April 2012
Self Directed Support Scotland

1. SDSS – who we are, and our aims and objectives

Self Directed Support Scotland (SDSS) provides a forum for Self Directed Support Organisations throughout Scotland to work together to promote better outcomes for people receiving or considering Direct Payments. As a membership organisation, SDSS has a wealth of experience and knowledge of Personalisation, Self Directed Support (SDS) and its attendant tools, such as Direct Payments, to call upon.

Self Directed Support Scotland actively promotes Independent Living for disabled people by supporting, working with and championing the aims of Self Directed Support Organisations, which themselves support disabled people to access and benefit from Self Directed Support. Self Directed Support Organisations (or Disabled People Led Support Organization) are organisations which are managed and controlled by disabled people.

Self Directed Support Scotland’s objectives are to:

- Promote the social model of disability and philosophy of the Independent Living Movement throughout Scotland;

- Research best practice and identify examples of good practice in Self Directed Support and to report on these to member organisations and others;

- Provide a national campaigning voice for member organisations;

- Provide support to existing and evolving member organisations;

- Provide a forum for member organisations to work together and share ideas, experiences and information;

- Provide training for member organisations, staff and others.

1.2 Summary profile of a Disabled People Led Support Organization

A Disabled People Led Support Organization have a majority of disabled people and or people with long term conditions on their board or management committee, and has a clear accountability process to members and/or service users.

These organisations share and adhere to common standards

- Work within the Social Model of Disability
- Promote Independent Living
- Promote people’s Human Rights and other legal rights
- Be shaped and driven by the initiative and demand of the organisation’s service users
- Be Peer Support based
- Cover all local disabled people, carers, and other who use support either directly or by establishing links with other local organisations or networks
- Be non-discriminatory and recognize and work with diversity in terms of race, religion and belief, gender, sexual orientation, disability and age
- Recognise that carers have their own needs and requirements as carers
- Engage the organisation’s service users in decision-making processes at every level of their organization

• The role of a Disabled People Led Support Organization is to support people who wish to access SDS and or Direct Payments recipients through providing a range of services including:
  - Advice and /or advocacy
  - Support in using individual budgets or other forms of SDS
  - Support in recruiting and employing Personal Assistants
  - Support with or offer Payroll service
  - Provide independent information about SDS and Direct Payments
  - Offer peer support
  - Offer training
  - Assist with assessment
  - May provide Disability Equality Training

Disabled People Led Support Organization do not employ or manage PAs on behalf of people awarded Direct Payments. However, if a Direct Payment recipient requires additional support to manage their finances, the organization may be able to provide this.

2. SDSS position on The Bill and recommendation

2.1 SDSS welcomes the legislative initiative in that it clarifies the rules, rights and obligations on direct payments and brings them up-to-date with current practice, while reinforcing the personalised person centred approach to engagement with individuals that is important to delivering cultural change.
2.2 Our response fully endorses the response sent to the Committee by Independent Living in Scotland (ILiS) and all of the points made in their response are points that we would make also. In addition to it and in order to improve the Bill, we would like to offer recommendations on two particular aspects that at present limit the Bill’s scope and chance of delivering positive changes for disabled people (across all impairments), people with long term conditions and older people. These views relate to the Committee’s questions 2 and 5.

2.2.1 Response to question 2: The overarching aim of the Bill should be to enable independent living for people in receipt of SDS

2.2.1.1 SDSS welcomes the move to address outdated aspects of community care and move it into the 21st century, using SDS as a much more effective means for people to buy better and more flexible support. We believe, however, that the Bill as currently worded cannot ensure the radical changes in social care that are required to address the needs of Scottish disabled people, people with long term conditions and older people, so that they are equal citizens in the community. The reason for this is that the vision and values at the origin of direct payments, which are central to (although not unique within) this Bill, and were set out by disabled people themselves, have been lost, depriving the Bill itself of a vision and ambitious aims.

2.2.1.2 Independent Living should be the overarching aim of the legislation (and of the SDS Strategy for Scotland) so that it can further enable the implementation of positive changes in society towards the rights of disabled people. SDS should be a method of accessing Independent Living, whereby "... 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".

2.2.1.3 It is our understanding, however, that the keenly anticipated current bill misses the unique opportunity to place SDS as a key tool of societal change and fails to enable an effective response to the Joint Committee on Human Rights report, published in March 2012, which recognised that the current framework of legislation supporting independent living was insufficient to protect the rights to it, set out in the UNCRPD. Undermining its own strength, the Bill ignores one of their recommendations to do this by ensuring that upcoming legislation on social care has independent living as an outcome.

2.2.1.4 We believe that given the current commitment of the Scottish Government to independent living, supported it as it appears by other political
parties, the Scottish Parliament should be given the opportunity to vote on an ambitious piece of legislation that would visibly and practically reflect support for this commitment.

2.2.1.5 To this end we support the proposal of the Independent Living in Scotland (ILiS) recommendation of an amended set of principles, which would be underpinned by a “statement of intent”. The statement would read as follows:

“An Act of the Scottish Parliament to enable local authorities to provide support to disabled people, other community care users and carers; to make provision about the way in which social care services are provided by local authorities; and for connected purposes.

SDS is one type of provision society makes, among several, which underpins disabled people’s right to independent living. Together with the other rights of independent living, it is intended that SDS, through this Bill, will empower those using self-directed support, to lead independent lives, to have the same freedom, choice, dignity and control as other citizens at home, at work, and in the community, so that they may participate in society and live an ordinary life”

Underpinning this and in keeping with a human rights based approach to policy making and service delivery, we recommend an amended set of principles, that include:

- **Freedom**: users of SDS are free to live their life in the way that they choose and SDS aims to support this to happen.

- **Choice**: users of SDS can choose how to live their life, what they do with it and who they involve in it and SDS aims to support this to happen.

- **Dignity**: everyone is entitled to dignity in their own life and others respect this dignity.

- **Control**: people can and should control their own lives, including what they do, who with, and when they do it and SDS aims to support this.

- **Better outcomes for individuals**: rules and processes, including assessments and eligibility criteria, work for the individual and their best interests. The outcomes for disabled people and other users of SDS, in terms of better health and well being, should be at the centre of both the legislation and the way that it is implemented.

- **Mutuality**: SDS is a tool provided to support users to participate in their own life, in their local community and this includes in decisions on their care and support. It is provided alongside the tools needed to make decisions on the way people obtain their care and support and the type that they select. Disabled people and other users of SDS must be equal partners in care.
• **Equality**: SDS is one tool among many to ensure the equality of disabled people and other users of it, within our society. SDS enables disabled people’s participation in wider society and their empowerment to take charge of their own lives. SDS is empowering in its design and delivery and plays a key role in the overall empowerment of disabled people and other users.

• **Portability**: Disabled people and other users of SDS have clear entitlements to SDS, regardless of where they live. Disabled people, and other users of SDS, know that they can move freely, for whatever reason, across Scotland and that their support package can come with them.

• **Accountability**: Service users, providers, assessors and professionals must all be accountable to the principles within the Bill.

It is our belief that without such principles, not only are we missing an opportunity on which to build on the rights of disabled people and other service users, but that the basic underlying intentions of SDS; control and choice, citizenship, equality; cannot be truly realised.

### 2.2.2 Response to question 5: The Bill should place a clear duty on local authorities to signpost and provide free access to peer support, advocacy, and disabled peoples support organisations, in order to obtain and use independent information.

#### 2.2.2.1 The lack of a more detailed legal framework around support and information, and the confusion between the two, constitute a great risk to the successful outcome of the Bill. As currently introduced, the Bill fails to ensure that the main players in SDS are accountable for the delivery of the subsequent national SDS Strategy. In relation to information and support the Bill lacks clarity on what constitutes independent and adequate information (Section 5 (3) and (4)). Very importantly, by not stipulating that local authorities, or the Scottish Government, have a duty to signpost and provide free access to peer support, advocacy, and disabled peoples support organisations, in order to obtain and use independent information (Section 8 (2) and (3)), it leaves future SDS recipients at risk of not realising what their choices are, making uninformed choices or not fully grasping the full scope of, and opportunities within the four options. Most importantly it may also leave them without the necessary support to manage a SDS package successfully.

#### 2.2.2.2 If true to its purpose such a duty would also lead to the duty of ensuring that resources are available, either from local authorities or Scottish Government, for independent and disabled people organisations to provide adequate independent information and support in all areas of Scotland.
2.2.2.3 Based on more than 20 years’ experience, including witnessing how the legislation on direct payment did not result in **ALL** eligible people effectively being offered this particular option, a duty to signpost or refer people to independent organisations led by disabled people, people with long term conditions and older people, would ensure that they are **ALL** informed about **ALL** options as well as **ALL** support available to manage them.

2.2.2.4 Although the SDS strategy may address the training needs of the workforce in relation to knowledge and use of SDS, local authorities themselves recognise that they will not be able to mainstream the knowledge of SDS in just a few years and that it will take much longer to bring the cultural shift underpinning long-term change. Disabled peoples organisations were at the forefront of direct payments and the idea of more flexible solutions, working with local authorities to develop sustainable solutions for individuals. **They are therefore the best placed to lead on providing information on, and support with SDS, for the benefit of individuals and statutory agencies.**

2.2.2.5 SDSS know of a number of people currently in receipt of a direct payment who say the reason for their choice is that they do not wish to receive a ‘service’ as such but prefer to have their support as a mean to use mainstream services, be more included in the wider community and/or live a more independent life. Historically this option has been conceded to people who knew that it could be ‘allowed’, in many cases had the capacity to argue for it, were generally more confident or had the support of a disabled people led support organisation to explore the option without prejudice to choose it and support if desired along the way. **By placing a statutory duty to sign post or refer to disabled people’s support organisations the Bill will ensure that this option is not just for those who are deemed to have greater capacity.**

2.2.2.6 At present people in receipt of a direct payment do not have to use any of their monies to access information or support to manage their package. If this changes and Support Organisations have to sell their services such as information and support directly to people this would completely change the nature of the relationship with disabled people, people with long term conditions and older people, by becoming merely another service provider as well as impacting on the ability of those organisations to remain inclusive and led by the people they serve. **It is therefore crucial that these organisations remain directly funded by statutory agencies.**

2.2.2.7 For individuals, free and open access to independent organisations means that they are not limited by their funding to obtain information from a particular type of direct care provider or on a particular option.
2.2.2.8 Based on our long and current experience we know that quite a number of people who have the capacity to choose a particular option, e.g. a direct payment, are not necessarily able to manage it without support. The knowledge of flexible and free access to support at any time (including crisis time) from professionals, and organisations they know and which have an intrinsic knowledge of their situation because they are led and staffed by their peers, is an essential part of a successful and positive experience of SDS/Direct Payment.

2.2.2.9 A duty to signpost or refer to peer support, advocacy services and disabled peoples support organisations, given the intrinsic inclusive nature of these organisations, would ensure that local people would have the opportunity, through these organisations, to engage with the national SDS project, co-produce development and solutions with other stakeholders and be fully involved in the future shape of health and social care. It would also provide the strategic network of people and their organisations to progress aspects of the strategy and measure and evaluate its impact over the years.

Self Directed Support Scotland
23 April 2012
Sense Scotland

Introduction
Sense Scotland is a leader in the field of communication and innovative support services for people who are marginalised because of challenging behaviour, health care issues and the complexity of their support needs. The organisation offers a range of services for children, young people and adults whose complex support needs are caused by deafblindness or sensory impairment, physical, learning or communication difficulties. Our services are designed to provide continuity across age groups and we work closely with families and colleagues from health, education, social work and housing. This breadth and depth of approach to service delivery helps us take a wider perspective on the direction and implementation of new policies.

Views on the Bill as a whole

1. Are you generally in favour of the Bill and its provisions?
We generally welcome the Bill, as long as, together with regulations, it will support people to have greater opportunity to lead the lives they wish.

2. What are your views on the principles proposed?
We agree with the principles, as far as they go, but believe that they need to be strengthened to go beyond ‘collaboration’ - to imposing a duty to act on needs identified by the person or their representative. Without a commitment that people will get comprehensive, good quality support, which will enable them to make comparable choices to non-disabled people, the Bill may be implemented in a way that simply calculates the cost of support, not the impact the support has on people’s lives.

We believe that the current widespread use of eligibility criteria in determining who receives support, acts against the positive intentions of the Bill and, on a wider note, against agendas relating to prevention and equality. This issue becomes even more pronounced when considered in relation to adult carers. Please refer also to our response to question 7.

We believe that the principles, as long as they are the right ones, will support people in holding their local authorities to account, but that they need to be backed up by regulation, or by stronger duties within the Bill.
Options for self-directed support

3. What are your views on the four options for self-directed support proposed in the Bill?

We believe that these are reasonable options to offer – our concern relates more to how people can be supported to manage a direct payment (see question 6), and that by addressing this issue, more people could be supported to take the direct payment option, and develop capacity in this area.

4. Do you have any comment on the proposal that the self-directed support options should be made available to children and their families, together with the proposal that the degree of control a child may have over the process should vary with age?

In principle, this seems correct. However, ‘maturity’ is also mentioned, and it will be very important that people who have complex communication support needs are not automatically deemed to lack the maturity required to make decisions or manage a budget.

Whatever the age or maturity of the child, it will be essential that their communication support needs are fully taken into account in determining what kind of support they will receive.

5. Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

See our comment above relating to assumptions which link communication ability to decision making.

We welcome the provision for support for the person to gain information, and make decisions about self-directed support, but it must be recognised that this support will often come from third sector organisations, and there is a cost involved. Sense Scotland frequently offers free advice and guidance to people needing support, their families, and other professionals. However, given the likely increase in demand with the hoped-for increase in uptake of self-directed support arrangements, this will not be sustainable in the long term, and our resources will be stretched. In order that people with communication support needs receive adequate assistance, the cost of this support should be built in to the process, and local authorities should be obliged to meet it. Without strong regulation relating to this, many people will have their communication support needs ignored.

It will be important that the information and advice given is timely – people with communication support needs often receive no specialist input prior to making major decisions, and on a much more general level, we know that many families do not receive their financial assessments and information
about charging early enough to take it into account in trying to plan their support arrangements. This is key, as it is one of the greatest causes of anxiety, and anxiety can prevent clear thinking about support.

Direct payments

6. Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?

We are disappointed that the option of empowering local authorities to pay direct payments to people who are not currently able to assist with the management of finances has not been taken. This could be implemented by introducing the notion of a ‘trusted’ person, who could be agreed by, and accountable to, the supported person (if possible) and the Local Authority in relation to the specific task of managing a person’s individual budget. If this is not to be included in primary legislation, we would hope that regulations relating to 13 (2) (g) would be put in place at the earliest opportunity, to deal with this issue.

We are also disappointed that direct payments for people in residential care have been put aside to be dealt with in regulations, and feel that this omission from primary legislation results in compromising the values which have led to the Bill.

Adult carers

7. Do you have any views on the provisions relating to adult carers?

We welcome the inclusion of consideration of adult carers. Support for them can provide them with the energy and space to offer more empowering support to their relatives. It must be recognised however that the reality for carers is that the current duty which exists elsewhere - to offer a carer’s assessment - is frequently ignored. We can cite a meeting we held with 13 parents in 2011, where only one had been offered an assessment, and the local authority would not provide that person with a written record of it, as a line manager would not ‘sign it off’. Another, more recent example, repeated with another parent, relates to a statement by a social worker that they should give up work to care for their child. Work can be essential to sustain a carer’s role in the long term, providing them with a life outside caring. Current experience indicates that this section will need to have strong regulations, review arrangements and enforcement behind it, to give it any relevance within the Bill.

Individuals’ responsibilities and risk enablement

8. Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?

Yes.
Financial Memorandum

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

If self-directed support is to achieve the aim of improving outcomes for people, enabling them to feel more in control of their support, then good planning is essential prior to arrangements being put in place. This will require advice and guidance which can be very time consuming if offered adequately to people with communication support needs. This is an issue which is already often ignored, and will continue to be ignored with self-directed support, if financial support is not available to ensure the involvement of specialist workers.

Self-directed support brings higher transaction costs for providers, and these are not short-term, but continue throughout the period of service provision. Sense Scotland is a reasonably large organisation and is experienced in dealing with a range of support arrangements. With the growth in self-directed support, these costs will increase significantly for us, and could be impossible to sustain for a smaller provider, without assistance.

Effects on equal opportunities, human rights, island communities and sustainable development

10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?

We agree that the Bill, if properly implemented, will increase human rights. However, experience to date is that the language of self-directed support is being used in some areas, with the prime intention of allocating resources, not improving outcomes. Strong audit of the implementation of the Bill will be required to ensure that what may be described as self-directed support does not result in more restricted lives.

Other matters

11. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

No.

Sense Scotland
23 April 2012
Social Care (Self-directed Support) (Scotland) Bill
Shetland Islands Council and NHS Shetland

1. Are you generally in favour of the Bill and its provisions?

Yes the introduction of the Bill and its provisions are generally supported.

2. What are your views on the principles proposed?

Section 1 of the Bill outlines its general principles which are, ‘involvement’, ‘informed choice’ and ‘collaboration’. These principles are absolutely supported. These principles are ones that we would advocate strongly, that we endorse within our day to day work with the individuals and communities we support.

3. What are your views on the four options for self-directed support proposed in the Bill?

The four options for self-directed support are already available to those being assessed as requiring community care services and support. Direct Payment uptake is steadily growing and via our With You, For You assessment process, which allows individuals to self assess, from the assessment if eligible then they can directly approach a service provision. We also have examples of mixed support packages. So the options available for individuals to direct their own support, currently pose no immediate problem to us here in Shetland.

4. Do you have any comment on the proposal that the self-directed support options should be made available to children and their families, together with the proposal that the degree of control a child may have over the process should vary with age?

We would in general, support the provision of self-directed support to children and their families and currently have such provision, an example being a direct payment so that the child & their family can direct their own respite provision.

5. Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

Yes – we already work with the voluntary sector in helping us achieve a variety of methods in ensuring advice is available. It would be difficult to expand and be more prescriptive in this area of the Bill as information giving needs to be given in a very person centred manner, so tailored to the individual in order to maximise their ability to make informed choices and direct their own support.

6. Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?
The specific focus around this question leads us to look at the fact that within the Bill there are numerous areas that are identified where the Government may make future provision around Direct Payments etc. Given this is such a significant change in how we are providing services etc, it would appear to make absolute common sense to have such provision made with this Bill.

7. **Do you have any views on the provisions relating to adult carers?**

No this is absolutely in line as provision to the cared for person. There are many examples where it is better in terms of supporting family life etc, where providing for the carer is preferable than providing direct to the individual requiring support.

8. **Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?**

This is obviously a much debated issue, both locally and nationally. This must be without doubt one of the biggest areas of concern. However these debates go on based on a certain amount of speculation and obvious fear for those who we support, who without question are the most vulnerable in our communities. However it would contravene the ethos of the Bill, if in some areas of SDS we became prescriptive. This comes back to making sure that people have the right and correct, information, support and advice, on an ongoing basis, not just at ‘set up’ stage. However it is an area that is identified in the Bill under section 13 (2.i.)(2.j.), where future provision could be made if necessary.

Shetland Islands Council and NHS Shetland
24 April 2012
I am making this contribution not as a direct stakeholder in Scotland's future, but as an independent consultant in Social Care and a writer and commentator on issues in relation to the reform agenda being pursued throughout the UK. I have had intermittent involvement in Scotland over recent years in a shared search for strategies that will deliver best results for service users. As such, I am keen to see Scotland succeed. I want to make my thoughts available in the hope they are helpful.

In general terms, I believe the approach taken in the Bill gives Scotland a great chance of creating a service it can be very proud of. In particular the Principles and the Options between them have the potential to form the legal basis for reform of the whole system so that is able to respond flexibly to the needs of each individual service user. The Bill also has the strength of not boxing Scotland into a single approach. There is increasing understanding that more than one approach is needed to ensure the reforms authentically benefit all service users.

However, I believe there remain risks that the ambitions of the Bill will not be realised. The following are thoughts about what they are and how they can be ameliorated. Some might be addressed through the guidance to follow, and some might call for an amendment to the wording in the Bill.

**The title of the Bill**

I believe the title of the Bill is important in that it conveys a message about the vision driving the Bill. However, there is a contradiction between the use of the phrase "Self Directed Support" in the title and the actual content of the Bill which emphasises collaborative working through what may be described as co-production.

The concept of Self Directed Support describes a process characterised by the person being given a cash entitlement along with the right to choose how to spend it. This is captured in the English approach described by the Department of Health as:

> "a clear, upfront allocation of funding to enable them (service users) to make informed choices about how best to meet their needs"

This is a definition that is absolute and does not lend itself to matters of degree. There is nothing in the Bill that suggests it will be the sole approach to Support Planning in Scotland, or even the dominant one. Therefore, I believe that using the phrase Self Directed Support in the title would be misleading.
If 'self directed support' is not used, an alternative is called for. Such an alternative option would be the phrase along the lines of "personalisation of support".

- Self Directed Support describes a **process**. Personalisation of support describes the hoped for **output** from it. As such, it is arguably the more important concept. There are many examples of public services failing to deliver improvements because of an undue focus on the processes that were expected to be the means to deliver the improvements. It is often easier to manage implementation of processes. However, when sight is lost of the desired improvements, history shows the processes often fail to deliver.

- The word **personalisation** has currency outside of Social Care and is likely to have some traction with the public. For example, 'personalised' bank accounts. The phrase **self directed support** has no currency outside of Social Care and only partial understanding within it. It is important to have a label that has public recognition not only at the point that people enter the Social Care system, but also because the wider community is a stakeholder in Social Care, not least in terms of funding it through taxation.

- There is increasing evidence from England that Self Directed Support is not actually delivering the expected result of personalisation of support for most people. The recent report by the Association of Directors of Social Services, *The Case for Tomorrow*, in arguing for a change to the 100% target of people with a Personal Budget by 2013, says that for many people, the approach does not offer the choices that are important to them. The important choices are not about which services to purchase, but how they work - which worker, what tasks, what times etc. It may well be that the term Self Directed Support will not have a long term future and will become anachronistic.

Similarly, where the Bill refers to 'options for self directed support', this could be replaced with 'options to personalise support planning'. This will not only be more accurate, it will have the further benefit of conveying the message that personalising support planning is only part of the challenge of achieving the wider personalisation of Social Care.

**The principles**

a). Principles one and three can be understood to address the whole system of assessment, support planning and provision;

1. The assessment of needs
2. The selection of services/support

3. The making of arrangements

4. Provision (on-going) of services/support

As such, it lays the basis for a comprehensive agenda of reform. However, the second principle, addressing the key issue of service users being well informed before they make choices, is currently targeted only on the second and third of the above key points. Targeting this principle on the whole system, consistent with principles one and three will strengthen the requirements.

b). While Self Directed Support is a process, and personalisation is the output, there remains the question of what outcome is being sought. Comments from various leaders suggest that there is indeed an outcome in mind. It is along the lines of securing the best possible levels of independence and well being for people who need Social Care. This could be captured in a fourth principle along the lines of:

"In all relevant decisions taken by Local Authorities, paramountcy should be given to ensuring the best possible independence and well being of people who require Social Care"

In the same way that it will be important to have a legal requirement to focus on the output of processes, so I believe it will greatly strengthen the Bill if it also ensures a focus on the overall outcome that is driving the whole agenda of reform.

The Options

I believe that service users and practitioners will struggle to make sense of the wording of options two and three. It is hard to imagine a scenario where a service user would opt to relinquish their ability to choose their service. The only exception will be where a service type has been chosen and there are several providers who could provide it. The service user may well be indifferent about who delivers it. But, arguably, choice of provider is a significantly lesser decision than choice of service type in the context of designing a system that leads to the most creative Support Plans. Option three would be wasted if it addressed only choice of provider. Also it would still leave the problem of deciding if the choice of service type was an option two or three route.

I believe it will be more readily understood by all if the distinction between options two and three is choosing a regulated service (option three) or one that is not regulated and is unique to the person (option two). Local Authorities have a responsibility through their strategic commissioning function to ensure a market place of regulated services. In that sense, choosing one of these services can be described as the Local Authority making the choice.
A distinction along these lines will also have strategic relevance, with Local Authorities gathering information to show the extent to which people are opting to use services outside of regulated services. This understanding is arguably no less important strategically than whether they choose to manage the money themselves (option one) or ask the Council to do so (option two).

Colin Slasberg
Independent Consultant in Social Care
19 April 2012
Thank you for the opportunity to comment on the above. Please find below South Ayrshire Council’s comments relating to the Social Care (Self-directed Support) (Scotland) Bill consultation process.

1. Views on the Bill as a whole

1.1 South Ayrshire Council is supportive of the principles of the Bill, considering Self-directed support to be an essential element of a continuum of support and care for individuals and their families. Indeed we have appointed a Programme Manager to drive forward a whole systems approach to shifting of the balance of care, which includes implementation of enablement and self directed support as the integral foundation stones of future services for our citizens. The intrinsic principles of “involvement”, “informed choice” and “collaboration” are embedded into social work practice and this approach enables practitioners to provide more responsive, personalised services with a truly outcome focussed approach at its heart.

1.2 There are some concerns with regard to the title of the Bill, with the introduction inferring the focus is that of social care provision. At a point in time when we are working increasingly with colleagues in the NHS on Shifting of the Balance of Care and self management service developments including enablement, the integration of community based services, a Joint Commissioning Strategy and various other interlinked joint strategic developments, it would appear that there is a missed opportunity to address the need for joint work with regard to achieving a focus on integrated self directed support.

1.3 With respect to 1.2 there would be the potential for some joint funded response to individual needs e.g. preventative support and palliative care needs, should the focus of the Bill be more inclusive of NHS and social care. Whilst it is appreciated this would require a need to address some systemic and cultural issues, the very move towards integration would assist in this process. It is of course understandable that there are some areas of NHS provision which would be unsuited to SDS options, however where there is a community based focus for service provision there may be options which should be explored.

1.4 It would be of assistance to provide clarity regarding the expected roles and responsibilities of individuals and carers accessing support. There is a need to emphasise that the approach in providing self-directed support is
outcomes focussed, with these being central to the self-directed support process. The role of Individuals and their carers, in respect of their individual budget, requires to be intrinsically linked to the mutually agreed outcomes, with both parties being responsible and accountable for ensuring that the funding is appropriately utilised.

2. Options for self-directed support

2.1 In principal the options being offered are clear and may be viewed as a positive development in the modernisation of support services for individuals and their carers. There is recognition that unpaid carers are vital to providing support within our communities, with an emphasis on working in partnership. In addition there is a marked shift in relationships between service users, carers and their role in their support planning and implementation, enabling rather than creation of dependency. This does represent a significant cultural shift for all stakeholders, which will require investment in time, education, development of supportive processes and funding.

2.2 There requires to be increased clarity and guidance on the manner in which partnerships between carers and the statutory services may be enacted. There are concerns that through placing the proposed power to support carers as a duty may result in a significant impact on costs and therefore other areas of public spending for local authorities.

2.3 By increasing the options to include the introduction of Individual Service Funds, there will be a need to address issues linked to the changing relationships and roles service that providers will have with service users, carers and local authorities. Whilst much of the focus of the Bill is on the duties of the local authority, there needs to be guidance and support provided in enabling service providers to adapt their businesses to accommodate this alternative approach. For service users and carers there also requires to be provision of a range of information relating to how this model of support may be meaningfully accessed. Whilst there is an onus on the local authority to provide some of this information, there needs to a framework to support all stakeholders in developing effective and equitable access particularly to this new and alternative option.

3. Availability of SDS options across all children and adult services

3.1 In principal South Ayrshire Council is supportive of this approach being adopted across all client groups. It would be unacceptable, given the principles of the Bill that there are blanket exemptions of certain groups of service users. There does, however, need to be an awareness of the complexities in managing the implementation process across the groups, with
varying legislative and policy structures requiring to be integrated into a meaningful, process. Currently local authorities do have a number of operational alignments and variations, which will need to be taken into account when developing the infrastructure to support the implementation processes.

3.2 There requires to be further clarification regarding to how to support access to self-directed support for certain categories of need e.g. children who are looked after, adults with severe and enduring mental health problems and adults with issues relating to alcohol and drug misuse. Ensuring availability of self-directed support to certain groups requires to be a meaningful experience for them and their carers, ensuring risks are appropriately managed.

3.3 The extension of self-directed support to individuals who wish to access residential care is another area that would require further consideration and guidance. For those wishing to access residential care through use of a direct payment there will potentially be an issue of varying costs, resulting from individuals not benefiting from the protection of the national care home contract and being classified as “self-funders”. Furthermore local authority residential resources are often more expensive than those provided by the independent sector. Should the individual budgets be set at the national care home contract rate, we may be creating an undesirable anomaly limiting choice and impacting on business viability.

4. Modernisation of Direct Payments

4.1 Within the Bill there is significant focus on the modernisation of the current Direct Payments system. This is generally welcomed, given the disappointing uptake to date. It would be beneficial, however, if information and guidance was to be made available with regard to Option 2, as indicated in 2.3 above.

4.2 In addition local authorities would benefit from the provision of regulations and guidance relating to their role in providing and monitoring access to self-directed support, particularly with regard to the discretion to refuse access to one or more options.

5. Individual responsibilities and Risk Enablement

5.1 Self-directed support whilst being recognised as a positive way forward does imply a significant cultural change for all stakeholders. This requires an investment in change management and an educational process which is inclusive of all groups involved. With the right of access to self-directed support there comes responsibilities. For service users and their carers this
includes the responsibility of accountability to the local authority, their potential employees and to themselves. In the past this has been one of the areas of concern resulting in service users and carers not taking up direct payments. Within this context there is a need to develop a supportive framework to enable positive risk taking and successful use of self-directed support and to share the risks of supporting and protecting some of the most vulnerable people in society.

6. Financial Memorandum

6.1 There is clear recognition of the complexity of managing the fundamental change process required in implementation with an awareness that local authorities are at varying points in this process. The Self-directed Support Strategy highlights this transformational change process will be of 10 year duration. Within this context there is an anticipated cost savings benefit in the longer term although in the short to medium term there is going to be a significant cost to local authorities and potentially service providers, in achieving the changes required to support implementation.

6.2 The funding made available to support this change, whilst welcome, does represent an anticipated shortfall, with there being concerns relating to the impact this will have on current support provision and infrastructure at a time when there are other constraints on local authorities and their partners. There will be a need to identify bridging funding to support dual running costs, as new processes are established and rolled-out.

6.3 Prior to consideration of roll-out of self-directed support, systems and infrastructures require to be fully developed, and staff, service users and carers trained. In conjunction IT systems will require to be reconfigured, accommodating both old and new practices in the interim. Time and funding for these exercises is clearly constrained.

6.4 As indicated above the changing relationship with service providers requires investment of time and funding. For many local authorities this may result in withdrawal from block contracts and a need to review and support changes within the local marketplace. Whilst such changes occur it is vital that we do not compromise current service provision to service users and their carers, with a concurrent awareness of the impact on individual employees and local economies.

7. Other Matters

7.1 The task of implementation across all service user groups is one of the biggest changes to occur in social work provision. This is occurring at a time
of change with regard to other aspects of provision, including the proposed integration of health and social work provision. It is essential, therefore, that consideration is given to making this a conjoined process which truly provides an effective, efficient, economic and meaningful response to individual needs. Consideration therefore needs to be given to the timing of implementation. To implement across all groups would result in enormous stress to all service user groups, with a risk of failure in a number of areas impacting on what we would prefer to be a positive experience for service users and carers. It is essential that we have the key component systemic parts in place, tested and working to support effective roll-out. The current 3 year funding and attached expectations do set tight time constraints for all parties.

South Ayrshire Council
24 April 2012
Social Care (Self-directed Support) (Scotland) Bill

South Lanarkshire Self-Direct Network

1. Are you generally in favour of the Bill and its provisions?

Yes, we are generally in favour of the Bill and its provisions.

2. What are your views on the principles proposed?

We are in agreement with the 3 principles that have been proposed. We would also like to stress the importance of information, advice and support being readily available to enable individuals to make the best possible use of the opportunities that Self-Directed Support provides.

3. What are your views on the four options for Self-Directed Support proposed in the Bill?

We believe that the 4 options will provide more choice and control for individuals and create a more flexible, creative approach to providing support which will enable a person-centred approach that will result in better outcomes.

4. Do you have any comment on the proposal that the Self-Directed Support options should be made available to children and their families, together with the proposal that the degree of control a child may have over the process should vary with age?

We welcome that the Scottish Government has taken on board our previous comments that consideration should be given to an age range being introduced for children to have a degree of control over the process.

We agree with the proposal that the Self-Directed Support options should be made available to children and their families and agree with the age ranges outlined within the easy read version of the bill.

5. Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

We agree with the provisions made relating to the provision of information, advice and support that should be offered. We also believe that welfare and financial guardianship should be applied if an individual cannot make an informed decision.

6. Are you satisfied that the method for modernising Direct Payments in the Bill will result in the change that the Government seeks?
Yes. The method for modernising Direct Payments in the Bill will result in the change that the Government seeks. The change will enable Direct Payments to be used in a more flexible, creative way and improve outcomes for individuals.

7. **Do you have any views on the provisions relating to adult carers?**

We agree that a discretionary power should be made available to enable local council’s to continue to decide if Self-Directed Support should be available to carers.

8. **Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?**

We agree with the approach taken by the Scottish Government not to place restrictions on who can and cannot be employed the only exception being the employment of close relatives which should still remain at the local council’s discretion.

9. **Do you have any views on the assumptions and calculations contained in the Financial Memorandum?**

We don’t have any specific viewpoints on the assumptions and calculations. We understand though that additional money is required to be spent initially on information, advice, support, training and capacity building.

In relation to costs as stated in Pt 8 we agree that employment of close relatives should only be at the discretion of the local council and that also cases should be looked at on an individual basis and decided on merit.

With regard to Direct Payments being paid gross or net we believe that there should only be one charging system in operation and that charging should be on a net basis.

We agree with the Scottish Government’s viewpoint that further consultation is required prior to the introduction of Direct Payments for Residential Accommodation.

10. **Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?**

Yes. We are satisfied in the assessments that have taken place and the conclusions reached.
11. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

The only other aspect would be in relation to pre-assessment the flowchart mentions this would be carried out by local council’s. We know that local Council’s have a duty to assess however reference has been made in the past to other organisations carrying out this task. We feel that additional clarification is required on this point and on whether additional funding will be made available as is being provided for information, advice, training etc.

South Lanarkshire Self-Direct Network
26 April 2012
Social Care (Self-directive Support) (Scotland) Bill

Cath Steven (individual)

I live in the Glasgow City Council area and am the main carer for my 19 year old disabled daughter. My daughter was assessed last year, April 2011 by Glasgow City Council under the Self Directed Support system and a budget was implemented from Dec 2011. My daughter's day support and respite are provided by a specialist service which is able to meet her complex health and disability needs.

The budget allocated under the SDS by Glasgow City Council has halved her day support and respite care. I am afraid to say that my experience of SDS is not a good one as due to her services being reduced, I am unable to work part time (I had to leave my job to look after her the days that she's at home).

I also was told by Glasgow City Council that it was my choice to use the service and that I could use a cheaper service and get better use of the SDS budget. When I advised the council that I use the service as it meets my daughter's needs and this surely was the point in Personalisation/SDS, the response from Social Work Dept was "it's up to you".

It seems to me that Glasgow City Council have used the SDS process as a cost cutting exercise rather than a needs led package in my daughter's circumstances. They carried out the assessment by completing a Self Evaluation Questionaire (SEQ) which was basically a tick box exercise and this was then used to decide the budget for my daughter.

I also cannot understand why Glasgow City Council have already completed the SDS process, when your committee members are undertaking a visit to hear from people who will be affected by the provisions within the Social Care (SDS) Bill. Is Glasgow City Council then premature in applying SDS, or am I missing something? How can a council implement a system which is currently going through the Scottish Parliament?

I apologise for my ignorance regarding laws, bills, etc and the process of going through Parliament, but I would like to know why Glasgow City Council have applied the SDS system if it is not yet been decided by the Scottish Parliament.

Mrs Cath Steven
21 April 2012
Are you generally in favour of the Bill and its provisions?

Yes

What are your views on the principles proposed?

We are very much in support of the roll out and principles of SDS and personalisation. We have some reservations about the introduction of statutory duties in relation to SDS and the timescales for implementation (in relation to the ten-year time span for implementation of the national strategy). We welcome the resource made available to support the implementation of SDS but question whether this is sufficient. We are however, committed to making best use of the opportunity and the provisions in the legislation to drive forward positive change.

What are your views on the four options for self-directed support proposed in the Bill?

We agree that the range of options is appropriate but consider that it will not be possible to make available all options for everyone without a lengthy process of implementation. Fully developing the four options will require work at a range of levels - commissioning strategies; development of the market (internal and external providers); support and information services; awareness raising with service users and carers and with key staff (including health staff) to support the different options. A significant level of business support will be required to support the delivery of the four options.

Do you have any comment on the proposal that the self-directed support options should be made available to children and their families, together with the proposal that the degree of control a child may have over the process should vary with age?

We are in agreement with this proposal. Chronological age may be a crude measure in terms of determining whether a child should have a degree of control over the SDS process.

Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

Effective support and safeguards are required at a local level to support this (this has significant resource implications). We have some concern that making decisions on the options may be stressful for service users.
Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?
We consider this to be an appropriate method and agree that flexibility is required.

Do you have any views on the provisions relating to adult carers?
We are in agreement with the provisions, but consider that there is a need for clarity in relation to the distinction between services for the carer and for the service user e.g. respite care.

There is a need to ensure that carers are supported when care arrangements break down. Carers can be put under considerable stress when managing direct payments and care arrangements (e.g. when a carer cancels at short notice). The arrangements under each of the options must ensure that carers are not left to deal with this situation on their own.

Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?
We are in broad agreement with this approach. This level of flexibility is required is SDS is to “work”. We do however recognise that there will be a need for clear guidance in relation to this to ensure that individuals are safeguarded, not subject to any undue pressure, and that employment legislation is adhered to.

Do you have any views on the assumptions and calculations contained in the financial memorandum?
There will be long term costs and implications, particularly in terms of support to service users and carers. Recognition that when this approach is embedded costs will reduce (e.g., implementation costs). The differential between traditional services and services provided e.g., through a direct payment are not likely to be significant but there should not be an assumption that SDS will enable reduction in the costs of care packages - this poses a significant reputational risk.

Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?
Yes, but would highlight the way in which limited of providers may restrict range of options.

Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?
No response

Stirling and Clackmannanshire Council Joint Social Services
24 April 2012
Views on the Bill as a whole

1. Are you generally in favour of the Bill and its provisions?

I am in general agreement with the Bill, and its provisions.

However, it seems to be akin to free personal care for the elderly in attempting to do something without regard to the potential costs. One cannot legislate for change, but expect no financial resources to be required to implement the changes.

2. What are your views on the principles proposed?

The three principles of involvement, informed choice and collaboration are a good start.

However, there is a significant risk that the organisation i.e. Local Authority or NHS Board can pay regard to these principles, and yet the individual will still see no difference in the service or the outcomes.

It will be very important that local leadership and management accept that the role of the individual citizen is vital, and that collaboration with individuals, families, communities and third sector organisations could bring about real change.

3. What are your views on the four options for self-directed support proposed in the Bill?

It is good to see the options - “direct payment”; “direct available resource”; “mix of approaches”; or, “local authority arranged support”.

All of these options to the individual will potentially cost the Organisations more money to implement and deliver than existing arrangements.

Local Authorities and NHS Boards may therefore not be happy to implement any changes, as they are to receive no resources.

My understanding is there are currently < 4,000 Personalised Budgets and Payments in operation in Scotland, so take up appears relatively slow.

The significant barrier is that (as far as I know), no system or process currently exists in Scotland’s public sector to enable them to happen.

The status quo is based on Organisation-centric processes.
Individuals will only receive personalised care when they have the means to engage with it, and to enable it to happen. Individuals cannot currently express their preference, choice or options in a way that is convenient, trusted, is with their consent and is under their control.

EU Draft Legislation is placing significant additional pressure on existing Customer Relationship Management, and Organisation-centric ICT architectures.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation)


Article 18 introduces the data subject's right to data portability, i.e. to transfer data from one electronic processing system to and into another, without being prevented from doing so by the controller. As a precondition and in order to further improve access of individuals to their personal data, it provides the right to obtain from the controller those data in a structured and commonly used electronic format.

With this impending EU legislation on privacy, consent and data, Scotland should take a lead and use this legislation to state:

“In order for organisations to obtain a single view of the customer / individual / patient / citizen, information must come from the individual. The individual is the only point of integration. “

Could we change the model, turn it on its head and let the Individual express their choice, preference and base this on their consent, and their volunteered personal information?

Then the individual will be empowered and will have the digital means to participate in digital public services on their terms.

Could there be small, agile tests using these new models for each of the proposed new methods to see what they cost? These would inform the Financial Memorandum at 9 below.

4. Do you have any comment on the proposal that the self-directed support options should be made available to children and their families, together with the proposal that the degree of control a child may have over the process should vary with age?
I believe that the Self Directed Support options should be made available to children, and that from age 16 the child should have a degree of control with total control at age 18

5. Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

I am generally satisfied, although I wonder whether there should be Universality of provision of information and advice written once for all Scotland, or whether each local authority should be allowed to choose.

Should there be a basic minimum for provision of information and advice? Should it not be common across all Scotland? Are we not asked to believe in "shared services" in an age of austerity, where these make sense?

In all cases, the choice of the individual must come first, and they be allowed to choose their own support.

Where individuals have difficulty in making an informed decision, then additional Finance must be provided to enable their family or carer(s) to assist. This is a reason why I think that the Bill must trigger financial consequences (see 9. below)

Direct payments

6. Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?

No.

There is no obvious means whereby the aspirations and outcomes in the Bill can be delivered if there are no Financial resources.

Local Authorities and NHS and other statutory agencies will need to enable much more patient-centric and individual-centric processes, in order for the Bill to bring about the changes and for the Government to enable individuals to see change.

This will require e.g. systems thinking, co-design, individuals to participate in service design and a program in itself.

These system and process changes will necessarily cost something.

The separate point about Section 13 giving Minsters powers to direct – surely this will generate costs, if used.
7. Do you have any views on the provisions relating to adult carers?

No comment.

8. Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?

Yes, I agree with this approach.

Financial Memorandum

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

It cannot be right, or correct, to assume cost-neutrality in the short or the long term. The Committee should pay heed to Care for the Elderly, and the principles learnt there. It is not possible to legislate for change, and expect a free delivery service.

To do so denies the fact that processes will have to change for individuals to play a much greater role. This will inevitably have costs and benefits for Local Authorities,

If the assumption is cost-neutrality, then the Bill will not deliver.

If the effect is cost-neutral, the Bill will fail. It will either be more or less expensive to deliver the desired Outcomes. Any other conclusion seems to be avoiding difficult discussions.

Effects on equal opportunities, human rights, island communities and sustainable development

10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?

No comment

Other matters

11. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

The provisions of the Bill do not currently appear to envisage any real change on the ground. If they did, then there would be costs, and financial resources to enable change to happen.
If there is no money to make change, then the Bill should seek to outline what outcomes are expected to flow, so that the purposes of the legislation are achieved.

However, this would appear to fail the desire of the Government – that the legislation will enable greater roles and responsibilities for the individual with respect to Self Directed Support.

I believe that the forthcoming EU Regulation (incl. Article 18) supports the views that the role of the individual should be given much greater consideration, in a true and honest sense, and that the Self Directed Support system be re-built in small, agile ways using systems thinking, service design and co-production techniques.

Only then will individual citizens be truly empowered and have the digital means to participate in digital public services.

Alex Stobart (individual)

13 April 2012
Views on the Bill as a whole

1. Are you generally in favour of the Bill and its provisions?

Yes. NDCS Scotland is supportive of efforts to encourage involvement, informed choice and collaboration. NDCS Scotland is hopeful that under these provisions, support for families with deaf children will enable them to:

- Nurture their child’s development
- Help the child reach their full potential
- Diminish barriers and remove risks posed by deafness to the child’s health, safety, intellectual development and overall welfare.

2. What are your views on the principles proposed?

NDCS Scotland is generally supportive of the principles proposed and hopes these principles will lead to better involvement from individual children and their families to ensure they are having a direct say on the type of support they receive and want. NDCS hope these principles will ensure that any staff providing support for deaf children will have the appropriate expertise in working with deaf children and their families.

3. What are your views on the four options for self-directed support proposed in the Bill?

NDCS Scotland welcomes the range of options available for self-directed support proposed in the Bill as the needs and support needed by each deaf child can differ greatly, as can the willingness of deaf children, young people and their parents to take full control of how to direct support.

The sliding scale of support is useful as it can be adapted to meet the needs of the individual child or family. Every deaf child will have different strengths and needs. The population of deaf children encompasses:

► Diverse language preferences, for example

- British Sign Language (BSL)
- Spoken English
- Other spoken or signed languages (e.g. Sign Supported English)

► A range of communication strengths, for example

- Better productive spoken language than receptive language skills
- Better receptive skills than expressive skills
- The ability to mix and match between visual and aural methods depending on who they are communicating with

► A range of communication and language needs, for example
• Many deaf children do not have age-appropriate literacy skills
• Some acoustic environments are more conducive than others to good communication
• BSL may be used at home but not at school

► Users of a wide range of continually emerging technologies that are available for deaf children and young people and deaf children and young people with additional needs.

► Deafblind children and deaf children with additional needs.

Whilst this is just an overview of the different strengths and needs a deaf child or young person can have, it demonstrates why the tiered system could work well for this client group, as their needs and willingness to take full control of their support will differ greatly.

No matter what tier of self-directed support a deaf child or their family choose, it will be critical for service managers to ensure that whatever staff support this choice have the skills to work with deaf children and their families, particularly to ensure that the child’s view is properly taken into consideration in the support provided. Staff must have a good knowledge and understanding of the range of implications of childhood deafness and a strong practical understanding of the positive development potential of deaf children. Staff must have full understanding of deafness if they are to ensure they support a child in the design of their self-directed support as identified in option 3 and 4.

NDCS Scotland is also aware that not all deaf children, young people or parents will feel confident enough to take full control over their support and in this case staff must still find tools to consult with these individuals to develop the best level of support that suits their needs.

4. Do you have any comment on the proposal that the self-directed support options should be made available to children and their families, together with the proposal that the degree of control a child may have over the process should vary with age?

NDCS Scotland supports proposals made for the self-directed support options to be made available to children and their families, together with the proposal that the degree of control may have over the process should vary with age.

NDCS Scotland welcomes the proposal that parents will be encouraged and supported to use self-directed support with a view to enabling their children and young people to access the same kinds of opportunities and activities as their non-disabled peers, and we can see that self-directed support should play a key role in sustaining and delivering the GIRFEC approach.

NDCS Scotland welcomes that the framework of choice and control will apply to children’s social care and support in the same way that it applies to adults support. But we would sound a note of caution – to ensure that the services are in place to meet the choices of families of deaf children, an appropriately skilled team with specialist knowledge of childhood deafness is critical.
NDCS Scotland are pleased that young people aged between 16 and 18 will be able to choose and manage all available options, including direct payment. While this is very positive and gives young people a great deal of responsibility NDCS Scotland is concerned that some deaf young people may not be ready or feel able to control their support. NDCS Scotland would like to see extra support and guidance offered to any young people aged 16-18 who choose to manage all the options available and ensure that they are able to cope with the high level of responsibility this requires, and would suggest that education services are best placed to deliver this, particularly with the curricular flexibility that the Curriculum for Excellence affords. NDCS Scotland would also recommend that the review period for 16-18 year olds is more frequent than it currently is set for adults.

NDCS Scotland welcomes that children under 16 years old, their parent, or person with parental responsibility will be able to choose the relevant self-directed support option, and that they will have full powers to manage the available resource or direct payment. NDCS is aware that many parents will welcome this responsibility as many currently do not feel the support being provided for their children is being well placed, and invariably would like more or less of a given support service. NDCS Scotland is concerned that this may not be the case for all parents some of whom may not feel capable of following the self-directed support option but may feel pressured into choosing it in the best interest of their child.

NDCS Scotland would like to see every local authority in Scotland employ the services of, or invest in training existing staff to become, a specialist social worker for deaf children who has:

- An understanding of the complexity and variety of linguistic and psychological developmental challenges deaf children and young people might face
- An awareness of deaf cultural identity and its implications for deaf children and their families
- Experience of the range of developmental trajectories of deaf children and young people
- An understanding and up to date knowledge of what technology and equipment exists and how to use it
- An ability to recognise and assess the strengths and needs of individual deaf children within their particular family and social environments.

This type of expert knowledge is key to ensure that all parents of deaf children are properly advised if they decide to use the self-directed support option for their child’s support. NDCS has produced a Practitioners Guide to Social care for deaf children and young people which provides detailed information about
the mechanisms of providing specialist social care support for deaf children and their families. NDCS Scotland supports the compliance with duties under both the Children (Scotland) Act 1995 and the UN Convention on the Rights of the Child, that the child should be able to exercise the maximum possible input to the initial decision and all subsequent decisions on how to meet their assessed needs.

5. Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

90% of deaf children are born to hearing parents with little or no prior experience of deafness. It is critical that parents have access to specialist and unbiased information about the variety of communication methodologies and technology available to their child to inform their decision making. Effective multiagency communication is therefore also critical to the success of the proposed model to ensure consistency of approach, support and financial resource around the deaf child at the centre of the process. NDCS Scotland would like to ensure that all the information and advice that is offered is made available in a number of formats to ensure that BSL users have access to all the information available. NDCS Scotland is pleased that that exceptions to a person’s choice have been made available, for instance:

- Where it is clear that the option itself or the implementation of a particular option will fail to meet assessed needs and desired outcomes. This reflects the local authority’s ongoing duty of care to meet assessed needs.

- In the case of direct payments, where the individual or type of support selected is one of the people or circumstances defined in regulations as being ineligible for direct payments.

NDCS Scotland wants to see a balanced practice of empowering people to manage support against potential risk to their assessed needs. NDCS Scotland believes that input from skilled care professionals and statutory guidance is needed to ensure that self-directed support does not overrule legislation to protect people at risk from harm.

NDCS Scotland agrees that equal access to all the self-directed support options must be given to everyone but this can only happen if we can ensure that the options they use do not contravene the local authority’s ongoing duty of care.

6. Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?

NDCS Scotland supports the modernising of direct payments and believed it will improve the flexibility of support and better outcomes for individuals. NDCS is concerned that the proposals may result in all services provided by local authorities changing to charge services resulting in many people who do
not qualify for direct payments losing out on key services currently provided free from local authorities.

7. Do you have any views on the provisions relating to adult carers?

N/A

8. Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?

NDCS Scotland does agree with the approach by the Scottish Government not to place restrictions on who may be employed by an individual as quite often family members who currently carry out this role may be the most suitable person for employment. NDCS Scotland is concerned about the level of responsibility an individual must take as an employer and must be properly supported to ensure they understand the practices they must follow in the recruitment practice.

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

N/A

10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?

N/A

11. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

N/A

National Deaf Children’s Society
24 April 2012
1. Are you generally in favour of the Bill and its provisions?
Yes.

2. What are your views on the principles proposed?
We agree with the principles proposed.

3. What are your views on the four options for self-directed support proposed in the Bill?
We approve of these as they maximise choice and don't assume an 'all or nothing' approach. We are pleased to see a recognition in the Policy Memorandum of the responsibility and accountability that is inherent in Option 1, as well as the recognition that, if choosing Option 3, the local authority should continue to maximise the degree of choice and control available to the individual.

4. Do you have any comment on the proposal that the self-directed support options should be made available to children and their families, together with the proposal that the degree of control a child may have over the process should vary with age?
This appears to be a measured approach.

5. Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?
Yes.

6. Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?
Yes, we agree that the regulations will be helpful in further supporting the implementation of changes required.

7. Do you have any views on the provisions relating to adult carers?
We agree that once the need for support has been identified that there should be a duty to offer from the four options.

8. Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?
We are concerned that the Personal Employer may be vulnerable because of the way that the Protection of Vulnerable Groups scheme operates in respect of them. They will only be able to have access to a Membership Statement. They can ask the potential personal assistant to let them see their Scheme Record if they have one, but the Personal Assistant can only possibly have one if they have previously been employed by an organisation. This means that the Personal Employer may not know about any number of things that may be on a Membership Statement that would merit risk assessment by them in order to make an informed decision about whether to continue with offer of employment.

There is one further scenario that could leave the Personal Employer at risk because of how the PVG scheme operates. If the potential Personal Assistant has presented the Personal Employer with their Membership Statement, obtained themselves, without the Personal Employer having been a counter signatory, and then is subsequently barred from working with protected adults, there is limited opportunity (perhaps none?) for the Police to be able to advise the Personal Employer, (as they may choose to do) as they will not know who the employer is.

So while it would seem reasonable to publish statutory guidance, ensuring individuals are aware both of their duties as an employer and of the risks involved in choosing not to adopt safe employment practices, there are limitations imposed on that safe practice by the PVG scheme.

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

Transformation costs for local authorities - We note that the recent Stirling University study on cost of SDS is cited and that this study readily acknowledges that the findings were based on direct payments only. It is difficult to see how conclusions drawn from this can be used as the basis to predict costs relating to other forms of self-directed support.

We are aware of a number of local authorities who are unable to commit to further direct payments as they have no money freed up from current service provision to accommodate that. In order to free up money, there is a pushing down of hourly rate for Providers. In some cases, this mitigates against full cost recovery for Providers which we know Scottish Government is committed to. We would suggest that Providers are sharing the associated implementation costs.

We would like to see the bridging finance alleviating these difficulties for people who want a direct payment, for Providers, as well as for local authorities but note that in England, there was no formal evaluation of how the money made available to local authorities there, was used or the effectiveness of that.
10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?

Yes, we are satisfied in terms of the conclusions reached by Scottish Government as reflected in the Bill and associated documents. Local authorities are being entrusted to take this forward within the spirit of both the Bill and Human Rights legislation.

11. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

No

The Richmond Fellowship Scotland
24 April 2012
Social Care (Self-directive Support) (Scotland) Bill

The Stroke Association

Are you generally in favour of the Bill and its provisions?

Yes, we are generally in favour of the Bill. We stress however that implementation must follow all three principles to be successful in securing greater control and choice for people who use support services.

We believe that the Bill should include specific reference to access to independent advocacy for people offered self-directed support (SDS). An effective independent advocate will work to ensure that; an individual’s rights are upheld, that they make informed decisions, they understand the consequences of their decisions and that they are fully involved in decisions that effect them.

What are your views on the principles proposed?

We are strongly in favour of the three principles. We believe that all three principles are necessary. We take this opportunity to give a strong message that stroke survivors and their carers must have readily available information and support to access SDS that is individually tailored round their communication needs. Only with truly informed choice will the principles be upheld and followed.

It will be important that effective evaluation processes are in place as the Bill is implemented to ensure that these principles are being maintained.

What are your views on the four options for self-directed support proposed in the Bill?

We are generally in favour of the four options. Given the nature of stroke and the individual’s unique journey to recovery we would wish to stress the importance of reviewing the person’s delivery preferences at agreed intervals, especially during the first year following stroke.

4. Do you have any comment on the proposal that the self-directed support options should be made available to children and their families?

We would wish to see all of the options available to child stroke survivors and their families.

5. Are you satisfied with the provisions relating to the provision of information and advice?

Although we are generally satisfied with the provisions relating to the provision of information, support and advice, we strongly feel that this must be properly resourced and accompanied in implementation by practical guidance and support for relevant staff. We stress the importance of getting
communication right for each individual to ensure that the choices people make in relation to SDS are truly informed. We would like to see a right to access independent advocacy for anyone considering SDS and especially where people have cognitive and/or communication difficulties.

For stroke survivors it would be important that relevant staff have training, which includes the direct input of stroke survivors, on the wide ranging effects of stroke with particular attention to communication needs. We also feel that all stakeholders should be better aware of the supports and agencies, such as independent advocacy, that stroke survivors could access to help them with the whole process from first contact through to assessment, decision making and any resulting challenges.

6. Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?

We are generally satisfied that the method of modernising direct payments in the Bill through secondary legislation and regulations will result in the changes the government seeks.

It will however be important that adequate safeguards are in place to ensure that local authorities do not use their ‘discretion’ in ways that impact unfairly on the individual’s right to determine their own support. We feel strongly that the discretion available to local authorities should be limited and that clear guidelines must be included in the regulations.

7. Do you have any views on the provisions relating to adult carers?

We are pleased that SDS options will be offered to carers. We think that clarity is required between the needs of the carer and the cared for person. Agencies offering help with SDS processes should have policies in place to both reduce potential conflicts of interest and to minimise their effects.

The Policy Memorandum states in relation to Island communities where there is a limited supply of appropriate care and support providers and where there are suitable family carers who are willing to become paid employees for the supported person, that under the more flexible SDS approach paying family carers may be a way forward for some individuals.

We are aware that some stroke survivors and their unpaid carers are reluctant to seek support. If the possibility of employing a family carer was advertised, more stroke survivors and their families may come forward for at least an assessment for community care support. Under the regulations the decision on whether or not to sanction the employment of a close relative will continue to rest with the local authority. We welcome this safeguard. We would add that where an option to pay a family carer is under consideration, the person should be offered the additional safeguard and support of an independent advocate. We would wish to see this enshrined in the Bill as a right.
8. Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?

Yes we are in favour of this approach. We feel it is important that stroke survivors and carers can choose the people and the agencies that provide their support. It will be important to ensure that safeguards are in place to ensure that individuals are not coerced when coming to their decision. This is in line with the Stroke Association policy and practice in person centred approaches and our belief that equality means shared rights and responsibilities.

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

We welcome the recognition given to the importance of addressing costs indirectly associated with the Bill implementation if the transformational changes are to be made to the culture, systems and approaches relevant to social care.

Linked to our responses to questions 2 and 5 we are concerned that if adequate resources are not invested in ensuring that people affected by stroke receive information about SDS in a way that is tailored to their individual communication needs they be indirectly discriminated against when this Bill is implemented. We recognise that funding has been identified for both workforce development and information and advice we will be interested to find out what positive impact this investment will have on people affected by stroke.

Independent advocacy will have a key role to play in supporting people affected by stroke to access SDS. The Stroke Association is delighted to have received Scottish Government funding to help increase awareness amongst stroke survivors and carers about SDS and the capacity of independent advocacy organisations to support people who may need their support to access SDS.

There has been a growing recognition within national policy and legislation about the important role that independent advocacy can play in relation to equality of opportunity. We would like to see access to independent advocacy specifically mentioned within the Bill, separated out from the provision of information and advice about SDS.

10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?

We have some concerns about the assessments laid out within the Financial Memorandum. In particular, ‘the Stirling study noted the importance to SDS users of investment in advice and advocacy services’. Across Scotland the investment in independent advocacy focuses strongly on mental health and
learning disabilities. There continues to be very little independent advocacy available to people effected by stroke or other physical disabilities.

The Stroke Association project mentioned in question 10 will help to increase the skills, knowledge and confidence of independent advocates to work effectively with stroke survivors. However, without increased investment in direct advocacy provision the ability of stroke survivors and their carers to access it will continue to be severely limited.

We agree that local authorities will not be required to set up or invest in a significant number of new organisations to meet the advocacy needs of people looking to access SDS, however, there will be a need for increased funding to enable existing advocacy organisations to respond to the potential increase in demand and to extend the 'client groups' they currently work with as necessary.

11. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

Stroke is a condition where many survivors are likely to require combined health and social care supports in order to make the best recovery and build a good life following stroke. This is especially true on discharge from hospital. The stroke association are pleased to see that two pilots have taken place in joint health and social care SDS approaches. We understand that some stroke survivors have benefitted from this pilot work and that the outcomes are positive. We feel the Bill gives an ideal opportunity to support joint working especially around long term conditions such as stroke. It will require more effective partnership working across services to develop a system for enshrining choice and control for those who require both health and social care. We think there should be a combined duty on health boards and local authorities to consider SDS for people with long term conditions from first discharge onwards. Outcomes focussed assessment is applicable to health elements of an overall recovery and/or condition management programme and self management processes should surely be linked to SDS from the outset.

Given the limited capacity within the NHS to delivery longer term rehabilitation services e.g. physiotherapy, speech and language therapy to people affected by stroke we feel that people should be able to use their SDS funding to buy this service from a private or third sector provider.

The Bill says that individual should be empowered to play a full and equal part in informing the initial assessment of need. The assessment is crucial in giving people the opportunity to think through and discuss their care needs and aspirations for the future. It is the building block for agreeing outcomes. The stroke association is aware that some people have not been aware that an assessment is taking place. We would wish to see very clear guidance accompanying the Bill in implementation about both social care and joint health and social care assessment. We welcome the outcomes focussed assessment model Talking Points and the provisions made for training staff in
this approach. We would hope implementation of the Bill will not lead to people being assessed by numerous agencies to determine their social and/or health care needs.

The Stroke Association
23 April 2012
Turning Point Scotland

Turning Point Scotland provides person centred support to adults with a range of complex needs. We work with people who have a learning disability or an autism spectrum disorder, and those who find themselves in the criminal justice system or experiencing homelessness, substance misuse or mental ill health. We learn from service users and seek to influence social policy.

Q.1 Are you generally in favour of the Bill and its provisions?

We are generally in favour of the Bill, and certainly support the policy aims of maximising people’s choice and control over, and their involvement in the design and delivery of their support. Our concerns relate to the implementation of this approach, so while we see this as a largely positive Bill we will highlight areas where we feel it should be strengthened.

The scope of this Bill is broad, applying to all community care services, as defined by Section 5A of the 1968 Act. Although the drive for self directed support has come from the disability field, and the majority of work and pilots to date have related to this care group, it is our understanding that this Bill could equally apply to substance misuse, homelessness and housing support services. As an organisation working with a wide range of support needs, we see the value in extending the concept of self directed support, and involving more people in their support; however we are concerned that little thought has been given to the implications beyond the disability field, and the structures and approaches that may be required. We would seek clarification on the intended scope of this Bill, and if indeed it is to apply across all community care services, we would ask what steps have been taken to consider the wider implications.

Q.2 What are your views on the principles proposed?

We support the general principles proposed, and agree that actions and decisions in this area should be underpinned by a commitment to involvement, support and collaboration. Our concern is that these principles do not go far enough to ensure the inclusion of people with significant needs.

The policy aims that underpin this Bill are “...to ensure that services and support become more flexible and responsive to people’s needs (in line with the Christie Commission’s recommendations), and to drive a cultural shift
around the delivery of support and views people as equal citizens with rights and responsibilities rather than people who receive services.¹

A person who is able to make and manage their own decisions will be able to benefit from the improved support that this Bill aims to deliver, and the Bill has made welcome provision for meeting the needs of people who require some support to make such decisions. We are not clear on how this Bill will deliver for people who lack capacity, or who require significant support to make and manage decisions.

There are strong principles established in the Adults with Incapacity Act, Mental Health (Care and Treatment) Act and the Adult Support and Protection Act, to ensure that any intervention must benefit the adult and be the least restrictive option, and of course these would apply to any decisions made under this Bill. Although these safeguards are important, we feel that there is scope to include a fourth principle, that ensures that any decision taken on an individual’s support, whether it is taken by a carer or family member, guardian or welfare attorney, or by a local authority, should be based on a person’s needs, preferences and aspirations, as far as they can be established. Section 7(5) of the Bill includes such a provision for children receiving support, recognising that although children may lack legal capacity, they are still able to and should be encouraged to express their views, and that these views should be considered. We would like to see this recognition extended across the Bill.

Q.3 What are your views on the four options for self-directed support (SDS) proposed in the Bill?

We support the four options outlined under Section 3, and feel that they offer a range of choices to the individual. Our concerns in this area relate more to the implementation of the Bill than the Bill itself, and we raise them here for the committee’s information.

Turning Point Scotland works in a number of local authorities across Scotland, and we have seen the range of different approaches to the implementation of the personalisation agenda, and self directed support. We are concerned that rather than empowering people, the processes as they have been rolled out by local authorities are in fact moving the balance of power further away from the people we support. In Glasgow for example there has been a marked increase in guardianship actions, and many Councils are cutting services under the banner of personalisation; most often there has been scant involvement of the person themselves and little involvement from Care

¹ Policy memorandum – Page 5
Managers (where these still exist). There also seems to be a shift away from multi-disciplinary approaches to power for decision making sitting with one person or department. This issue is presented in greater detail in the Learning Disability Alliance Scotland (LDAS) response, which we support.

We are sure that this a point that will be made by many respondents, but the effectiveness of this Bill will depend on its implementation. There is little in this Bill about the monitoring and reviewing of support plans to ensure that progress is being made towards agreed outcomes. Not only is this essential if we are to ensure that support is properly targeted, but there must also be structures in place to ensure the appropriate use of public funds.

We would welcome greater guidance on this area, and feel that the Scottish Government will have to take a greater role in monitoring the implementation of this bill and of self directed support if we are to achieve the desired changes. We note that the Self-directed Support Implementation Group will lead on the review of data collection, and will progress towards measuring outcomes for people directing their support, which we welcome. We look forward to further detail on this important process, and the way in which the information will be used.

Q.5 Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

Our comments here relate back to our proposed additional general principle; that the interests of the individual must form the basis of any decisions or actions taken. Consideration must be given to ways in which we can ensure that decisions are made in the interests of the individual being supported, and not in the interest of those making the decision. An example to highlight our concern is the current situation regarding mobility cars; these are often used as a family car to the detriment of the person we support. They are the car owners, but are unable to access the car because it is used by other family members. Under the current structure this is seldom, if ever challenged.

We would like further consideration to be given to safeguards that could be put in place to avoid such misappropriation. These could include risk assessments, or the involvement of independent advocacy.

If a person’s circumstances change after they’ve chosen their SDS option, the local authority must give them the chance to choose again; this is a welcome provision, particularly for people who are unsure about self directed support. The wording of the Bill is clear that they should be offered the opportunity to
reconsider their choice; there is no requirement on people to choose a different option.

Q.7 Do you have any views on the provisions relating to adult carers?

A flexible approach will need to be taken to supporting adult carers. There will be times when support for a person and support for a carer will overlap, for example a good quality respite service will provide a break for the carer, but should also meet the individual’s needs. We would like to see a situation where a flexible and creative approach is taken, applying the principles of this Bill and our proposed additional principle to guide the use of resources, ensuring that both party’s needs are met and potentially making savings. However we are concerned that the pressure on budgets will result in an approach guided by savings rather than what is best for the people involved, and that the needs of one party will supersede the other.

Q.8 Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?

Over the years we have introduced significant safeguards and protection to ensure the suitability of the social care workforce, and to identify and bar any individuals who may put people requiring support at risk. We are not clear on how these safeguards will apply to people employed by individuals through self directed support, and are concerned at the gap this may leave in protection structures. People accessing self directed support will need advice and information on how to make use of the protections that are available to them.

The same can be said about requirements for training and qualification of support staff; again this issue is discussed in greater detail in the LDAS submission, which we support.

Turning Point Scotland
25 April 2012
Introduction
UNISON is Scotland’s largest trade union representing approximately 160,000 members working in the public sector. UNISON Scotland represents over 25,000 workers employed in social work services throughout Scotland, with members employed as social workers, home care workers, residential care workers, welfare rights workers, and others administrating and supporting the social work team, as well as over 60,000 in the NHS.

UNISON Scotland welcomes the opportunity to respond to the Call for Evidence on the Social Care (Self Directed Support) (Scotland) Bill

General Comments
UNISON Scotland acknowledges that certain groups of service users, particularly physically disabled people, view direct payments and personalisation as a way to enjoy more freedom, choice and the greater independence that this can bring.

For a time, our views were misrepresented as we spoke up for the rights of Personal Assistants (PAs) and argued that the level of direct payments had to be sufficient to allow such rights as a decent level of pay, training, holidays, hours, pensions, etc to be met. In 2006 we met with representatives of disabled people and produced a joint statement confirming our support for the principle of independent living and worked with other organisations to ensure that our concerns would be taken up. We welcomed the inclusion of such provision for PAs in the Strategy for Self Directed Support outlined by the Scottish Government in May 2010 and are disappointed that this provision is not contained in this Bill. We are, however, aware that discussions surrounding such issues for PAs are being considered in another forum set up by the Bill Team and we welcome this.

Our main concerns however, are with the implementation of the Bill. Service users will only have a real choice in how their needs are met if there is sufficient funding available to local authorities to allow adequate budgetary amounts to be given to them to enable them to purchase the care they need. We are aware that some authorities are using the concept of personalisation as an attempt to cut their social care budgets and we have anecdotal information that staff are advising service users that they cannot afford to purchase local authority care, but must use another company who will give them cheaper services. UNISON believes that cheaper care is often inferior care, based on paying staff lower wages and allowing less time for the service to be provided, in effect a race to the bottom. This is further privatisation of social care staff, often by the back door.

UNISON Scotland believes strongly that public services should be publicly funded should be delivered by accountable public bodies, such as local authorities. Public services in Scotland developed over many years as a
response to market failure. Care services are central to Scotland’s economy and the quality of life for our citizens. Scotland has begun to develop its own public service model leading to real improvements on people’s lives. Cutting services and jobs risks the achievements and will halt progress in tackling the challenges we face. The current cuts in public spending are driven by ideology not economics.

Scotland has taken a different approach to public services than England; an approach that reflects Scotland’s geography, scale and culture. The aim has been to deliver improvement and value for money through collaboration and co-ordination not competition. The ethos of public domain is different from the market domain. This public service ethos underpins our approach to Scotland’s public services. Public services run on ethical lines, based on the principles laid down by Lord Nolan: selflessness, integrity, objectivity openness, accountability, competence and equality.

Private provision of care services goes against these principles and puts profits for private companies above these principles. Profits from care services can only be produced by the provision of poorer services and a worsening of the terms and conditions for the staff providing the services – the creation of a two-tier workforce. Over recent years, private care companies have tried to introduce a variety of contracts to cut the terms and conditions of staff, for example, zero hours contracts, where staff had to be ready to work when asked to, but had no certainty or continuity of work on which they could enjoy employment rights or guaranteed earnings. The time carers can work with their clients has also been continuously cut and staff are often not paid for the time taken to travel to their next client.

An Audit Scotland report published in March this year, emphasised that planning social care is complex and is becoming harder as demands are rising and budget constraints are tightening. They believe that the introduction of self-directed support will require a new approach from councils and health boards who will have to do more to involve both the people receiving services and the service provider organisations. If services are to improve there needs to be better information on the needs of the population, on the costs, quality and impact of services. We believe Audit Scotland must ensure that public money is properly spent and that vulnerable individuals are getting the service they need.

Audit Scotland are also concerned that councils are concentrating resources on people who need intensive support leading to a risk that people who need a small amount of support may not get the help they need to live independently and that their early problems may worsen more quickly without

We also have concerns at the long term future of core services which we believe should be maintained at a sustainable level, to provide real choice for people who do not want to use direct payments or individual budgets. The Bill devotes a great deal of time on how to deal with individuals who are ineligible for self-directed support and indeed those who are eligible to receive a personal budget, but opts for local authority provided services. We believe
that core services will essential for those who are deemed ineligible or for those who for whatever reason do not want or are unable to manage their own care. We are concerned that if a large number of individuals opt to select services outwith those provided by the local authority, then local authority provision will by default be reduced, leading the choice to retain local authority provision being threatened.

Questions:
Views on the Bill as a whole

Are you generally in favour of the Bill and its provisions?

In general, UNISON is in favour of the Bill and its provisions, which should help to reduce the current ad hoc situation, in particular where it defines and clarifies the aims of self-directed support and its consolidation and modernisation of the legislation governing direct payments.

2. What are your views on the principles proposed?
UNISON does not have difficulties with the principles underlying the Bill, but we would include a duty on local authorities to provide sufficient resources for the care the service user needs to be adequately met.

Professionals should be given adequate training to enable them to encourage involvement, informed choice and collaboration, but if there is no duty on local authorities to ensure that a proper choice is given and paid for, but just to have “regard” for the principles, then we fear that service users will be given an inferior service than they have so far been used to and neither we or they would find this acceptable.

We also believe that service users should be given a proper professional assessment and not be subject to self assessment. An individual may not be aware of all the implications of their perceived needs, whereas professionals should know what is available and what would be more suitable for their possibly multi-faceted needs.

3. What are your views on the four options for self-directed support proposed in the Bill?
UNISON acknowledges the four choices contained in the Bill which do not make self-directed support the default position, as was outlined in the previous draft bill.

The confirmation that individuals must be provided with information and advice to help them make their choice and that those who may have difficulties in making informed choices are provided the necessary support to do so will help ensure that service users are not confused about the choices they are making. However we need to ensure that the people giving the advice have the necessary training and expertise to provide the best information to meet the needs of the service user, not merely pointing them towards the cheapest option.
4. Do you have any comment on the proposal that the self-directed support options should be made available to children and their families, together with the proposal that the degree of control a child may have over the process should vary with age?

We are not opposed to the principle of offering self-directed support to children and their families and the proposal that the child’s control over the process should vary with age. We believe the provisions outlined in the Bill ensure that the rights of the child and their “appropriate person” should be adequately protected.

5. Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

UNISON believes that that professionals explaining choices to all service users, whether children and their families or those with impaired physical or mental abilities should be sufficiently trained and knowledgeable to assist the individual to make a proper choice and for those professionals to ensure that sufficient resources are available to allow those choices and needs to be adequately met.

6. Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?

UNISON believes that the consolidation of the existing legislation will help to clarify the position with direct payments. We acknowledge that secondary legislation may become necessary in the future.

7. Do you have any views on the provisions relating to adult carers?

We agree with the principle of offering support to carers, although believe that there can be a degree of tension and conflict between the needs of the carer and the individual being cared for, so welcome the clarification contained in the Bill and supporting documents.

8. Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?

UNISON has great concerns over the amount of responsibility which is placed upon individuals and their families particularly in employing Personal Assistants, (PAs) who are not subject to the provisions of the Protection of Vulnerable Groups (Scotland) Act (PVG). In addition, we have concerns that individuals and families effectively becoming employers of those PAs will not have enough knowledge or expertise to manage the employment rights of those individuals, such as providing holidays and pensions, as well as allowing them training to carry out their roles satisfactorily. We would also want to be assured that the level of payment given to individuals and families to employ PAs would be sufficient to allow them to provide these rights and facilities. As stated in the General Comments above, we are disappointed that provisions for PAs are not included in this Bill, despite having been part of the Strategy published in 2010 and the previous draft Bill, consulted on in that
year. We welcome discussions taking place in the SDS Workforce Group on this issue.

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?
UNISON notes that the Scottish Government intends to provide funding to support the transitional arrangements to drive forward the provisions contained in the Bill, but we are concerned that the amount provided for looks insufficient to deliver what it aims to. If an equivalent amount of the funding provided for in England to deliver similar policies were applied to Scotland, we believe the amounts stated would have to be doubled. In addition, we envisage there could be additional costs if services moed away from in-house or contracted provision, as councils could end up providing both services and direct payments.

In addition, as stated above, further resources are not provided for local authorities to offer sufficient funding to meet the needs identified in the assessments, or if local authority provision has been cut back, due to decreased use, then the choices opted for may not be able to be satisfied by the local authority.

10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?
UNISON notes that the Scottish Government has carried out its responsibilities by assessing the proposed Bill in relation to Human Rights and Equal Opportunities, using an Equality Impact Assessment (EQIA).

However as stated previously, if the legislation is used by authorities to cut the provision of support to individuals and families, resulting in a lesser or inferior service, this could result in challenges under the Disability Discrimination Act or European Commission of Human Rights, as has happened in a number of cases in England, when similar cuts were proposed.

UNISON
27 April 2012
Social Care (Self-directed Support) (Scotland) Bill

VOCAL – Voice of Carers Across Lothian

VOCAL – Voice of Carers Across Lothian – contributed to the following submission on the Social Care (Self-directed Support) Bill through carer consultation, carer focus groups, Board and staff meetings and through public events to the submission below, which was also submitted by the Coalition of Carers in Scotland.

VOCAL supports all the key issues raised in this submission which evolve directly from the experience of carers of people with support needs.

Background Information

There are over 660,000 unpaid carers in Scotland\(^1\) who save the government £10.3 billion pounds every year, equivalent to more than three quarters of the entire budget of NHS Scotland\(^2\). Of these, 115,000 care full time, without pay, for over 50 hours a week – roughly equivalent to Scotland’s total paid care workforce\(^3\). With our increasingly ageing population, the number of unpaid carers is set to grow, with society becoming ever more dependent on their contribution to health and social care delivery.

With the current move towards shifting the balance of care to care at home, family members, relatives and friends will play an increasingly central role in the care and treatment of people who are frail or live with long term conditions, illnesses and disabilities. The current shift towards more personalised, self-directed support is not achievable without the support and participation of these unpaid carers.

1. Key Recommendations

1.1 We welcome the Self Directed Support Bill. The Bill is a positive step in bringing together and extending legislation in relation to self-directed support and in ensuring there is greater clarity and easier access to direct payments and other delivery mechanisms.

We agree with the four options proposed replacing the original proposal for people to ‘Opt Out’ of self-directed support. While direct payments provide an opportunity to extend choice and control to service users and carers, it is also important to recognise that many people are satisfied with their current provision and that wanting to retain existing arrangements is a legitimate choice. The four options provide a better balance in allowing people to determine how much involvement they want in the design and management of the services they use.

1.2 While we support the Bill we feel that it could be significantly strengthened in some areas, particularly in relation to:

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\(^1\) Scottish Household Survey 2007/2008
\(^2\) Valuing Carers, Carers UK. 2011
\(^3\) Census 2001
• recognising carers as equal partners in care

• ensuring carers have equal access to support across Scotland, including through the provision of a direct payment

• extending the ability for people to employ a relative through a direct payment.

1.3 We also have concerns about the implementation of the Bill and the need for clear guidance and direction to local authorities in relation to adhering to the principles of SDS, ensuring there are robust and fair processes and timescales in relation to implementation and that outcomes for service users and carers are clearly recorded, monitored and evaluated.

2. Recognising Carers as Equal Partners in the Provision of Care.

2.1 We welcome the recognition of the key role that carers play in the provision of health and social care in Scotland

‘Without the contribution of Scotland’s carers the health and social care system would be unsustainable.’ (Social Care (Self Directed Support) (Scotland) Bill, Policy Memorandum)

2.2 The Community Care and Health Act, 2002 (Supporting Guidance) recognised carers for the first time as ‘partners in care’. The Scottish Government and COSLA extended this by recognising carers as ‘equal partners in care’ in ‘Caring Together’ Scotland’s Carers Strategy, 2010. While the SDS Bill acknowledges the vital contribution carers make it falls short of recognising them as equal partners. The Minister Michael Matheson MSP, recently stated that the shift towards SDS is one of the most significant developments in social and health care provision for the last decade. The role carers will be required to play in the success of this service redesign cannot be understated. It is therefore imperative that the principle of acknowledging carers as equal partners is embedded in the Bill and accompanying guidance.

3. Direct Payments for Carers - Duty versus a Power.

3.1 The Bill provides an opportunity to not only recognise carers, but to ensure they are appropriately supported in their caring role. As stated in the policy memorandum:

‘The Bill helps to deliver the strategy by providing a power to local authorities to release support to a carer following a carer’s assessment. No specific power exists for this at present although in practice authorities can and do provide a range of services and support to carers’

3.2 Despite the growing recognition of the contribution carers make to health and social care provision, carers have never had a right to access support to assist them in their caring role. The SDS Bill provides the opportunity to rectify this by placing a duty rather than a power on local authorities and new joint health and social care structures to provide carers with support following
an assessment.

3.3 While it remains a power there will always be very diverse practice and interpretation across Scotland’s 32 authorities and a danger to perpetuate current inequity and the postcode lottery of provision and eligibility of service users and carers.

3.4 At the moment the Bill proposes that the power is enacted following a carers assessment, thereby only providing carers with services they are assessed as needing. We propose this should be a duty in the same way as it is for service users who are assessed as needing a service and fit the local eligibility criteria. Failing to extend this duty to carers to apply in the same way as it does for service users could be prone to interpretation as discriminatory practice.

3.5 Local authorities will interpret a Power in different ways leading to inequity for carers across Scotland. It will result in some carers being able to access services and a direct payment following an assessment, while others with the same level of need will be denied the same rights. Until supporting carers is a statutory duty carer support services will always be vulnerable to cuts, particularly given the current and future pressures on health and social care funding.

3.6 The economic benefits of providing timely, preventative support to unpaid carers has been recognised by the Scottish Government and needs no further explanation. It therefore makes no economic sense to place restrictions on providing this support to carers following an assessment of their needs.

3.7 It is important that the needs of carers are recognised within the assessment process for SDS for the person they care for. Local authorities need to avoid the danger of making assumptions about a carers ability and willingness to contribute to care. It is also important to recognise and resource carer support. However, this should not be included in the cared for person’s direct payment as happens in some local authorities, as this can produce a conflict of interest. For example we have evidence of carers reducing their short break provision in order to be able to direct more resources to higher cost services for the person they cares for, despite the impact on their own health and wellbeing. Similarly, this situation could work in reverse with the cared for person resenting the use of ‘their direct payment’ for carer support. There cannot be a presumption that the needs of carers and the person they care for are always in alignment. This is why it is essential that carers are able to access a direct payment in their own right.

4. Carers Assessments and Considerations Relating to Carers Accessing a Direct Payment

4.1 It is important to strengthen carers’ assessments to ensure effective implementation of carers ability to access a direct payment. There are many excellent examples of outcome focused carers assessments, such as Talking Points, but these are not in place in all areas of Scotland and uptake for
carers assessments is still poor. Evidence from many local authorities suggests continuing low level of carer assessments, which would undermine the intention of new legislation. Further investment is required to ensure systematic practice is in place in every local authority.

4.2 Scotland has an enviable network of local carer organisations that provide early preventative support services to carers, such as information, advice and advocacy, emotional support, training and access to short breaks, as well as increasingly personalised and person-centred planning in care planning. In almost all cases these services are free to carers and do not require the involvement of statutory services. This existing infra-structure of ‘universally accessible provision’ must be retained.

It is imperative that direct payments for carers enhances and complements existing services by extending the type of support carers can access, for example by allowing carers to design more personalised short break services or access support with practical household tasks. Direct Payments for carers must not be seen as a replacement for existing carer support services, which remain the mainstay of direct carer support and are vital in protecting and promoting carers health and wellbeing.

4.3 Carers who receive a Direct Payment should be adequately resourced and supported by an independent organisation, such as InControl, to ensure there is no additional burden placed on them in regard to accessing and managing their Direct Payment.

4.4 Providing carers with access to training should continue to be a priority for the NHS and other partners, with carers being able to access free training, such as moving and handling and training courses such as ‘Caring with Confidence’ This should not be funded through Direct Payments to carers.

5. Employing a Relative Through a Direct Payment and Community Development

5.1 At the moment the restrictions placed around employing a relative through a direct payment, which directs local authorities to only permit it in ‘exceptional circumstances’, mean that many people who would choose to employ a relative are unable to do so. The SDS Bill acknowledges that this is often the best course of action for people and is likely to produce the most positive outcomes.

‘Local authorities should be empowered to allow the employment of close family members where this is the supported person’s and carer’s informed choice and where it is appropriate to do so. The Bill therefore contains a power for Ministers to issue regulations in order that they can guide authorities who may need to sanction such arrangements.’ (Social Care (Self Directed Support) (Scotland) Bill, Policy Memorandum)

5.2 We welcome the move to free these restrictions making it easier for people to employ a relative where it is in their best interests to do so. But we argue strongly, that legislation should not simply extend the power of local
authorities, but instead extend and embed the right of service users to request the employment of family members. Where service users request the use of direct payments for the employment of family members or relatives, local authorities and future joint planning and commissioning structures should have a duty to consider and respond positively to such requests, and where such requests cannot be granted they should offer clear reasons why the proposal would not be considered to safeguard the care of the service user.

We believe that Ministers should develop clear regulations which adopt such a universal approach to the employment of relatives which not simply focuses on the powers of local authorities, but strengthens the right of service users to request a particular form of care provision. A Scotland wide framework of safeguarding criteria to protect vulnerable adults and ensure care criteria are met will be important.

5.3 There are many examples where employing a relative is the only available or desired option for people. The SDS Policy Memorandum touches on this issue:

‘Self-directed support may, therefore, offer a solution where there is a limited supply of appropriate care and support providers and where there are suitable family carers who are willing to become paid employees for the supported person’ (Social Care (Self Directed Support) (Scotland) Bill, Policy Memorandum)

The Coalition of Carers in Scotland recently held several information events for carers in relation to Self Directed Support. In both island and rural and remote communities, such as Shetland, Angus and Aberdeenshire we found examples where recipients of direct payments were unable to access a service by recruiting a P.A or using the services of a care agency because the area they lived in was too remote to sustain such services. The only way they were able to use their direct payment was by employing a relative.

5.4 There also needs to be a clear strategy and investment in community development to ensure that SDS is able deliver greater choice. Those living in rural and remote areas, from BME communities or looking after people with complex conditions report finding it difficult to employ PAs or purchase services from agencies. While this situation exists SDS cannot deliver on its promise of promoting greater choice and flexibility. It may be that over time services will evolve to fill this gap, however, initial investment is required to lay the foundations for this shift.

5.5 Many conditions result in challenging behaviour, or anxiety associated with unfamiliar people. In these circumstances the best outcomes for the service user are for care to be provided by those people, with whom trust has already been established. For example, carers looking after someone with dementia have told us that where care is provided by a care agency there is often a lack of consistency in the staff delivering care, which is upsetting and confusing for the person with dementia. In one situation the carer told us that the local authority had withdrawn a service as her mother had become aggressive as she was upset at the number of strangers providing her with
personal care. Their solution was to place her in residential care. However, by employing a relative through direct payments her mother was able to remain in the home and was no longer anxious or aggressive.

5.6. An additional group which often struggles to access appropriate support services are people from BME communities. We recently undertook some joint research with a member organisation (MEAD) around the needs of carers from BME communities in rural Perthshire. We found that one of the biggest barriers to people accessing care was language difficulties and a lack of access to interpreters. Respondents to the survey indicated that an interpreter was available in only 28% of cases. This was the same both for those trying to access an assessment and those wishing to take up a service following assessment. Unless language and cultural barriers are addressed by mainstream services, employing a relative through a direct payment is the only suitable option for many from BME communities.

6. Issues Relating to Implementation

6.1 The success of the SDS Bill in increasing choice and control to individuals and enabling them to access more personalised, outcomes focused support is dependent on the government issuing clear guidance and regulation to local authorities. At the moment local authorities have been very inconsistent in their approach to the implementation of SDS, which has resulted in some people having a negative experience. It is essential that the Bill is supported by strong guidance ensuring that local authorities adhere to the principles of SDS, that there are robust and fair processes and timescales in relation to implementation and that outcomes for service users and carers are clearly recorded, monitored and evaluated.

6.2 SDS is being implemented at a time when local authorities are facing financial pressures and are seeking to identify savings. It is essential that in implementing SDS local authorities do not view this as an opportunity to introduce cuts to services. The government will already be aware of Glasgow’s policy of introducing personalisation and SDS alongside cuts of approx 20% to individual care packages. This goes against the principles of SDS and reduces choice, forcing people to make difficult decisions in reducing the level of services that support them and narrowing the opportunity to identify new and more innovative models of support.

6.3 In addition, local authorities must not make presumptions about the type of support people will wish to access. Some local authorities have funded SDS by firstly closing more traditional support services such as adult resource centres and residential respite units in order to shift resources towards individual budgets. However, this removes the choice for people to choose more traditional service models, which may produce the best outcomes for their individual circumstances. Choosing to maintain an existing care package rather than moving to something new must be viewed as a legitimate choice.
6.4 The process for implementation needs to be clear and robust, guidance needs to ensure that best practice is adhered to, particularly in the following areas:

- Developing an assessment process which is person centred and outcome focused. Lessons must be learnt from the poor SEQ process developed in Glasgow.

- Involving carers as equal partners in the assessment of the person they care for.

- Ensuring there is a robust review process which monitors outcomes.

- Ensuring local authorities develop Resource Allocation Systems which are clear, equitable and transparent and adhere to universal standards.

- Ensuring there are appropriate timescales for implementation so that local authorities do not adopt a whole system approach as they have done in Glasgow to the detriment of the individual. There needs to be sufficient time for information dissemination, consultation, for outcome plans to be developed in partnership with the appropriate people. Risk enablement processes need to be thorough and there needs to be ample opportunity for people to take time to be creative in their thinking when it comes to the development of their care plans.

6.5 Information provision and support is at the heart of the successful implementation of SDS:

‘Individuals and families must understand the responsibilities that come with the choices available to them, particularly in managing and choosing to take risks.’ (Social Care (Self Directed Support) (Scotland) Bill, Policy Memorandum)

Service users and carers must have access to independent support agencies who are able to assist and empower them in making decisions and understanding the responsibilities inherent in accessing a direct payment, such as managing payments or employing people. Local carers centres may also play an important role in disseminating information and providing training. For example specialist staff are already employed by local carer organisations in Dundee and Midlothian to assist in the implementation of SDS and several local carer organisations have run awareness events and training to increase carers’ awareness of SDS.

7. Charging Carers

7.1 As previously stated carers have been recognised in legislation as ‘partners in care’ due to the significant contribution they make to the provision of health and care services in Scotland. The cost of replacing care provided

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4 Community Care and Health Act 2002
by carers in Scotland is estimated at over £10 billion each year. Carers must be viewed as contributors to care provision, rather than as service users. They should not be expected to contribute financially to the cost of services provided to the person they care for, or to the cost of services which enable them to continue in their caring role.

7.2 Section 16 of the Bill must therefore be amended in line with this principle:

Section 16 amends Section 87 of the 1968 Act (authorities’ power to charge for services or support). This has the effect that authorities may charge for support provided to carers under section 2 of the Bill. *(Social Care (Self Directed Support) (Scotland) Bill, Explanatory Notes)*

If you require any further information, supporting evidence or wish to consult with our members in relation to any of these issues, please don’t hesitate to get in touch.

Voice of Carers Across Lothian
24 April 2012

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5 Valuing Carers, Carers UK, 2011
Social Care (Self-directed Support) Scotland Bill

West Dunbartonshire CHCP

1. Are you generally in favour of the Bill and its provisions?

We are generally in favour of the Bill and the principles it espouses but we are concerned that the Bill and more importantly the Guidance and Regulations that will accompany it are developed and seen in the context of the Government’s policy intentions for the integration of health and social care services. At the most fundamental level this should affect title the legislation has (i.e. Health and Social Care) and the timing of its enactment. Beyond that this will involve consideration of how we achieve our ambitions for individual choice and the integration of health and social care services, which will need to take account of making self directed support available across the whole range of services in the new Health and Social Care Partnerships.

2. What are your views on the principles proposed?

We strongly agree with the principles proposed, but the Bill also needs to strike the right balance between the rights and responsibilities of providers, commissioners and service users under SDS. The principle of reciprocity, if included, could be introduced covering not only financial responsibility and the management of risk but also the responsibility to comply with equalities, procurement and regulatory requirements.

3. What are your views on the four options for self-directed support proposed in the Bill?

We are content with these as a framework of choice

4. Do you have any comment on the proposal that the self-directed support options should be made available to children and their families, together with the proposal that the degree of control a child may have over the process should vary with age?

The introduction of self-directed support options for children and their families would require specific regulations which would allow local authorities to exercise professional judgement on a case by case basis.

5. Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

We are content that the Bill strikes the right balance in these areas

6. Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?
Although we have made this point earlier, it may be worth repeating that there needs to be greater clarity and perhaps restrictions on how the current Direct Payment framework operates if the principle of reciprocity applies.

**Adult carers**

Currently, adult carers of other adults or children are entitled to have an assessment of their needs. However, section 2 of the Bill proposes that local authorities should have the power to provide support to a carer on the basis of that assessment. Where a local authority decided to provide such services, section 6 would require it to offer a choice of the four self-directed support options to the adult carer.

We don’t have a problem with this as a Power (rather than a Duty) as it should help defining and controlling the relationship between carers and those who support them.

**7. Do you have any views on the provisions relating to adult carers?**

As the Bill progresses there will inevitably, and correctly, be further discussion and consideration of how support to carers could be improved. We believe that any attempt to introduce a duty to support carers would be beyond the scope of this Bill and needs to be considered amongst wider societal and political debates.

**8. Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?**

No, see the comments at 2 and 7 above.

**9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?**

It is recognised that the actual cost will depend on new uptake of SDS, however the implementation covers a 10 year period, but the funding identified is only for 3 years –we would wish to seek assurance from SG that appropriate funding will be provided for the whole 10 year period. The funding allocation model should be subject to on-going review to ensure fairness and no unintended consequences that may have to be mitigated in the short-medium term; and to ensure “fit” with the pooled budgets anticipated for new health and social care partnerships.

We have real concerns if the transitional costs are insufficient to meet the changes that will be required, there is a real risk that failure to recognise this could lead to Councils adopting the kind of Resource Allocation Systems (RAS) that have thus far attracted such criticism. The SG expects the strategy to be cost-neutral; however it is unclear as to when it may reach that point (as “bridging” finance requirements may last for some time and change as more people take up SDS over the years). In order to be cost-neutral implies that
savings will be generated and WDC would argue that SDS should not have an explicit aim of delivering financial savings, not least as this could be perceived to be contradictory to the intended outcomes of the wider personalisation agenda

10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?

Yes but we are still concerned that the resources being made available to local authorities to implement the new arrangements will not enable the fullest realisation of the Bill’s ambitions.

11. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

No

West Dunbartonshire CHCP
24 April 2012
Social Care (Self-directive Support) (Scotland) Bill

West Lothian Council

West Lothian welcomes the opportunity to offer written views on the general principles of the Social Care (Self-Directed Support) (Scotland) Bill which makes legislative provisions relating to the arranging of care and support in order to provide a range of choices to individuals as to how they are to be provided with their support and would offer the following response:

1. Are you generally in favour of the Bill and its provisions?

West Lothian is generally in favour of the Bill and its provisions and supports the amended proposal to make choice itself the ‘default’ position rather than any particular mechanism. West Lothian seeks to support people to live independently in their communities and acknowledges the potential benefits to individuals of a personalisation approach which puts individual outcomes, choice and control at the heart of service delivery and recognises that good quality well targeted support can help to reduce pressure on health sector and crisis services.

However, West Lothian is aware of the fundamental shifts in both culture and infrastructure that will be required to implement the Bill and has some concerns that the resources identified to support the Bill do not adequately reflect the shorter term transformational costs or the costs of delivering on the 10 year vision of the National Strategy for Self-Directed Support in the longer term. More detail on West Lothian’s position is provided in the responses to the specific questions below.

2. What are your views on the principles proposed?

West Lothian would support the three principles of ‘involvement’, ‘informed choice’ and ‘collaboration’ which are described as ‘the general assumptions under which professionals and individuals should operate’ and would suggest that these principles are largely already applied by local authorities when engaging with people in the assessment of their needs and the planning of their care and support.

However, the duty on local authorities to provide a person ‘with any assistance that is reasonably required to enable the person to express any views......and......make an informed choice’ could be open to interpretation and also has resource implications in relation to assessment and care and support planning timescales and the potential funding of additional services from advocacy and support organisations.

3. What are your views on the four options for self-directed support proposed in the Bill?

West Lothian recognises that the core provision requiring the local authority to offer individuals the four options as to how they would like to receive their support – ‘direct payment’; ‘directing the available resource’; ‘local authority
arranged support’ and a ‘mix of approaches’ – offers a balanced approach to service user choice and control. Local authorities currently offer options 1, 3 and 4 and are in the process of developing systems to widen the delivery of option 2 – the establishment of appropriate Resource Allocation Systems (RAS) to enable the allocation of Individual Budgets or Individual Service Funds based on assessed needs and desired outcomes requires time and resources to be developed effectively.

There are challenges associated with resourcing this transformational change and the transition to full implementation of the Bill and the national strategy, including the development of alternative models of service provision, workforce development and supporting relevant stakeholders and providers through a process of diversification and capacity building. Withdrawing from existing buildings-based services whilst maintaining these and other existing services until they can be closed, or scaled down in order to continue to offer genuine choices for people, including those with very complex care and support needs, is likely to incur dual running costs, at least in the short to medium term. Moving away from block contracts and the attendant economies of scale towards new and more individualised contractual arrangements is also likely to incur additional costs. These developments will be taking place at a time of severe economic and demographic pressures on local authorities and whilst there may be savings in the longer term through improving outcomes and thereby reducing demand, there is a need to consider ongoing resource requirements going forward.

4. Do you have any comment on the proposal that the self-directed support options should be made available to children and their families, together with the proposal that the degree of control a child may have over the process should vary with age?

Provisions under the Bill will mean that a wide range of children and families supported under Section 22 of the Children (Scotland) Act 1995 including disabled children, children who are carers and relatives of children who are either disabled or young carers will have access to self-directed support and the full range of options under the Bill’s framework of choice and control.

West Lothian recognises that self-directed support should play a key role in sustaining and delivering the GIRFEC approach and acknowledges that the principles of self-directed support should apply to children, young people and their families.

The concept of self-directed support in relation to children and young people with disability is well-established in West Lothian but the implementation of self-directed support across children’s services requires the development of appropriate resource allocation and risk management systems, particularly in relation to child protection. West Lothian supports the involvement of all service users and their families in the assessment, care and protection planning processes but recognises that there may be occasions when applying the self-directed support framework will face difficulties if agreement about appropriate support arrangements to meet the assessed needs and outcomes and reduce risk cannot be reached. West Lothian welcomes the
intention to issue statutory guidance to clarify how local authorities should go about balancing their duties on protection with their duties on self-directed support.

West Lothian would see no reason, in principle, why all forms of self-directed support should not be available to children, young people and their families. As in the case of adults, the provision of direct payments to service users who may not fully endorse the assessment of need or arrange appropriate support to implement the agreed care and protection plan and outcomes can present challenges. Effective partnership working between service users, local authorities and others will be required to ensure the desired outcomes and that the successful protection of children and young people is not compromised. Whilst it is recognised that, under the Bill, local authorities retain the right to withdraw and / or reclaim direct payments in cases where there has been gross misuse or where a person’s assessed needs or agreed outcomes are not being met, it can be difficult to recoup such monies and the local authority would sustain this loss. West Lothian welcomes the intention to issue Regulations to provide further clarification on the range of duties and powers in relation to direct payments retained by local authorities.

West Lothian would support the proposal that the degree of control a child may have over the process of self-directed support should vary with age. Enabling children aged between 16 and 18 to choose and manage all available self-directed support options has real potential to empower and promote independence for this group and West Lothian would support this approach within a context, where necessary, of appropriate safeguards.

5. Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

The principle of empowering people to make an informed choice about the support available to them to meet their assessed needs and desired outcomes is already an established principle in social care practice and service delivery. West Lothian recognises that, with the introduction of the Bill, local authorities will be required to make information on self-directed support available in a range of formats, take steps to promote the availability of the options for self-directed support, explain the nature and effect of each self-directed support option and to signpost people towards available advice and information, including independent sources. West Lothian supports the provision of robust advice and information and the promotion of a clear understanding of the mechanisms and implications of the options for self-directed support but would wish to note that there are resource implications attached to this including increased care management time and the potential funding of additional services from advocacy and other user support organisations.

West Lothian acknowledges the Scottish Government’s policy to ensure equal access for all clients to all of the self-directed support options including those with mental health problems, dementia and severe learning disabilities and the proposed emphasis on finding ways to support people to direct their
support and facilitating a wide range of assistance mechanisms to help with this.

West Lothian welcomes the amended provisions in the Bill, in response to the previous consultations, in relation to those social care clients who will encounter difficulties in expressing informed decisions.

The principles underpinning the provisions in the Bill already inform social care practice; however, in relation to Sections 5 and 15, West Lothian would wish to note the following:

- The duty on local authorities to ‘take reasonable steps to enable the supported person to make a choice...’ could be open to interpretation

- The duty on local authorities to ‘take reasonable steps—
  (a) to identify persons having an interest in the care of the supported person, and
  (b) to involve them in assisting the supported person in making decisions...’

  could be open to interpretation

- There are resource implications attached to the above in relation to assessment and care and support planning timescales; the potential provision of additional specialist support services and the funding of additional services from advocacy and support organisations in order to facilitate a wide range of assistance mechanisms

West Lothian would welcome further statutory guidance or Regulations expanding on definitions, the fulfilment of statutory duties in practice and the use of discretionary powers in order to promote consistency and to minimise national variations in approach and application.

6. Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?

In general, West Lothian would support the provisions relating to direct payments within the Bill and acknowledges the benefits of modernising and consolidating current legislation. It is appropriate to place direct payment provisions within the wider framework of self-directed support options and West Lothian would suggest that all the options, not just direct payments, will contribute towards the development of increasingly flexible support and better outcomes for individuals when delivered within a context of informed choice.

West Lothian supports local authorities retaining the right to assess or reassess a person’s ability to contribute financially to the cost of their care and support irrespective of the self-directed support option they choose and would agree that there should be no differential treatment in relation to charging for those who choose to direct their own resource.
West Lothian welcomes the intention to issue Regulations to provide further guidance on the range of duties and powers retained by local authorities in relation to direct payments and would stress the importance of local authorities having the necessary discretion regarding these duties and powers in order to deliver the optimum solutions for individuals within the context of their circumstances, needs, community and desired outcomes.

7. Do you have any views on the provisions relating to adult carers?

West Lothian continues to recognise the significant role played by unpaid carers in supporting people affected by illness, disability or substance misuse without which the health and social care system would be unsustainable. West Lothian supports the provisions within the Bill relating to carers.

8. Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?

West Lothian recognises that local authorities should be empowered to allow the employment of close relatives but supports the retention of the existing rules limiting the employment of close relatives to ‘exceptional circumstances’. West Lothian believes that this offers the appropriate balance between flexibility and responsiveness and the avoidance of conflicts of interest and the potential for financial abuse or misuse. This can protect direct payment recipients from feeling pressurised to employ a relative and it can also protect carers from feeling obliged to take on a greater level of care due to being offered payment and protect the caring relationship within the family from becoming enmeshed in an employer / employee relationship. West Lothian hopes that any Regulations issued by Ministers in order to guide authorities who may need to sanction such arrangements will reflect this current position.

West Lothian would agree that individuals and families must understand the responsibilities that come with the choices available to them, particularly in managing and choosing to take risks. As the Bill does not place any restrictions on the categories of people that may be employed by an individual, in addition to the comments above, West Lothian would support the publication of statutory guidance that will cover ensuring that individuals understand their duties as an employer and the risks in failing to adopt safe recruitment practice.

As self-directed support does not replace or overrule legislation to protect people at risk of harm or affect the duty on local authorities to arrange suitable and adequate support, local authorities will need to be satisfied that the chosen option can meet the assessed needs and desired outcomes in line with their ongoing duty of care. West Lothian welcomes the intention to issue statutory guidance which will elaborate on the question of balancing empowering practice with support for people to manage risk in more detail.

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?
The assumption within the Financial Memorandum that anticipates that, after implementation, self-directed support will be cost neutral is viewed with uncertainty as the national strategy has a 10 year timeframe but funding to support implementation is only provided for the three years to 2014/15. In addition, whilst self-directed support may promote savings in the longer term by improving outcomes and reducing demand, these will take time to become apparent and may not all be experienced by social care services and so it is anticipated that there will be recurring costs incurred by local authorities.

The implementation of the Bill will require local authorities to make fundamental changes in culture and infrastructure and whilst the calculations contained in the Financial Memorandum have indicated a provision of funding of £23m across local authorities over the three years to 2014/15, the West Lothian share of this funding is significantly below the costs we anticipate will be incurred in local implementation.

The financial implications of the Bill for West Lothian include:

- Transformational change costs mainstreaming the self-directed support framework provisions and structures across services
- Workforce development costs
- Increased assessment, care and support planning and care management time in order to deliver the requirements of the provisions outlined in the Bill
- Withdrawing from existing contractual arrangements and moving away from the economies of scale of block contracts towards more individualised contractual arrangements
- Commissioning new or additional services to support the implementation of the self-directed support framework provisions
- Maintaining existing buildings-based services until they can be closed or scaled down is likely to incur dual running costs
- Increased administration and financial services costs due to the management of Individual Budget allocations and direct payments
- Information and publicity materials costs

West Lothian would note that, as the Bill places statutory duties on local authorities, any costs incurred in meeting these statutory requirements which are not met under the provisions contained within the Financial Memorandum would have to be met from elsewhere and this would have implications for existing service delivery. In addition, the intention to issue a range of statutory guidance and Regulations to support the Bill soon after enactment may place additional duties and responsibilities on local authorities which may lead to the incurring of additional costs.
West Lothian would propose that the costs of implementing the Bill are monitored on an ongoing basis and that these are taken into account and reflected in future financial settlements.

10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?

West Lothian would support the findings of the Equality Impact Assessment that the Bill’s provisions are not discriminatory on the basis of age, gender, race, disability, religion or sexual orientation and would agree that the Bill has the potential to help to promote equality of opportunity for individuals. West Lothian welcomes the intention to continue to review data collection in relation to the protected characteristics of age, disability, gender and race.

West Lothian would support the conclusion that the Bill does not give rise to any issues under the European Convention on Human Rights and that self-directed support is in line with the principles of equality and non-discrimination and participation and inclusion.

West Lothian recognises that the provisions for self-directed support within the Bill may provide the opportunity to be more flexible and responsive to local need within rural and remote communities, including island communities. West Lothian acknowledges that the option to employ suitable family members as paid carers may offer a solution where there is a limited supply of appropriate care and support providers in such areas but would suggest that this option is already available under the ‘exceptional circumstances’ rule and, therefore, we would refer to the response given under question 8.

West Lothian is satisfied with the conclusions reached in relation to sustainable development and environmental issues.

11. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

West Lothian would note that jointly funded health and social care individual budgets can greatly benefit the health, wellbeing, social inclusion and citizenship of individuals, particularly those with complex care needs, but that, currently, such joint arrangements are small in number. With Scottish Government plans for the closer integration of adult health and social care, West Lothian would be interested in future plans for the right to access the self-directed support options within health provision.

West Lothian Council
20 April 2012
ANNEXE D: NOTE OF DISCUSSION SESSIONS BETWEEN SERVICE USERS, CARERS AND MEMBERS FROM HEALTH AND SPORT COMMITTEE

Note of discussion session between service users and Members from Health and Sport Committee

Note of discussion session between carers and Members from Heath and Sport Committee
Discussion between service users and MSPs from Health and Sport Committee
The following notes outline the broad themes and views that were discussed in the three discussion groups with service users, and should not be taken as being a verbatim note of the discussion.

General

- The introduction of the Social Care (Self-directed Support) (Scotland) Bill was generally welcomed.
- SDS offers more control, more choice and more flexibility
- All 4 SDS options in the Bill are required as people need different types of support at different times
- The Bill has the potential to support independent living by making explicit the link between SDS and wider independent living more generally
- But, how will it be implemented? Will local authority social work staff be adequately trained?
- Scottish local authorities have been slow to offer direct payments and other forms of SDS, even when service users have made direct requests, due to:
  - Fear of change and aversion to risk
  - Concerns about negative media publicity if a direct payment is used for certain social activities e.g. attendance at football matches, or respite care to stay with a relative abroad
- But there are many positive examples which demonstrate that SDS can and does work and enhances service users’ level of choice and control
- Successful implementation of SDS can reduce the need for social care interventions and can generate savings for the NHS too. It can also lead to better outcomes in terms of independent living, whereby people can contribute to society, have support to access learning and get a job and play key roles in their communities.
  - Consider the Christie Commission case study on preventative spending

SDS and independent living

- SDS can reinforce the objectives of the disabled people’s independent living movement
  - 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.”
  - Supporting independent living is a positive approach for everyone in society but there is limited understanding among the general public about what it means in practice
The Bill should state that SDS is intended to support independent living

- Direct link with human rights – not strong enough in Bill at present
  - SDS can provide people with the support they need to participate as full and equal members of society

### Barriers to accessing SDS

- Information – people need to know about SDS before they can decide whether to access it. Part of this information should come from existing services users – considering a model of peer support
- Social work budgets – resource allocation systems, eligibility criteria, charging for social care generally and restrictions on funding
  - People were concerned that RAS’s reduced accountability of the LA to meet assessed need
  - Further concern that the SDS may not be cost neutral but it will deliver better outcomes for the individual and thus value for money
  - Concerns that in fiscal squeezing, social care must not be cut as disabled people will be consigned into poverty though lack of opportunities to participate
  - Charging is a huge barrier, particularly when a large proportion of disabled people currently live in poverty
  - There is a need for minimum entitlements in terms of what people can expect, and that these should apply nationally, to help mitigate against issues associated with portability of care
  - Strong feeling from disabled people that there needs to be a Commission on the Funding of Social Care in Scotland to address the wider issues of eligibility/charging/resource allocation

- Assessment process for SDS
- Cultural change – required from social work managers, staff and service users
- Training – social workers require more training to understand the principles of SDS and on the options available
- Peer support – service users need support mechanisms to help during transition

### Theory and practice of SDS

- Concern about potential difference between what is written in legislation and guidance and what happens in practice:
  - The legislation and guidance on Direct Payments was excellent, but this was not necessarily what happened in practice.
  - What would be different with SDS Bill and associated guidance?

### Portability
• Need for service users to be able to move to another area and be sure they will get equivalent levels of support. The package of support should move with them – a basic human right. More evidence of what is happening in practice is required.

**Qualification for SDS**

• Concerns raised about assessment process for SDS and that individuals who do not have critical needs, but lower level needs may not be able to access SDS

**Budgets**

• To give people real choice and control means appropriate funding
• Concerns raised about whether a person’s SDS package would be taken into account under the new welfare arrangements
• There are more restrictions on how an individual can spend SDS money than other types of public money individuals receive -such as child benefit
• Many local authorities charge for various social services. Suggestion that if charge is taken from an individual service user’s budget this could lead to a decrease in funding. This would affect the ability of the individual to achieve the level of service they need and therefore their quality of life.
• General consensus that charging for social care is a barrier to accessing it

**Health care**

• Health services still can promote a very medicalised form of care, removed from independent living
• Lack of awareness of SDS amongst healthcare professionals – role for GPs to promote it
• Concerns about integration of health and social care and the effect it would have on independent living
• Request to committee to consider how SDS and the integration of health and social care will work together

**Monitoring and evaluation**

• Monitoring, evaluation and quality assurance of the implementation of the Bill is vital
  - Monitoring must be meaningful – not just numbers of people receiving direct payments
  - Need for local authorities to learn from each other about their experiences
• Should be a user-led review of legislation once it comes into force to monitor the experience of service users

**Support for service users - Independent advocacy**

• There is no mention in the Bill of independent advocacy
This is a fundamental requirement to allow all service users to have their voices heard and to support people to make decisions around SDS e.g. both processes and potential outcomes of it – without this, choice will be meaningless.

A right for service users to access independent advocacy must be included in the Bill.

Independent advocacy particularly important for those with a learning disability, as they may not feel comfortable in challenging the views of professionals or families.

Lack of availability of independent advocacy in rural areas.

Positive experiences of people using their local SDS unit for advice. Need for joint working between the unit, service user groups and carers.

Suggested that potential for SDS unit, social work department or support work and PA advice to be biased as they will be keen for the service user to stay with them or their service.

Advice also available from voluntary organisations, such as centres for inclusive living. Some of these services may be provided under contract from a local authority. No suggestion they would not provide good advice, however it was felt perception also mattered.

**Black and Minority Ethnic community**

- The BME community face potential barriers to access SDS including language and cultural issues.

**Rural areas**

- Service users in remote rural areas may have little or no choice of providers.

**Experience from Glasgow**

- Social work budgets cuts in Glasgow have resulted in restrictions to the potential of SDS:
  - Success is dependent on the level of funding available
  - Some personal budgets have been cut by between 50-70 percent
  - Argument has been that re-assessment process is about “equity” and meeting current demand – but this has occurred within a fixed budget
    - Acceptance that it is a political decision about whether to move money from other priorities

- Concerns raised that:
  - Social workers did not understand the context
  - Self-Assessment Questionnaire was not appropriate
  - Possible misinformation about what SDS can be used for – some options could not be funded from the individual budgets provided
  - Process was rushed for those with learning disabilities.
• An appeal procedure was put in place – but shouldn’t care needs assessments be accurate in the first place?

Direct payments
• Direct payments should be sufficient to allow a service user to select an agency of choice to deliver care – not merely the lowest level of service
• If employing a Personal Assistant, the budget must be sufficient to meet statutory obligations as an employer e.g. 5.6 weeks annual leave (or the equivalent statutory minimum); appropriate training

Other matters
• A social care commission should be created in order to monitor services, portability, charging systems, eligibility.
• A commission to look at funding including eligibility, charging and budgets.
• Software should be developed to facilitate self-assessment

In conclusion
• “Grab this and go with it. Yes, there are barriers, but they can be broken down.”
Discussion between carers and MSPs from Health and Sport Committee

The following notes outline the broad themes and views that were discussed in the three discussion groups with carers, and should not be taken as being a verbatim note of the discussion.

General
- Principles and possibilities of SDS are huge
- Social workers are the professionals so they know best about what to offer, and even well informed individuals can easily fall into that thinking. SDS provides opportunity to “turn that on its head”
- Using direct payments enables services to be tailored to what is required but for carers it can be time consuming in additional to normal caring role
- SDS Bill has potential to build on what already exists, however, some concern that SDS may turn out be same as current practice, as changes in social work practice which are required may not occur.

Barriers to accessing SDS
- Lack of information on how to access SDS:
  - Including need for assessment and information on rights as soon as someone who requires community care is discharged from hospital
  - Need for health coordinator who liaises with carers centres on a person’s discharge from hospital
- Lack of training on how to use SDS:
  - Service users, carers and social workers have lack of knowledge and understanding of rights and entitlements to SDS
- Difficulties in accessing appropriate care – including sourcing carers who meet service users requirements including cultural needs or preference for male carers

Assessment process
- Self-Assessment Qualification (SAQ) for service users was felt to be inappropriate and not fit for purpose
- Assessment process for those needing community care services could be more robust – particular in Glasgow when people were reassessed
- Concern that social workers did not have knowledge and training required to undertake assessments – due to lack of knowledge of options available they can tend to rely on CareFirst package (as don’t have to think about cost etc.)
- Service users and carers not provided with sufficient information
• Carers organisations had begun providing advice as a result – example given of one occasion where a social worker had thanked carers organisation for being present to advise not only the carers, but the social worker as well

• Need to ensure same provision available to people across Scotland - variation between and within local authority areas of the use of SAQ

• Time it took for assessments was generally thought to be too long

• Questions and implications of the answers of SAQ not always clear to person completing it

• Not always appropriate support when SAQ was being completed

• Examples given of where process had not worked well:
  o Service user was asked if they could take their own medication, they ticked “yes” but in reality they were handed their medication to take, they did not physically prepare the medicine themselves. The answer they gave meant that they were assessed as being able to undertake the whole process. Therefore effecting the result of the assessment and possibly the resources provided.
  o An individual saying they were fine, when they were just coping with existing services, which resulted in less services being offered after the assessment

Budget
• Concern that SDS is a way of cutting budgets through the backdoor with personal budgets being cut following reassessment of needs

• More could be done with the budget to make services more personalised but only if it is based on the sum of resources dedicated to previous service provision

• Money is only part of the issue, it is about how resources are used, making sure they achieve quality of care provision

• More transparency needed about budgets and what can and can’t be done in the climate of budget cuts

• Advice and information was recognised as important, but needs to be clear that time and resources needed around advice should not eat into budgets/resources available for support

• Having an equivalent budget, such as through a Direct Payment, and, for example, using that to employ PAs did make a difference:
  o You were able to better respond to an individual’s needs and wishes – ultimately improving their quality of life
  o These options could be more response than, for example, a day centre
• Call for relaxation on exemptions so that family members could be PAs, particularly in circumstances where the individual service user had profound and complex needs

• Unfair that family carers don’t have access to financial support when they provide care

• Carer can take on a number of roles, none of which are recognised or supported - one carer delivered care directly for her son and also managed the team of PAs he used.

• Sometimes carers in this situation felt that PAs provided through agencies could not be flexible enough

• Concern about PAs being employed on a self-employed basis

Choice

• Choice an attractive aim of SDS process

• New assessment process could be a ‘Hobson’s choice’ – without a carer you got a higher budget than if you stayed at home

• Unpaid carers were being expected to pick up the shortfall in budget – carers giving thought to whether they should continue in role

• Concern that costs were being distributed from existing service users to new demand

Supporting carers

• Not everyone had been offered a carers assessment under current legislation – some told no point doing one because no services would be provided as a result

• Where there was a lack of assessment of carers needs and provision of support this could impact on their quality of life – example given of carer not being provided with training on how to correctly lift the person they were caring for resulting in physical injury

• Carers Assessment should be conducted at same time as service user is assessed

• Criticism that Carers Assessment where done were not:
  o Done enough
  o Not done well
  o Not reviewed

• Call for SDS Bill to include a duty to provide services following an assessment, rather than a discretionary power – concern that when unmet need identified it wasn’t then provided

• Carers could receive a direct payment in their own right under the Bill:
o Why does this require a separate budget? As this is an additional mechanism that they did not want to deal with

o Others wanted a separate budget and did not like the fact that it was linked to the service user budget

- Respite care in Glasgow comes out of the service users budget
- Inflexibility in respite care – service user had respite arranged but the service user was unwell when the time came for them to go to respite. It was not possible to rearrange it, respite lost and the budget along with it

Training
- Training significant issue – need to ensure that everyone knows that SDS is not just about filling in a form, that it offers a different way of deciding on care options – starting with social workers
- Training required for carers needed before SDS is implemented, then support required for them going through the process of care planning – including where required how to use individual budgets and knowledge of employment law.
- Training programmes have been developed and are used by carers. SPAEN – provide information on employee rights, tax etc.

Guardianship
- Carers often not aware that they need guardianship of person they are caring for before they can access SDS payments.
- Guardianship process can be lengthy

Other issues
- Need for independent advocacy
- Lack of forward planning when service user moves from children to adult services
Dear Duncan,

SOCIAL CARE (SELF-DIRECTED SUPPORT) (SCOTLAND) BILL FINANCIAL MEMORANDUM

The Finance Committee gave consideration to the above at its meeting on 9 May 2012 when it took oral evidence from the Scottish Government Bill team. I am aware that your Committee began its Stage 1 consideration on 8 May and that you plan to publish your Stage 1 Report before the summer recess.

There were a number of points discussed with the Bill team (Official Report 9 May 2012) and I hope these are of interest and use to your Committee in its examination of the Bill. These may be matters which you wish to raise with the Minister for Public Health when you take oral evidence from him later this month.

As you know, our role is to scrutinise the financial implications of all Bills introduced in the Parliament. The Financial Memorandum (FM) must distinguish separately costs that would fall on—

(a) the Scottish Administration (i.e. the Executive, in the broad sense of Ministers, departments and agencies);  
(b) local authorities; and  
(c) other bodies, individuals and businesses.

It must set out the best estimates of the administrative, compliance and other costs to which the provisions of the Bill would give rise, best estimates of the timescales over which such costs would be expected to arise, and an indication of the margins of uncertainty in such estimates.
Our approach to considering the FM was to invite a number of organisations, including all 32 local authorities, to respond to a series of specific questions. That we did on 7 March and we received responses from nine local authorities and from COSLA. These responses are published on our website: www.scottish.parliament.uk/S4_FinanceCommittee/General%20Documents/Web_version_of_all_responses.pdf

As you know, the Scottish Government considers that self-directed support will be ‘cost-neutral’ in the long term and that there is ‘not expected to be a long term demand for increased funding within the local government finance settlements arising from this new framework of choice’ (paragraph 83 of the FM).

There was much discussion at our meeting on the level of funding which the Scottish Government will make available to local authorities for transformation. This was the main issue raised in the local authority and COSLA responses. Views were expressed that the funding is not enough and should be available over a longer period. The Scottish Government is to make £23 million available across the years 2012-13 to 2014-15 to assist local authorities with transformation (bridging finance, leadership, commissioning and contracting, IT and accounting systems, information material, administration and reporting requirements) to implement the Bill’s provisions.

The methodology underpinning this figure is dealt with at Table 2 and paragraph 106 of the FM. The Scottish Government has used three local authorities to determine the level of funding to be made available. One point to make here is that it would have been more helpful had a larger and more geographically dispersed and diverse number of local authorities been used rather than only three, all from the central belt and with two of these being our largest cities.

There was much discussion on the concerns raised that this £23 million will be insufficient. In particular, COSLA stated (paragraphs 11 and 12) in its written submission—

‘Both the financial memorandum, and indeed previous research studies, acknowledges it is difficult to accurately estimate the costs that will arise from the changes outlined above. Indeed, the timing and extent of these shifts in commissioning arrangements, administrative costs, and dual running costs are partly dependent of the choices individuals make under SDS. That said, the £23m identified falls far short of even councils’ most conservative estimates. Whilst it is difficult to fully estimate the exact cost for all Councils, from the information provided by Councils even the lowest estimate for each of the cost areas outlined above over three years would total just over £50m nationally. Given that councils are at different stages in implementing SDS, it is highly likely that these costs would be higher, and indeed even based on the median of the estimates which were received the total cost to councils, over the next three years would be over £90m. Clearly this is very different to the actual level of funding which has been provided.'
These estimates are of course subject to the limiting factors outlined earlier and COSLA is in no way presenting these figures as definitive. What we do wish to highlight however, is the level of disparity between even our most conservative estimates and the resource being made available.

COSLA did not produce a methodology or breakdown of what the level of transformation funding should be. I am aware that you have requested COSLA to provide your Committee with information on this issue and I hope that will add clarity to its position and give foundation to its estimate. The Bill team did say it had requested such information on a number of occasions in order to establish how the estimated £90 million came about. It also stated that the COSLA estimate may well include a number of elements which are not within the £23 million and for which funding may be provided elsewhere. There is therefore a degree of uncertainty around this.

The Committee therefore recommends that the lead committee explores further why such a significant disparity exists between these two estimates.

The Scottish Government supplied us with a breakdown of how this £23 million will be allocated to local authorities and a copy of this is attached. The point was made about the number of variables which must be considered. An example was given with respect to East Ayrshire Council which, in its written submission, sets out its estimates over the three year period but which are lower than the funding which it is to receive from the Scottish Government in each year. There is therefore clearly a need for detailed communication now and in the coming months, between the Scottish Government and each local authority and COSLA, to determine where each local authority is in the shift towards self-directed support and establish what funding is actually needed and for what precise purpose. This may be something which the Minister can update the Committee on.

While the Scottish Government has outlined its approach to preparing the FM, and it has drawn on the University of Stirling research, the Reid Report of 2003, and the University of Kent research, we must recognise the gap between its estimate and that of COSLA and of the local authorities (whatever these are). It is important that the Scottish Government’s estimated costs are as informed and precise as possible, particularly since any additional transformation costs would need to be covered from within local authority budgets.

In addition to the actual amount of funding to be made available, concerns were expressed as to the period over which funding will be provided. For example, Scottish Borders Council considers there will be a ‘substantial cost implication over at least 6 years’. As stated above, the Scottish Government will provide funding across the years 2012-13 to 2014-15. COSLA highlighted this issue in its submission—

‘Whilst COSLA recognises that SDS may deliver savings over the longer term, the SDS strategy is a 10 year vision. Whilst resources have been provided to support the next 3 years, it is clear that both changes to culture and associated infrastructure often take time to emerge, and will require resources to support
the necessary changes. Given the Bill places new duties on Councils, it is difficult to estimate what level of savings may be realised going forward. Whilst the Scottish Government have made it clear that the level of resources which are currently provided are for the next Spending Review only, there will be a need to consider any future anticipated resources going forward.'

Again, this disparity may be an issue you wish to raise with the Minister.

I do hope this information is useful to your Committee. Should you wish to discuss, please do get in touch (alternatively, your clerks can discuss with Finance Committee clerks).

Yours sincerely

Kenneth Gibson MSP
Convener
Self-directed Support: Transformation funds to local authorities 2012/13 – 2014/15

In 2011/12, £1.12m was distributed to local authorities at a flat rate of £35,000 each. The Financial Memorandum to the Social Care (Self-directed Support) (Scotland) Bill identified a further £23m to support transformation within local authorities over the next 3 years - £6m in 2012/13, £11m in 2013/14 and £6m in 2014/15. At the time of writing the Memorandum, the Government was still in negotiation with COSLA about how that resource would be allocated. A formula has now been agreed and approved by the Minister for Public Health and the COSLA leadership, and the Government has commenced distributing the money for 2012/13.

The funding will be divided as follows:
- a flat rate of £50,000 per local authority per year; and
- the remainder to be divided up using a formula based on existing Social Work Grant Aided Expenditure (GAE) lines relating to older people and adults with community care needs plus 12% of the GAE lines relating to children and families.

The flat rate £50,000 per year is in recognition of the need for a properly resourced Implementation Manager in each local authority and also creates a minimum amount per local authority.

The distribution of the remainder of the funding follows a similar approach to that used for the allocation of the Older People’s Change Fund and therefore avoids creating a new distribution process for what is short-term funding. The formula gives a weighting of 100% to lines relating to older people and adults with community care needs, in recognition that SDS will apply to the majority of people in these groups. In relation to children and families, the Bill will mainly apply to children and young people with a disability and their carers. However, there are no specific GAE lines for this group. Statistics suggest that 12% is the best estimate for children and young people with a disability as a proportion of the groups covered in children and families’ GAE lines. This is therefore applied as the weighting for these lines.

Overall, this results in a distribution of funding as set out below:

<table>
<thead>
<tr>
<th>Local Authority</th>
<th>2012/13</th>
<th>2013/14</th>
<th>2014/15</th>
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<tr>
<td>Aberdeen City</td>
<td>£226,440</td>
<td>£426,000</td>
<td>£225,560</td>
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<tr>
<td>Aberdeenshire</td>
<td>£234,360</td>
<td>£445,740</td>
<td>£236,560</td>
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<td>Angus</td>
<td>£151,640</td>
<td>£268,080</td>
<td>£152,520</td>
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<tr>
<td>Argyll and Bute</td>
<td>£136,680</td>
<td>£235,180</td>
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<td>Clackmannanshire</td>
<td>£88,280</td>
<td>£131,780</td>
<td>£88,720</td>
</tr>
<tr>
<td>Dumfries and Galloway</td>
<td>£194,760</td>
<td>£359,260</td>
<td>£195,640</td>
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<tr>
<td>Dundee City</td>
<td>£187,720</td>
<td>£343,280</td>
<td>£186,840</td>
</tr>
<tr>
<td>Region</td>
<td>£ 1</td>
<td>£ 2</td>
<td>£ 3</td>
</tr>
<tr>
<td>------------------------</td>
<td>-------------</td>
<td>-------------</td>
<td>-------------</td>
</tr>
<tr>
<td>East Ayrshire</td>
<td>152,960</td>
<td>269,960</td>
<td>152,520</td>
</tr>
<tr>
<td>East Dunbartonshire</td>
<td>130,520</td>
<td>222,020</td>
<td>130,960</td>
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<tr>
<td>East Lothian</td>
<td>130,080</td>
<td>222,020</td>
<td>130,960</td>
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<tr>
<td>East Renfrewshire</td>
<td>121,720</td>
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<td>122,160</td>
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<td>Edinburgh, City of</td>
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<td>909,160</td>
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<td>75,960</td>
<td>104,520</td>
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<td>Midlothian</td>
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<td>Moray</td>
<td>123,480</td>
<td>207,920</td>
<td>123,920</td>
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<td>North Ayrshire</td>
<td>169,680</td>
<td>305,680</td>
<td>169,240</td>
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<td>North Lanarkshire</td>
<td>299,480</td>
<td>583,920</td>
<td>299,920</td>
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<td>Orkney Islands</td>
<td>66,280</td>
<td>84,780</td>
<td>66,280</td>
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<td>Perth and Kinross</td>
<td>186,840</td>
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<td>Renfrewshire</td>
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<td>347,980</td>
<td>189,480</td>
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<tr>
<td>Scottish Borders</td>
<td>150,760</td>
<td>265,260</td>
<td>150,760</td>
</tr>
<tr>
<td>Shetland Islands</td>
<td>67,600</td>
<td>87,600</td>
<td>68,040</td>
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<tr>
<td>South Ayrshire</td>
<td>160,880</td>
<td>286,880</td>
<td>160,880</td>
</tr>
<tr>
<td>South Lanarkshire</td>
<td>304,760</td>
<td>596,140</td>
<td>306,520</td>
</tr>
<tr>
<td>Stirling</td>
<td>121,720</td>
<td>204,160</td>
<td>122,160</td>
</tr>
<tr>
<td>West Dunbartonshire</td>
<td>129,200</td>
<td>217,320</td>
<td>127,440</td>
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<tr>
<td>West Lothian</td>
<td>161,320</td>
<td>290,640</td>
<td>163,960</td>
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<td><strong>5,999,120</strong></td>
<td><strong>10,999,060</strong></td>
<td><strong>6,000,000</strong></td>
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Subordinate Legislation Committee

29th Report, 2012 (Session 4)

Social Care (Self-directed Support) (Scotland) Bill

Published by the Scottish Parliament on 23 May 2012
Subordinate Legislation Committee

Remit and membership

Remit:
The remit of the Subordinate Legislation Committee is to consider and report on—
(a) any—
(i) subordinate legislation laid before the Parliament;
(ii) [deleted]
(iii) pension or grants motion as described in Rule 8.11A.1;
and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;
(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;
(c) general questions relating to powers to make subordinate legislation;
(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;
(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act; and
(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject.

(Standing Orders of the Scottish Parliament, Rule 6.11)

Membership:
Chic Brodie
Nigel Don (Convener)
James Dornan (Deputy Convener)
Mike MacKenzie
Michael McMahon
John Pentland
John Scott

Committee Clerking Team:

Clerk to the Committee
Irene Fleming

Assistant Clerk
Rob Littlejohn

Support Manager
Daren Pratt
The Committee reports to the Parliament as follows—

INTRODUCTION

1. At its meetings on 8, 15 and 22 May, the Subordinate Legislation Committee considered the delegated powers provisions in the Social Care (Self-directed Support) (Scotland) Bill (“the Bill”) at Stage 1. The Committee submits this report to the Health and Sport Committee as lead Committee for the Bill under Rule 9.6.2 of Standing Orders.

2. The Scottish Government has provided a Delegated Powers Memorandum (DPM)\(^1\) setting out the need for the delegated powers, how they may be exercised and the choice of procedure applicable to their exercise.

3. Scottish Government officials also provided oral evidence to the Committee at its meeting on 15 May 2012. The *Official Report* of the meeting is available on the Parliament website.\(^2\)

OVERVIEW OF THE BILL

4. The Social Care (Self-directed Support) (Scotland) Bill was introduced in the Parliament on 29 February 2012 by Nicola Sturgeon MSP. It is a Government Bill which makes provision about the manner in which local authorities provide certain support and services. In particular, it is intended to provide individuals who require those services with the power to direct the way in which they receive them. The Bill applies to both adult and child social care.

5. Local authorities presently have duties to promote social welfare, as laid down in Part II of the Social Work (Scotland) Act 1968 (“the 1968 Act”). In particular, this includes assessing whether individuals to whom they owe a duty

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\(^1\) Social Care (Self-directed Support) (Scotland) Bill. Delegated Powers Memorandum. Available at: [http://www.scottish.parliament.uk/S4_Bills/Social%20Care%20(Self%20directed%20Support)%20(Scotland)%20Bill/DPM.pdf](http://www.scottish.parliament.uk/S4_Bills/Social%20Care%20(Self%20directed%20Support)%20(Scotland)%20Bill/DPM.pdf)

under the 1968 Act are in need of community care services, and providing services to meet those needs.

6. Local authorities also have a duty to promote the welfare of children in their area who are in need by providing services appropriate to those children’s needs, under sections 22 to 24 of the Children (Scotland) Act 1995 (“the 1995 Act”).

7. The Bill does not replace these duties. However, it does set out a number of principles which local authorities must have regard to in exercising their functions under Part II of the 1968 Act, sections 22 to 24 of the 1995 Act and under the Bill itself.

8. The starting point is that individuals must have as much involvement in the assessment of their needs and in the provision of support or services to them as they wish (section 1(2)). Local authorities are required to provide any reasonable assistance to enable individuals to express a view and to make an informed choice in choosing an option for “self-directed” support (section 1(3)). Local authorities are also obliged to collaborate with individuals in assessing their needs and providing support and services (section 1(4)).

9. The central element of the Bill is that individuals are to be given a choice as to how the services which they need are delivered to them. There are four options for self-directed support established by the Bill:

   - Option 1: the making of a direct payment by the local authority to the supported person for the provision of support.
   - Option 2: the selection of support by the supported person and the making of arrangements for the provision of it by the local authority on behalf of the supported person.
   - Option 3: the selection of support and the making of arrangements for the provision of it by the local authority.
   - Option 4: the selection by the supported person of Option 1, 2 or 3 for each type of support.

DELEGATED POWERS PROVISIONS

10. The Committee considered each of the delegated powers provisions in the Bill.

11. The Committee determined that it did not need to draw the attention of the Parliament to the delegated powers contained in sections 18 (new section 15(4)(h) of the Community care and Health (Scotland) Act 2002) or 26 (commencement) of the Bill.

12. The Committee’s comments and, where appropriate, recommendations on the other delegated powers are detailed below.
Section 12 – Power to modify section 3

Power conferred on: the Scottish Ministers
Power exercisable by: regulations
Parliamentary procedure: affirmative procedure

Background
13. Section 12 enables the Scottish Ministers to make regulations which modify section 3 of the Bill. So far as it is necessary in consequence of any modification to section 3, they may also modify sections 4, 6 and 7.

14. Section 3 lists the options for self-directed support made available under the Bill. The supported individual is to be offered a choice of these options, and sections 4, 6 and 7 make provision about making that choice of support for adults, adult carers and children respectively.

Breadth of the power
15. It appeared to the Committee that the power in section 12 would enable the Scottish Ministers to make any modification to section 3 that they saw fit. It accordingly asked the Ministers to explain why such a broad power was considered to be necessary, and whether consideration had been given to limiting its scope. The Scottish Government officials advised the Committee that:

"ensuring flexibility and future proofing the range of options that is available to individuals were the main reasons behind including in the bill the power to modify the options."³

16. They further explained that:

"The power in section 12 could have been drawn differently. For example, it could have allowed ministers to vary, remove or add an option. What it does is allow ministers to modify section 3 …

The power is wide, but a narrower drawing up of it would have amounted to the same thing."⁴

17. The officials subsequently confirmed to the Committee that it was not this present administration’s policy intention to use the power in section 12 to restrict the choice available to individuals. The Scottish Government’s legal adviser offered the opinion that:

"we are open to suggestions about how the power might be drawn more narrowly to achieve the aim. However, if, say, the power were drawn so that options could be added or removed, all the options could just be removed. It is simply theoretical. The Parliament could refuse to agree to regulations under the affirmative procedure. If a future Government with different

intentions with regard to the use of the power rejected the original intentions, the Parliament could refuse it."\(^5\)

18. The Committee recognises that the intention of the Scottish Ministers in seeking this power is to ensure that the Bill contains sufficient flexibility to allow it to be adapted to innovations in social work practice. In principle, it accepts that it may be reasonable to delegate power for that purpose, were the power to be exercised solely as this administration appears to propose.

19. However, it continues to have concerns in relation to the breadth of this power. Although the Scottish Government officials spoke of using the power to amend the definitions of the existing options specified in the Bill\(^6\), they accepted that it might be used to add new options in the future. They appeared to suggest, at least hypothetically, that however the power was framed it might be used to remove options and so to restrict the effectiveness of the choices available to individuals.

20. Given that section 3 of the Bill is recognised by the Scottish Government as one of its core provisions, and that the principle of choice in the delivery of services is central to the Bill, the Committee does not expect to see this power exercised so as to remove individuals’ ability to choose among the options. It observes that specific powers to restrict choice are to be found in sections 13 and 21 of the Bill. The Committee continues to be concerned that the entire policy and purpose of the Bill might be defeated by the making of regulations under section 12 so as to remove the element of choice. It accepts that this is in no way the policy of the present administration. However, given the significance of this matter, it suggests that the Scottish Government may wish to consider whether the power can be revised so as to provide that it cannot be used to remove the element of choice by reducing the options in section 3 to a single option.

Parliamentary procedure

21. As this power appeared to the Committee to be a particularly significant one, it explored with the Scottish Government why it considered the affirmative procedure to provide a sufficient level of parliamentary scrutiny. In particular, it wished to establish whether consideration had been given to a form of super-affirmative procedure to ensure an opportunity for detailed consultation on any draft regulations. In response, the Scottish Government’s legal adviser stated:

“It is a similar story to the one that you heard from the bill team for the Local Government Finance (Unoccupied Properties etc) (Scotland) Bill. The options had been widely consulted on prior to the bill’s introduction. I assure you that there are no plans to use the power at present, and that any making of regulations would be done with extensive consultation with stakeholders.”\(^7\)

22. The position adopted by the Scottish Government appeared to be that it views super-affirmative procedure as entailing detailed consultation followed by

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the affirmative procedure, and as it already proposes to consult then a form of super-affirmative procedure would not go any further.  

23. The Committee does not consider that it is accurate to draw parallels between the parliamentary procedure applicable to the Local Government Finance (Unoccupied Properties etc) (Scotland) Bill and the procedure applicable to this power. The Scottish Government’s legal adviser on that Bill informed the Committee that:

“The Scottish Government will consult on regulations before it makes them. Indeed, there will be a statutory obligation to consult the Convention of Scottish Local Authorities and such other bodies as ministers think appropriate.”9 [emphasis added]

24. The Committee contrasts that with the position in relation to section 12, where there is no such statutory requirement to consult. While the Committee welcomes the stated intention of the Scottish Ministers to consult voluntarily before exercising the section 12 power, it observes that statutory consultation with prescribed bodies is, on the face of it, a greater safeguard on the exercise of the power.

25. Having considered the example of the Local Government Finance (Unoccupied Properties etc) (Scotland) Bill, the Committee considers that the Government ought to include a similar statutory consultation requirement in section 12. It takes the view that, in particular, the Government should consult local authorities (or representative bodies such as COSLA), as well as organisations appearing to represent the interests of individuals to whom the Bill applies.

26. The Committee draws the power in section 12 to the attention of the lead Committee as it considers it to be particularly broad in its scope, and observes that it appears to be possible for it to operate in the future so as to defeat the entire policy and purpose of the Bill by reducing the options for choice in section 3 to a single option.

27. The Committee accordingly recommends that the Scottish Government consider whether the power might be revised so that it may not be used in that manner, while still enabling the Government to achieve its stated aim of preserving sufficient flexibility to adapt the Bill to keep pace with changing social work practice in future.

28. The Committee considers that the section 12 power ought to be subject to a statutory requirement to consult interested bodies on any draft regulations. Were it subject to such a requirement, the Committee would be content that the regulations are subject to the affirmative procedure.

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Section 13 – Power to make further provision about direct payments

Power conferred on: the Scottish Ministers
Power exercisable by: regulations
Parliamentary procedure: negative procedure

Background
29. Section 13 allows the Scottish Ministers to make further provision via subordinate legislation about direct payments, and section 13(2) sets out a non-exhaustive list of ways in which this power may be exercised. In their Delegated Powers Memorandum, the Scottish Ministers characterise the purposes for which section 13 might be exercised as being largely technical. Section 13(2)(a) enables the Scottish Ministers to specify descriptions of persons who are ineligible for direct payments and section 13(2)(b) enables them to specify circumstances in which the right to choose to receive direct payments need not be offered.

Parliamentary procedure
30. It appeared to the Committee that provision under section 13(2)(a) and (b) would be substantive and would go beyond the merely technical. Accordingly, it asked the Scottish Government officials to explain why it was considered that the negative procedure provided a sufficient level of parliamentary scrutiny for regulations of that nature.

31. The Scottish Government officials advised the Committee that this power derived from the existing provisions in relation to direct payments which are to be found in section 12B of the 1968 Act. They highlighted that regulations under section 12B may similarly restrict access to direct payments and that those regulations are subject to the negative procedure. They further indicated that it was intended to carry forward the existing regulations following the Bill’s enactment, although consultation would take place and the form might be different. For these reasons, the Scottish Ministers considered that the negative procedure was appropriate.

Comment
32. The Committee does not consider that the adoption of a particular procedure in relation to an earlier delegated power is necessarily determinative of the appropriate procedure to be adopted in relation to section 13. It notes that section 12B of the 1968 Act was inserted in 1996, and that the approach to delegated powers adopted by Parliament at that time may not necessarily be the approach favoured by the Scottish Parliament nowadays.

33. However, the Committee accepts that it is not the Scottish Ministers’ intention to innovate substantially in relation to restrictions on access to direct payments, and indeed officials suggested that the Bill would “carry on” the existing

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regulations. In these circumstances, the Committee accepts that it is appropriate that this power is subject to the negative procedure.

34. **The Committee is satisfied in principle with the power in section 13, and that it is subject to the negative procedure.**

### Section 19 – Guidance and directions

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>the Scottish Ministers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power exercisable by:</td>
<td>guidance/directions</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>no parliamentary procedure</td>
</tr>
</tbody>
</table>

**Background**

35. When read with section 53 of the Scotland Act 1998, section 5(1) of the 1968 Act provides that local authorities are to perform their functions under the 1968 Act and their functions under Part II of the 1995 Act under the general guidance of the Scottish Ministers. Section 19(a) amends section 5(1) to extend the Ministers’ powers to issue guidance to include guidance on functions conferred by the Bill.

36. Similarly, section 5(1A) of the 1968 Act provides that the Scottish Ministers may issue directions to local authorities as to the manner in which they exercise the functions conferred upon them by a number of Acts listed in subsection (1B). Section 19(b) adds the Bill to that list so that the Ministers may issue directions in relation to it.

**Comment**

37. The Committee considers that delegating powers to issue guidance and directions of this sort is, in the circumstances, appropriate. However, it notes that neither guidance issued under section 5(1) nor directions issued under section 5(1A) of the 1968 Act are subject to any form of parliamentary procedure. Nor does the 1968 Act require their publication in any other form. It accordingly welcomes the fact that the Scottish Ministers have convened a group of interested persons to assist in the development of the statutory guidance and delegated legislation necessary to implement the Bill.

38. **The Committee accordingly finds the powers inserted into section 5 of the Social Work (Scotland) Act 1968 by section 19 to be acceptable in principle, and is content that they are not subject to any parliamentary procedure as this reflects the existing position under section 5(1) and 5(1A) of the Social Work (Scotland) Act 1968.**

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Section 20(1)(b) – Regulations: general

Power conferred on: the Scottish Ministers
Power exercisable by: regulations
Parliamentary procedure: affirmative procedure when being exercised in conjunction with sections 12 and 21, and negative procedure when being exercised in conjunction with section 13

Background

39. Section 20(1)(b) provides a “bolt on” ancillary power to allow the Scottish Ministers to include supplementary, incidental, consequential, transitory, transitional and savings provision when making subordinate legislation under any of the other regulation-making powers in the Bill (i.e. the powers in sections 12, 13 and 21). The inclusion of bolt-on provision does not alter the level of parliamentary scrutiny which applies in relation to the individual powers themselves.

40. The Committee was concerned that, in a Bill which contains only three substantive delegated powers, and which includes standalone powers to make ancillary provision by order, it was difficult to identify an obvious need for this power. This concern was fortified by the fact that two of the substantive powers (sections 12 and 21) of themselves contained specific powers to make ancillary provision. It accordingly sought further information from the Scottish Government on the interaction of this power with the specific powers in sections 12(b) and 21(2).

41. The Scottish Government indicated that the existence of those specific powers did not, in its view, prevent the exercise of the section 20(1)(b) power in conjunction with the powers in section 12 or 21. When asked why this was considered necessary, its legal adviser commented:

“It is not possible to speculate without knowing the terms of any changes to section 3. As I said, the specific power in section 12(b) would be used to amend the bill consequentially. If another amendment were needed to a further enactment—say, regulations regarding direct payments—we could use the power in section 20(1)(b) to make a consequential change there. However, we cannot speculate without knowing”.

Comment

42. It appears to the Committee that the ancillary powers provisions of the Bill are complex, and it is not apparent why this degree of complexity is required. It observes that regulations under section 12, which of themselves are of a significant nature, might contain wide-ranging ancillary provision made under a combination of section 12(b) and 20(1)(b).

43. To the extent that section 20(1)(b) might be exercised in conjunction with section 13, the Committee accepts that it enables the Scottish Ministers to make

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ancillary and transitional provision in the same instrument as the related substantive provisions, and acknowledges that this may improve transparency and clarity for the end user. It is less clear to the Committee that a situation whereby the ancillary provisions in section 12(b) or 21(2) might be combined with further ancillary provisions in section 20(1)(b) does anything to promote transparency or clarity.

44. The Committee accordingly recommends that the Scottish Government consider whether it is appropriate that the significant powers in section 12(a) and 21(1) are capable of attracting two separate sets of ancillary powers, and whether as a result the power in section 20(1)(b) is necessary save in relation to section 13.

45. As the procedure which applies to the exercise of this power will be determined by the procedure applicable to the principal power being exercised, the Committee considers this to be acceptable in principle.

Section 21 – Power to modify application of Act

Power conferred on: the Scottish Ministers
Power exercisable by: regulations
Parliamentary procedure: affirmative procedure

Background

46. Section 21 confers power upon the Scottish Ministers to make provision for or in connection with disapplying sections 4(2) or 7(2) of the Bill. Sections 4(2) and 7(2) are key to the Bill, as it is those provisions which require local authorities to give supported persons the opportunity to choose one of the section 3 options for delivery of support.

47. Section 4(2) requires local authorities to give supported adults the opportunity to choose one of the options for self-directed support listed in section 3, unless the authority considers the supported adult ineligible to receive direct payments. Section 7(2) places a similar obligation upon local authorities in respect of supported children or a member of a supported child’s family to whom services are to be provided under section 22 of the 1995 Act.

48. Where regulations disapply section 4(2) or 7(2), section 21(2)(a) provides that the person may also be deemed to have chosen Option 3, and section 21(2)(b) provides that the regulations may disapply or modify any other section of the Bill.

Interaction with section 13

49. It appeared to the Committee that the powers in this section and in section 13(2)(a) and (b) were intended to be used in a similar way, to restrict the choice available to individuals. It accordingly asked the Scottish Government to explain why both powers were necessary and the criteria it would apply to determine which power ought to be exercised in any given case.
50. The Scottish Government officials made it clear that section 21 potentially has a much greater impact on the operation of the Bill than section 13. They stated:

“Any way in which section 21 was used would say, “You have no choice. In these circumstances, the local authority will provide the services as the local authority sees fit.” However, sections 13(2)(a) and 13(2)(b) would be able to restrict the choice and to say, “You have a choice, but your choice is between options two and three and option four”.

51. They went on to specify that the section 21 powers were only intended to be deployed to remove any element of choice, and that they would not be used to restrict access to a particular option.

52. The Committee notes the Scottish Government’s position, and accepts that in principle it is appropriate to make a distinction between these powers based on their intended use.

Circumstances in which the power might be exercised

53. The Committee was concerned to note from the Delegated Powers Memorandum that, when the Bill was introduced, the Scottish Government did not know what the section 21 power would be used for. In particular, it was concerned that the DPM at paragraph 24 recorded that there were divergent views within the Scottish Government on that point. It accordingly asked whether those views had been reconciled, and whether the Scottish Government could advise as to the circumstances in which the power might be exercised.

54. The Scottish Government officials gave two examples of circumstances where the power might be deployed. It might be used in relation to child protection services which local authorities delivered in reliance on their powers to promote the welfare of children in need in terms of section 22 of the 1995 Act (as distinct from their child protection functions under other sections of that Act, to which the Bill does not apply). Officials also appeared to envisage its use where Option 2 was not considered appropriate:

“In relation to option 2 in the bill, which is not the direct payments option, there have been discussions with consultees around some of the recipients of social care who are at the outside edges of those whom social work departments support—people whose need arises from homelessness, drug addiction or alcohol addiction. The sector may not be ready to respond to the increased flexibility of option 2—the individual service fund option—in the short term, at least. Therefore, it was felt that a power to modify the application of the act was necessary”.

55. The Committee accepts that, in some circumstances, such as those mentioned in paragraph 54 above, it might be necessary to disapply the element of choice. It notes, however, that there is an inconsistency between the position

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adopted in paragraph 51 above and the suggestion that it might be appropriate to deploy section 21 where Option 2 (rather than Option 1) was felt to be inappropriate. It accordingly suggests that the Scottish Government may wish to clarify whether it considers it necessary to remove the element of choice entirely in respect of persons whose need arises from homelessness, drug addiction or alcohol addiction, or whether it is merely Option 2 which is not appropriate for those persons. If it is the latter, then it is asked to explain how this may be reconciled with its stated position that section 21 should only be used to remove choice entirely, and not to interfere with the available options.

Operation of the power
56. The Committee sought additional information in relation to three aspects of the way in which the power is intended to operate.

57. As section 21(1) provides only for the disapplication of subsection (2) of sections 4 and 7, it sought clarity on the position in relation to the remainder of sections 4 and 7 should subsection (2) be disapplied. The Scottish Government advised that, in its view, any other provisions in sections 4 and 7 would be disapplied by necessary implication if subsection (2) were disapplied.15

58. The Committee notes this explanation, although it does not consider the position to be entirely free from doubt. It considers it at least arguable that, if section 4(2) or 7(2) is disapplied, then the supported person has not made a choice in pursuance of that subsection or subsection (3)(b), and accordingly is deemed to have chosen Option 3 by virtue of subsection (4). As competing interpretations appear to be open, the Committee recommends that the Scottish Government consider whether the drafting of the section 21 power could be clarified so as to put the matter beyond doubt.

59. The Committee observed that, although sections 4, 6 and 7 were in very similar terms, the section 21(1) power could not be used to disapply section 6 (which relates to the choice to be given to adult carers). It sought an explanation as to why carers fell to be treated differently. The Scottish Government confirmed that this was an intentional omission, on the basis that the principal powers to provide support to adults (section 12 of the 1968 Act) and to children (section 22 of the 1995 Act) were “enormously wide”16. By contrast, the power to provide support to adult carers is contained in the Bill itself and it is a limited power. The officials advised that, while circumstances could be envisaged where the power might be needed in connection with sections 4 and 7, it was not possible to justify extending it to section 6 as no such circumstances were envisaged.17

60. The Committee notes the position, and observes that the omission does not in any way prejudice adult carers, who appear in fact to have a greater degree of protection than others who are entitled to a choice under the Bill.

61. Section 21(2)(b) provides that regulations made under section 21(1) may include provision disapplying or modifying any other section in the Bill. On the face

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of it, this power enables the Scottish Ministers to disapply or modify the Bill essentially as they see fit, if they disapply either section 4(2) or 7(2). It accordingly asked the Scottish Government to explain the basis upon which the supplementary power in section 21(2)(b) is intended to be exercised.

62. The Scottish Government suggested that the power might be used to disapply section 8, which relates to the provision of information by local authorities. The Scottish Government’s legal adviser said:

“It would be sensible to disapply local authorities’ duty to provide information on choices if somebody did not have a choice.”18

63. The Committee agrees that that would be a sensible approach. However, it observes that, in terms of section 8(1), section 8 only applies where “a local authority gives a person an opportunity to choose one of the options for self-directed support.” It appears to the Committee that no such opportunity will be given if section 4(2) or 7(2) has been disapplied, and so section 8 will not apply. Making provision to disapply section 8 in regulations would accordingly seem to be otiose.

64. As sections 9 to 11 of the Bill will similarly apply only where a local authority has given a person an opportunity to choose one of the options, the Committee suggests that the Scottish Government give further consideration to whether the power in section 21(2)(b) is in fact necessary, particularly given that it enables the modification or disapplication of any provision of the Bill and is accordingly of a particularly significant nature.

65. As an example of the breadth of potential provision which might be made under section 21(2)(b), the Scottish Government was asked whether it might be used to disapply section 6(2), notwithstanding the previously-stated intention that section 6(2) be protected from the principal power to disapply contained in section 21(1). The Scottish Government’s legal adviser replied:

"It certainly has not crossed my mind that that would be the intention. It would be for Parliament to decide, but that would clearly be a strange use of the power."19

66. Whether or not it might represent an unusual exercise of the section 21(2)(b) power, the Scottish Government appears to accept that the power could be used to controvert its intention to prevent the disapplication of the right of carers to make a choice. The Committee accordingly suggests that, if the Scottish Government remains of the view that the power is necessary, the Government should consider whether it is necessary to take a power to modify any provision of the Bill, or if it could feasibly identify provisions which should be protected from modification using this power.

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Parliamentary procedure

67. As with section 12, this power appeared to the Committee to be a particularly significant one. It therefore explored again with the Scottish Government why it considered the affirmative procedure to provide a sufficient level of parliamentary scrutiny, and whether super-affirmative procedure had been considered. The Scottish Government took the view that there was nothing to distinguish this power from section 12. It confirmed its earlier position, i.e. that the reasoning given in relation to the Local Government Finance (Unoccupied Properties etc) (Scotland) Bill applied similarly in relation to this power.

68. As reported at paragraph 23 above, the Committee does not consider this to be an accurate comparison. Again, there is no statutory consultation requirement in section 21. It considers the section 21 power to be equally as significant as the section 12 power, if not more so. Accordingly, while it welcomes voluntary consultation, it is of the view that a statutory obligation to consult would constitute a greater safeguard when proposing to exercise a power which would preclude any element of choice.

69. The Committee accepts that the power in section 21(1) to disapply section 4(2) or 7(2) of the Bill is, in principle, appropriate.

70. However, the Committee recommends that the Scottish Government explain whether it considers it necessary to remove the element of choice entirely using section 21(1) if Option 2 is considered not to be appropriate in any given situation. If this is not the case, then it is asked to explain how this may be reconciled with its stated position that section 21 should only be used to remove choice entirely, and not to interfere with the available options.

71. The Committee also recommends that the Scottish Government consider whether it is sufficient to rely on the disapplication of section 4(2) or 7(2) impliedly to disapply the remainder of those sections, given that it is arguable that subsection (4) could sensibly continue to operate despite such a disapplication.

72. The Committee does not accept that the supplementary power in section 21(2)(b) to modify or disapply any other section of the Bill in consequence of a disapplication of section 4(2) or 7(2) – as presently drafted – is appropriate.

73. The Committee calls on the Scottish Government to identify the sections of the Bill to which section 21(2)(b) might apply, given that a number of sections are expressed to apply only where a local authority has given a person the opportunity to choose one of the options.

74. Given that it appears to be intended that certain sections of the Bill, such as section 6(2), should not be modified, the Committee invites the Scottish Government to consider whether it is necessary that the power in section 21(2)(b) permit the modification of any other section of the Bill, or if it could feasibly identify the provisions which should be protected from modification using this power.
75. The Committee also considers that the section 21 power ought to be subject to a statutory requirement to consult with interested bodies on any draft regulations. Were it subject to such a requirement, the Committee would be content that the regulations are subject to the affirmative procedure.

Section 24 – Ancillary provision

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Background

76. Section 24(1) allows the Scottish Ministers to make such supplementary, incidental or consequential provision as they consider appropriate for the purposes of, in consequence of, or for giving full effect to, any provision of the Act. Section 24(2) provides that this power may be used to modify any enactment. Section 24(3) provides that where the power is exercised so as to amend any part of the text of an Act, then the affirmative procedure applies. Otherwise, negative procedure applies.

Comment

77. The Committee accepts that circumstances may arise which would necessitate adjustments of the nature permitted by this power. It does not think it would be an effective use of parliamentary time to require matters of a technical or minor nature, and which are bound up with giving effect to the provisions in this Bill (as distinct with being used for some wider purpose), to be dealt with by means of further primary legislation.

78. Nevertheless, to the extent that this power enables textual changes to be made to primary legislation, the Committee considers that it is important that an appropriate level of parliamentary control is applied to that process. It therefore agrees that the affirmative procedure should apply in such circumstances. Similarly, the Committee considers that in other circumstances it is reasonable that the negative procedure should apply.

79. The Committee did not consider it to be entirely clear whether an order under section 24 may modify the Bill itself, despite the provision in section 24(2) that an order may modify “any enactment”. It has recently scrutinised delegated powers where the matter has been put beyond doubt in the Bill, for example in section 121(2) of the Police and Fire Reform (Scotland) Bill. The Committee accordingly asked the Scottish Government to explain whether it was intended that this Bill could itself be modified by order under section 24.

80. The Scottish Government did not offer a view on whether it would be possible to modify the Bill using the power in section 24, but it did clarify that it is not its intention to do so. The Committee considers that the present administration’s intentions cannot be determinative of the matter when the power will appear on the
statute book until it is repealed, and so will be available to any future administration. The Scottish Government went on to make it quite clear that it considers the wording used in the Police and Fire Reform (Scotland) Bill to achieve clarity to be unnecessary, as it has no intention to use the power in that way.

81. The Committee respects the Scottish Government’s intentions in relation to this power. However, if there is no intention that the power should be used in that way, then the Committee considers that it could be revised so as to state expressly that the power does not extend to modification of the Bill itself. In that respect, it would represent the mirror image of the Police and Fire Reform (Scotland) Bill’s wording, which contains express provision to put it beyond doubt that the equivalent provision did extend to modification of that Bill. The Committee suggests that the Scottish Government reconsider this matter in the interests of clarity.

82. Subject to the following recommendation, the Committee is satisfied in principle with the power in section 24, and that it is subject to the affirmative procedure when making textual amendments to primary legislation, and otherwise to the negative procedure.

83. The Committee recommends that the Scottish Government, in light of its stated intention not to use the power in section 24 to modify the Bill itself, consider whether section 24(2) might be revised so as to put the matter beyond doubt in order to make it clear that it may not be used to modify the Bill itself.

Section 25 – Transitional provision etc.

Power conferred on: the Scottish Ministers
Power exercisable by: order
Parliamentary procedure: negative procedure

Background
84. Section 25 confers power on the Scottish Ministers to make such provision as they consider necessary or expedient for transitory, transitional or saving purposes in connection with the coming into force of the Act. Section 25(2) provides that an order made under this section may modify any enactment, and orders under this section are subject to the negative procedure in all cases.

Comment
85. Again, the Committee accepts that circumstances may arise which necessitate adjustments of the nature permitted by this power, and it does not think it would be an effective use of parliamentary time for matters of a technical or minor nature, which are bound up with giving effect to the provisions in this Bill (as distinct with being used for some wider purpose), to be dealt with by means of further primary legislation.

86. However, this power, although subject to the negative procedure, may be used to modify any enactment. Unlike the power in section 24, there is no requirement that the affirmative procedure will apply when making textual
amendments to primary legislation. As the Scottish Government’s Delegated Powers Memorandum did not provide any explanation as to why negative procedure is considered appropriate in these circumstances beyond a bare reference to “similar ancillary powers in other Bills”, the Committee explored the matter further with Scottish Government officials. The Scottish Government’s legal adviser stated:

“I had thought that it was general practice that such revisions would be subject only to negative procedure, because I cannot think of ways in which transitional or transitory provisions would modify the text of primary legislation.”

87. The Committee accepts that this may well be the case. However, section 25(2) expressly provides that an order under section 25(1) “may modify any enactment.” Regardless of whether the circumstances can be presently envisaged, section 25 as it stands would confer the power to make transitional or transitory provisions which modify the text of primary legislation. It accordingly appears to the Committee that section 25(2) is either unnecessary, insofar as it relates to primary legislation, or it should be subject to the affirmative procedure in the same way as the section 24 power is when it is used to textually amend primary legislation.

88. The Committee observes that the powers in section 25 are very similar to those in section 122 of the Police and Fire Reform (Scotland) Bill. In the Committee’s report on the delegated powers in that Bill, it recommended that, as the power might be used to amend primary legislation, it ought to be subject to the affirmative procedure when used to do so. In the Cabinet Secretary’s letter to the Convener dated 30 April 2012, the Scottish Government acknowledges the merits of a consistent approach when textual modifications are being made to primary legislation. It has accordingly undertaken to lodge a Stage 2 amendment to make section 122 subject to the affirmative procedure when textually amending primary legislation.

89. The Committee reaffirms its view that a delegated power which permits the textual amendment of primary legislation is a significant matter, no matter how unlikely it is that it will be exercised for that purpose. It accordingly has a particular interest in ensuring that the Parliament has an appropriate level of scrutiny in relation to its exercise. Indeed, if the exercise of the power textually to amend primary legislation is considered to be unusual or rare then the Committee considers that this could be said to strengthen the appropriateness of the affirmative procedure being applied to ensure that the Parliament is adequately alerted to those unusual events.

90. Separately, and as with section 24, the Committee did not consider it to be entirely clear whether an order under section 25 might modify the Bill itself, despite the provision in section 25(2) that an order may modify “any enactment”. As section 24(2) and 25(2) are identical, the Committee adopts its reasoning in relation to section 24 in respect of section 25.

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91. Subject to the following recommendation, the Committee is satisfied in principle with the power in section 25.

92. The Committee recommends that the Scottish Government consider whether section 25(2) might be revised so as to put it beyond doubt that the power in section 25 may not be used to modify the Bill itself.

93. The Committee recommends that, as is the case with the power under section 24, the power in section 25 should be subject to the affirmative procedure where it is used to make textual amendments to primary legislation, and to the negative procedure otherwise.
Present:
Gavin Brown
John Mason (Deputy Convener)
Michael McMahon
Paul Wheelhouse
Kenneth Gibson (Convener)
Mark McDonald
Elaine Murray

1. **Decision on taking business in private:** The Committee agreed to take item 4 in private.

3. **Social Care (Self-directed Support) (Scotland) Bill:** The Committee took evidence on the Financial Memorandum of the Social Care (Self-directed Support) (Scotland) Bill from—

   Jean Maclellan, Head of Adult Care and Support Division, Jen Willoughby, Self-directed Support Bill Team Policy Officer, Iain Pearce, Analytical Services Division, and Craig Flunkert, Bill Team Leader, Self-directed Support Bill, Scottish Government.

4. **Social Care (Self-directed Support) (Scotland) Bill (in private):** The Committee considered the evidence taken on the Financial Memorandum of the Social Care (Self-directed Support) (Scotland) Bill and agreed to consider a submission to the lead committee by correspondence.
On resuming—

Social Care (Self-directed Support) (Scotland) Bill:
Financial Memorandum

The Convener: For item 3, I welcome to the meeting Jean Maclellan, head of the adult care and support division; Jen Willoughby, the bill team policy officer; Iain Pearce from the analytical services division; and Craig Flunkert from the bill team. They are all from the Scottish Government. Good morning. Would you like to make a short opening statement?

Jean Maclellan (Scottish Government): Thank you, convener, I am happy to do so. I really enjoyed the earlier witness session.

The Convener: I am sorry for keeping you waiting, but it was a stimulating session and I did not want to interrupt.

Jean Maclellan: I couldn’t stop smiling. I could not get over the fact that I have brought my children up so badly. They are both creatives; one is a designer and one is a jeweller. I thought that I had failed them in every possible respect. I hope that I am better at this. [Laughter.]

Convener, you have introduced the team, but I will clarify our roles so that you know to whom particular questions should be directed. I head up the division. To put that in context, in addition to dealing with self-directed support policy, the division was set up a few years ago to look at social care policy, although we stray into health policy as well. Mostly we work with the experience of the individual in relation to the support and services that they receive. Other parts of the division are responsible for the policy for people who have a learning disability, people who have autism, and adults who survived being abused when they were children in care but who have problems with life at times and have found it difficult to recover, participate in society and get employment. We aspire to help them in that regard. We are also responsible for carers policy and young carers.

The division does quite a lot of diverse work but, at its heart, it looks at the experience of the individual and their aspirations. Self-directed support is a key component of that. We endeavour to look at how each part of policy impacts on others, and are always looking to improve the quality of life for individuals who use support and services.
Craig Flunkert is our bill team leader, so questions for him would be about the rationale for the bill and the bill’s content. We also have a wider strategy, which is a 10-year programme, and the bill is only part of what we are trying to achieve, as the committee will have seen from the papers that it has already scrutinised.

Jen Willoughby is Craig’s supporter, but she specialises particularly in the financial aspects of drawing the bill together. She is being ably supported in that by Iain Pearce, who is an economist. He gives us technical and professional detail.

I will give the committee a bit of background about where we think we are. We have general stakeholder support for the bill from users, carers and professionals. The one notable exception to that is the Convention of Scottish Local Authorities, which is of the view that statute is not necessary. Some local authorities also hold that view to a greater or lesser extent.

It would also be fair to say that the difficult fiscal situation that conventional or general service delivery is facing is, to a degree, constraining the pace of our aspirations. Members should make no mistake about the fact that self-directed support is a radical systems change. It is about giving choice and control to the individual. Counterbalancing all that, there is a general willingness across Scotland—a hearts and minds commitment, if you like—to make the policy work. There is also a view that the users of support might well be able to get better value from the resource that they are allocated and better outcomes for themselves if they are truly involved in shaping that support.

A considerable body of qualitative evidence emphasises the positive benefits to individuals. However—and it is a considerable however—the lack of robust quantitative evidence means that estimating costs has been challenging. We have small, microlevel bits of evidence, some of which has come from England, but when we began, we did not have a macrolevel Scottish context.

Our methodology was to consider costs, benefits and impacts as widely as possible. Because of the lack of substantive quantitative evidence, we commissioned a study from David Bell and his team at the University of Stirling on macrolevel costs and the benefits of SDS. That study essentially confirmed for us that it is genuinely difficult to make accurate estimates. It also concluded that self-directed support costs are similar to those of existing conventional social care support. There was no sense that greater expenditure would be required as a result of changing the model.

We used other evidence, such as the Reid report, which dates back to 2003. It looked at a number of local authorities and best estimates of cost for introducing direct payments rather than a whole SDS framework. We looked at our experience in implementing other acts that had local authority costs—the bulk of the burden from this proposed statute will fall on local authorities. We took some of the calculations that we did around adult support and protection legislation because there are some parallels there. We also did some internal modelling of potential shifts such as expected take-up and what that might look like.

Underpinning all that, we have done a considerable amount of consultation with stakeholders. The business regulatory impact assessment shows that we have consulted in two phases. We also consulted with COSLA and local authorities throughout the process. In addition to a bill steering group, for example, we have a wider strategy group of which COSLA has always been a member and to which it has always contributed.

I move briefly to the contents of the financial memorandum. We identified potential costs in various areas around the framework provisions, including what we need to transfer from one method of assessment and delivery of social care services to another; what that means for workforce development; what it means if we are truly putting citizens at the heart of the changes; and what information and advice must be readily available to them and explained to them so that they become, to a degree, advocates of their own destiny. We also recognised potential cost implications in the power to provide support to carers, in relation to the duties to provide direct payments and, a little bit, in joint working with the NHS. The financial memorandum considers whether the costs within each area are directly or indirectly associated with the implementation of the bill.

I will stop there and sum up the issues. There is a difficulty in arriving at figures due to a lack of evidence, which is acknowledged by all parties—it is not as though someone takes a different view from ours about how the costings could be put together. The figures that we have are our best estimates, and we have applied a logic to the process.

The lack of agreement with COSLA is significant, but many local authorities do not hold COSLA’s view. Yesterday, we gave evidence at the Health and Sport Committee and several local authorities were there, three of which—Glasgow City Council, Dumfries and Galloway Council and Highland Council—had participated in test-site pilots and were very supportive of all that has been done to date. It is clear that all local authorities are in different positions and therefore require different levels of support and funding.
We are constrained by the current fiscal situation, but that does not alter our assessment. The accounts provided are estimates. We also think that there are other significant pots that local authorities can go to—the reshaping care for older people change fund, in particular, although there are other change funds. That change fund totals £220 million. Within the guidance for local authorities on applying for money from that pot, specific reference is made to self-directed support being one use of that money. There is another substantial pot for autism, one for learning disability and one for sensory impairment. It is not all about a cumulative self-directed support pot.

There is also the issue of long-term, recurring and short-term costs. Our view is that the proposals would be cost neutral in the long term, and that is supported by the Stirling study.

We face the difficulty of separating out what is required for the bill directly and what is required for the wider strategy. If we are looking at it critically, to implement the bill really requires only specific bill training. The wider funding is to effect what was described at the Health and Sport Committee as the “seismic” culture change that the strategy requires.

I will stop there—it is over to you.

The Convener: No bother. Thank you very much. I will focus a wee bit on COSLA, as its response is the issue of greatest concern. The explanatory notes state:

“The specific impacts of the Bill provisions themselves are relatively narrow. However, there are a range of costs associated with transforming culture,”— which you have just touched on—

“systems and approaches to social care provision in response to the Bill and the wider Strategy.”

In its response, COSLA says that

“commissioning arrangements, administrative costs, and dual running costs are partly dependent on the choices individuals make under SDS. That said, the £23m identified falls far short of even councils’ most conservative estimates.”

It says that councils have suggested that the lowest estimate—it has put “lowest” in italics, just in case we have not picked that up—would be just over £50 million. However, COSLA suggests that the cost, over three years, would be £90 million.

Having looked through a number of financial memorandums I am well aware—I am sure that colleagues are too—that Scottish Government officials always seem to err on the side of the lowest possible costs and that many organisations, such as COSLA, always seem to suggest that the costs will be higher. Occasionally, there has been a meeting of minds, but that has not happened as often as we would have liked.

Given what you said about local authorities being so supportive—I am well aware that stakeholders other than COSLA are overwhelmingly supportive—and the test work that has been carried out so far, why is there a mismatch between what the bill team is saying and what COSLA is saying?

Jean Maclellan: I will let Jen Willoughby explain how we came to our costings so that the committee can reach a view on whether they are realistic.

COSLA’s estimates are based on a survey that it conducted. At yesterday’s Health and Sport Committee meeting, it committed to providing a collation of that survey rather than the individual authorities’ returns. Our sense is that the survey used a range of methodologies rather than a consistent methodology, so COSLA was provided with very disparate returns, and that the figure that you quoted as the “lowest” is the median or middle of the range that it received.

Jen Willoughby can talk about our calculation of the £20-odd million for transformation.

Jen Willoughby (Scottish Government): I reiterate what Jean Macellian said. We think that the COSLA estimates are overestimates, but I guess that members are used to Government officials saying that to them. We think that its estimates do not include the possibility of any savings that might occur over the three-year period, and we think that there will be savings. In the financial memorandum, I pointed to the example of the Alzheimer Scotland pilot in Ayrshire in which considerable savings were made with only a few people. That is an example of what can be done when money is used more flexibly in an SDS package.

I produced a little table, which is included on page 24 of the financial memorandum and which shows how we came to the £23 million estimate. Jean Macellian referred to the Direct Payments Scotland "Direct Payments Finance Project Report", which is one of the sources that we used for that. I think that further information about that was provided to you. That report is from 2003, which is a considerable time ago, but it looked specifically at bridging finance needs in local authorities. The issue of bridging finance is not new; it has been on-going for many years, as members can tell—as I said, the report is from 2003. That project tried to break things down specifically and look at several areas objectively.

We recognise that things have moved on since then. Obviously, it is not 2003 any more and things will be different. Local authorities have received substantial amounts of money from the Government since then to effect transformation, and there has already been substantial
transformation in many local authorities. They have moved away from block contracting and building-based services, which will help with bridging finance and the need for dual running costs—or the lack of need for them. We thought that that published report was useful public information on which to base an estimate.

Obviously, we uprated from 2003 prices and scaled up the estimate for the whole of Scotland, and we compared that with a Glasgow estimate. Glasgow City Council is currently rolling out SDS with money that it asked for from its local council committee. As members will see from the table, the figure is £0.5 million per year for three years. That compares quite favourably with the estimates that we upcaled from the Reid report of 2003.

That is the reasoning behind our £23 million estimate. As Jean Maclellan said, the COSLA estimates have not been published—they are not in the public domain. We have worked with COSLA quite extensively and tried to work through the estimates with it, but we think that its estimates are overestimates and that it has not taken into account other factors, including the savings that could be made.

The Convener: There is concern that the “potential saving has perhaps been over-emphasised.”

I think that that is really about the long-term savings. How robust are the data on the potential for long-term savings?

11:45

Jen Willoughby: The case for long-term savings and cost neutrality in the long term is quite robust. The Stirling report found that, in the long term, the costs were not different to those of what might be called a traditional package. That backs up findings from the individual budgets evaluation network—IBSEN—survey of personal budget pilots in England. It came to a similar conclusion about cost neutrality, so that is the academic view.

Obviously, we need to keep an eye on the issue, which we will do in the long term as part of the monitoring process around the bill and the strategy.

The Convener: Jean Maclellan mentioned the change fund. What will be the long-term impact of the legislation with regard to the change fund? Is that a pot that local authorities should be able to dip into in the short term, or will they have to rely on it, if the figures are not as robust as is hoped?

Jean Maclellan: The change fund is specifically for the term of this Administration. At the moment, it is not clear whether it will continue thereafter. It is particularly focused on older people’s issues and carers’ issues. It is not SDS-specific.

The Convener: I think that all committee members are aware of that. If the change fund was not continued beyond this session, would there be a need to consider additional sources of funding, or would the SDS budget be completely neutral by that time, so there would be no need to access additional funds?

Jen Willoughby: The Stirling report talks about cost neutrality in the long term. What is meant by the long term differs between local authorities, because they are all in very different places. As I said, some of them have moved away from block contracts entirely and now use spot contracting, which is far easier to align with what we are doing under SDS. It is difficult to say where we will be after the end of the current spending review and whether any further transformational money will be needed.

We expect transformation to be a fairly rapid process and to be able to get things in place quickly. The idea of the transformation funding is to push the strategy forward quickly, in line with the bill, and to make the two things happen at the same time. We expect that, in some local authorities at least, there will be no further need for funding after the end of the spending review period.

Jean Maclellan: I can give two small illustrations of what we are talking about. John Alexander, the director of social work in Dumfries and Galloway, said yesterday that he has only spot purchasing now and that, on that basis, he can get much better value for the £20 that a client spends than he can get by spending it for them. You can set that against the Glasgow experience. There, traditional care packages had not been reviewed for a number of years. Some of those packages, concerning people who were placed in hospitals were closed, amounted to five or six figures. Those are the complexities of the system that we are working with.

The Convener: I am playing devil’s advocate, to an extent, as I have seen some of the significant savings that have been suggested.

I take it that you want full roll-out and full implementation by the end of this session.

Jen Willoughby: Obviously, if the bill is passed by the Parliament, we would expect enactment to take place around the end of next year. At that point, any new clients presenting to social work will be assessed along the lines of SDS and will be given the options that they would be entitled to under the act. When existing clients enter their review process—that should take place every year, but, for various reasons, it can take longer in various local authorities—they will be offered the options and choices that will exist under the act.
We are in negotiations with the Association of Directors of Social Work and the Convention of Scottish Local Authorities about how long we might require that process to take, to ensure that everyone is offered the choices. We are looking at three to five years after the enactment of the bill before the system is in place for everyone.

Jean Maclellan: The wider strategy is 10 years.

The Convener: Yes. I will open up the discussion to colleagues.

Elaine Murray: Jean Maclellan mentioned that Dumfries and Galloway was one of the pilot sites, and that John Alexander, the director of social work, gave evidence to the Health and Sport Committee yesterday.

With regard to the bridging costs, the public reaction to what was happening in Dumfries and Galloway was, unfortunately, that the changes were perceived as a smokescreen for the closure of day centres and adult resource centres. There was a significant backlash against the concept of personalisation, which is most unfortunate and very sad.

The backlash occurred to such an extent that the two parties most likely to form the administration in Dumfries and Galloway both said in their manifestos that they would keep the day centres open. Where there has been such a degree of public reaction, and where many people in receipt of services would choose to buy into the building-space services—as they are called—there will not, in the immediate future, be any savings from the cost of the buildings.

If that experience is replicated throughout Scotland, the transitional costs for local authorities could be significantly higher than estimated.

Jen Willoughby: A lot of the bridging finance estimates involve double-running costs. We are having to run the building-based services for those people who want to remain with them while other people move away, and having to liquefy resources so that people can take a direct payment to go and purchase a service elsewhere.

We are not imposing any choices on people, or saying that building-based services or day centres are wrong. If there is a demand for those services, they will remain and flourish because people want to use them, and people will direct their resources to those places.

If a local authority has day centres for which there is a demand, there is no reason why those day centres would have to be closed at all.

Elaine Murray: My point is that if a slightly smaller number of people are using the centres and perhaps using the personalisation moneys to buy into services in such centres, but other people are choosing to go elsewhere, local authorities will not be able to make savings from the day centres that one might assume would be made over a transitional period.

Jen Willoughby: Yes—there is a case for some rationalisation within those services if there is some spare capacity. One example is South Lanarkshire, which has invested quite heavily in its building-based services to create flexible resource centres. Day centres within buildings have been expanded to include other services.

If a local authority finds that it has spare capacity and spaces, it might use those in more creative and flexible ways to provide other services that people want.

Elaine Murray: At present, many local authorities have excess property that they are not able to use and are trying to dispose of. However, in the current economic climate it can be quite difficult for them to sell the buildings and put the services in with a day centre or whatever. The transitional costs may therefore be a bit higher than you were anticipating.

Jean Maclellan: A lot of things that are laid at the door of the self-directed support policy are about much wider social care issues. The closure of day centres is part of another policy that is largely related to the needs and wishes of people with learning disabilities. It dates back to the same as you initiative from 10 years ago, which involved a consultation in which the vast majority of people with learning disabilities who contributed said that they did not want building-based activities.

That flies in the face of what other client groups might say. People on the autistic spectrum—please forgive my gross generalisation—prefer being in a building where they know the environment, the lighting, the seating and the routine.

The SDS framework allows people to choose whether they want a direct payment, an individual service fund, conventional services or a combination of all those elements. It is not about being dogmatic, but about trying to enable choice and a degree of control.

Craig Flunkert (Scottish Government): To expand on what Jen Willoughby and Jean Maclellan have said, committee members may have seen the recent Audit Scotland report on “Commissioning social care”, which relates to the way in which good-quality strategic commissioning of services and procuring of particular services on the back of that come into play.

One of the report’s main findings is that councils need to put longer-term strategies in place to improve how they do that. As Jean Maclellan said,
SDS is a driver for getting commissioning to shape up a bit more, but it is one of many drivers.

Iain Pearce (Scottish Government): Another thing that it is important to stress is that the concern around double-running costs that the personalisation agenda has given rise to tends to relate to the fact that local authorities are concerned that people who are offered self-directed support will move away from building-based services, but the buildings will have to be kept open for the smaller number of people who still wish to use those services.

It is important to stress that the fact that someone goes on to self-directed support does not mean that they will stop using building-based services. We know from the experience in England that people tend not to make very radical changes to the services that they use, even if they are moved on to a more personalised regime. The most recent statistics from England show that although there has been a higher than expected take-up of individual budgets—35 per cent of users have been transferred across to individual budgets—the vast majority of people in that subsection are still not choosing to take direct payment-style options and move away from building-based services. Overall, only 9 per cent of the total number of clients have taken such options. Even when they are offered the choice, the vast majority of service users will continue to consume the more traditional council-organised services, so although there will be a large cultural shift in how services are designed and delivered, there will not necessarily be a move away from the traditional locations and buildings that they have been delivered in to the degree that is feared.

Jean Maclellan: Just to give some ballpark statistics, only 2 per cent of those who get services at the moment are using an SDS equivalent, so we are far from reaching a tipping point of any sort.

Michael McMahon: From my experience locally of people who engage with the local authority in determining their support needs, managing their expectations appears to be crucial when it comes to the amount of money that the local authority ends up spending on the services that are delivered.

To go back to the convener’s culinary experiences of burgers and Egon Ronay food, people will expect the best that they can get, but what is put to them by the local authority is often way short of their expectations. Is that the type of dialogue that we get into in trying to meet the demands set out in the financial memorandum? Is it the case that, at the lower end, people will be dining on burgers rather than on steaks?

Jean Maclellan: There are many ways to answer that question. Some of the interventions that people are looking for in their lives are very small. For example, they might want to be a member of a leisure centre; such a membership could make a major impact on their health and wellbeing.

I can think of an illustration of an intervention that was fairly controversial in its day—it dates back a couple of years. A local authority had provided traditional respite for an adult with learning disability and his mother, which meant that she had a rest when he was away. He would go into a traditional residential unit, which he did not particularly enjoy. Through SDS, the local authority bought a caravan and a motorbike, which meant that the mother and the adult child could get respite in the caravan whenever they chose. There was not much social work involvement and the cost was less over a relatively short period of time than the cost of continuing to provide an arrangement that neither party benefited from.

Craig Flunkert: As Jen Willoughby mentioned, using Scottish Government funding, Alzheimer Scotland undertook a pilot in the Ayrshire council areas that produced some stark figures.

There were six people with dementia in the pilot, and the total combined cost of direct payments with self-directed support packages for them was £880 per week. Alzheimer Scotland estimates that the total equivalent cost of residential accommodation, which was seen as the primary alternative for those individuals, was £2,845. In that instance—

12:00

The Convener: —the potential annual saving is £102,180, as you state in paragraph 82. You are obviously keen on that example.

Jean Maclellan: We like it. It demonstrates something.

Craig Flunkert: That is a positive example. Jean Maclellan mentioned that Glasgow City Council is undertaking a large review programme and in many cases it is reviewing the support of individuals who have not had a review for a long time—much longer than the yearly reviews that the guidance recommends. Some individuals’ needs reduce in time and the level of support to which they are entitled also reduces. That can be a difficult discussion for the social work practitioner and the individual to have. The review is not necessarily prompted by self-directed support; it happens in order to offer the individual greater choice, but it can still be difficult. Discussions are often easier with newly presenting clients. That is the other side of the issue.
Ian Pearce: To come back to the point about whether people are eating McDonald's or steaks, it is worth looking at the experiences of people on self-directed support. We have seen from the test sites where self-directed support is being piloted in Scotland, and also from the evidence from where individual budgets have been introduced in England, that people who choose to go on to individual budgets or self-directed support report that they are happier with the services that they receive and that they feel that they have a better quality of life and better outcomes. The outcomes are positive when such support is introduced.

Jean Maclellan: We want the best value for the public pound. There is an issue of equity across Scotland, because provision varies between local authorities and people with similar needs are not necessarily getting the same care packages, whether they are traditional or innovative. Part of what self-directed support does, through reviews and so on, is to release some funds that can be given to other people who might not have had their outcomes met if it were not for the initiative pushing or driving forward the agenda. Equity is an important aspect of the work.

Michael McMahon: That is helpful.

Paul Wheelhouse: I want to give the witnesses an opportunity to address a couple of points on page 34 of the Scottish Parliament information centre briefing, on the main issues for local authorities, service providers, SDS users and family carers. I would have asked about building-based solutions, but that has largely been dealt with. However, I ask the witnesses to comment and give their views on a couple of points.

The paragraph on the main issues for service providers mentions

"the risk of investing in staff training and infrastructure if services are destabilised (e.g. by SDS users changing contracts at short notice)."

I appreciate that there is only a limited evidence base so far, but is there any validity in that statement or are you happy that such things can be addressed?

Jean Maclellan: Craig Flunkert is the best person to answer that. Perhaps Ian Pearce can help, too.

Craig Flunkert: Some of this comes back to the way in which the bill frames the four options that are available to individuals. Sometimes there is an assumption, which feeds through to some of the findings from the Stirling study as well, that 100 per cent of people will move on to direct payments and take their business elsewhere.

Although the bill will make a big difference by enshrining people’s right to choose, and if they want to get the direct payment and take their business elsewhere they will be able to do that, it sets out four options, including the option to choose arranged services, where there is already investment in professional care managers. It is sometimes easy to overstate the impact that the bill will have. As policy officials, we obviously want to emphasise the difference that it will make, but the idea that there will be an overnight destabilising of the situation is probably a red herring.

Ian Pearce: Currently, only 3 per cent of service users access services through direct payments. Even with a large increase in that number, such as a 100 per cent increase, we will still end up with somewhere in the region of only 5 or 6 per cent of services being delivered in that way. There are challenges for service providers, but they need to be viewed in the context of the changes that are occurring in local authorities. There is already a shift in local authorities away from the traditional block contract towards the use of spot contracts. As local authorities move towards spot contracts, the differences between having a spot contract with a local authority and a spot contract with an individual who has self-directed support individual will be smaller than the differences between having a block contract with a local authority and a spot contract with an individual who has self-directed support. Some of the differences will disappear over time anyway, as councils change the way in which they procure services.

Jen Willoughby: We are investing in providers in the next three years. We allocated £1 million last year, and there is £6 million in the next three years, to invest in transformation among providers and to help them to come to terms with and prepare for the changes. Some of the money has gone to Community Care Providers Scotland, which represents providers. Its role is to troubleshoot for providers, to consider where the issues are and to come up with solutions, and then to feed back to the Government to tell us what is going on in the sector. Lots of innovative projects are going on to grow capacity and to help service providers to move on and to become more streamlined and efficient.

Paul Wheelhouse: That is helpful.

My second point, which is in a similar vein, is that there is a risk that the cost of the increased flexibility in SDS will fall on SDS users and family carers. Will you respond to that and say whether the costs are included in the financial memorandum and whether you are happy that you have dealt with that risk?

Jen Willoughby: We recognise that, as people take more control, they take on certain costs because of the time and effort that are involved in organising their own package. There will be monitoring costs. If someone decides to take a
direct payment, the council will require returns at various intervals, so that will involve the costs of the personal time and effort that the person puts into that. The evidence from users who are already on direct payments and self-directed support packages is that, despite those costs, they still see the value of the packages that they receive and they do not consider those costs to be a barrier to uptake of the packages.

Paul Wheelhouse: I should put it on record that I support the policy, so do not take my questions the wrong way.

There is also a suggestion that independent advocacy might need to be beefed up a bit for those individuals. Has that issue been taken into account?

Jen Willoughby: Support, advice and information are key aspects of the agenda. It is important to ensure that people make an informed choice rather than just any old choice. That has been flagged up in every piece of research that has been done on self-directed support. We are investing in advice and support services in the next three years to try to grow capacity. There are many advice and support services out there, but we need to ensure that they are networked, that they are in the right areas and that they can move into other areas if necessary to provide the support that people need.

The approach applies not only to the self-directed support agenda. We have a carer information strategy. Carers can go to places to receive advice and support, which can include stuff about SDS. We also have one-stop shops that can provide advice and support for people with sensory impairment. There is a large network out there. We need to bring the services together and ensure that the coverage is sufficient and that services have the right information to give to people to help them understand their choices.

Gavin Brown: I will focus on the financial memorandum. There is a degree of support for the bill, but the flashpoint is around the estimates of the transformational costs to local authorities and the time that it might take for transformation to happen.

You referred to table 2, which is the main basis for your estimates. Am I correct in thinking that the table is based on data from only three local authorities?

Jen Willoughby: Yes.

Gavin Brown: Why did you not seek data from the other 29 local authorities?

Jen Willoughby: We consulted twice on the bill, which included consulting on a business and regulatory impact assessment and asking local authorities for their views on the finances. At every stage of consultation, local authorities have told us that there will be costs but that they do not know what the costs will be. The costs are uncertain because of the nature of the proposed changes. The costs will depend on what individuals choose to do, so it is difficult for local authorities to estimate the costs and think about them quantitatively. Local authorities found it difficult to tell us what the costs will be.

COSLA wrote to local authorities to survey them, and even it found it difficult to reach any firm conclusions. Local authorities could quantify some costs but not others, and different methodologies were used to find costs in different areas. We decided that the most sensible way forward was to use sources that were in the public domain.

Iain Pearce: As Jen Willoughby said, we tried to develop a set of costs by taking a bottom-up approach and putting costs against individual items, because finding evidence on what the costs will be has been difficult. When we began to produce the financial memorandum, one of the first things that we did was a literature review to try to find sources of evidence that could inform the financial memorandum. Most of the studies on self-directed support, individual budgets or other such forms of support tend to look at the outcomes that people experience rather than the costs to local authorities of providing services.

The University of Kent conducted a study of the pilots on and the introduction of individual budgets in England and looked at the set-up costs and transformation costs to 12 local authorities, which was a relatively small sample size. The study found that local authorities experienced a range of set-up costs and that the average came to about £270,000 per year per local authority.

That study was anonymised, so we do not know the sizes of the local authorities involved. That makes it difficult to translate the costs accurately to Scottish local authorities, particularly because local authorities in Scotland tend to be smaller than those in England. However, if we scaled the average across the 32 local authorities in Scotland, the cost would come to a little over £8 million a year. Such figures are very much in line with the estimates that we have calculated for the financial memorandum.

The study in England looked at how long local authorities believed that set-up costs or transformation costs would be incurred for. The answer from most local authorities was at least two years; some local authorities said that the period would be three years. That closely matches the allowances for costs that we have included in the financial memorandum.

What we have included in the financial memorandum is similar to what was experienced
when individual budgets were introduced in England.

**Gavin Brown:** Does your approach have a risk? You are scaling up on the basis of three local authorities’ figures. Jen Willoughby said that all the councils are in slightly different places. What is the degree of risk? Would it be safer to have a range of estimates as opposed to one specific figure?

**Jen Willoughby:** There is a degree of risk, and all the figures are estimates. Even producing estimates has been quite difficult in the first place. We thought carefully about how to divide the £23 million among local authorities, because we know that they are at different stages—some will need more, some will need less and some will do different things from others with their transformation funding.

We talked through that approach with COSLA and it asked us to divide the money in the way that we have. Members have the breakdown of that division. We recognise that local authorities are all at different stages so we will keep an eye on things. If, by the end of three years, some local authorities have not achieved what they need to achieve and there is more to do, we will need to reconsider what funding can be applied.

12:15

**Gavin Brown:** The Finance Committee put out a call for evidence on the bill and we have reviewed the responses. Have you had the opportunity to review those responses?

**Jean Maclellan:** Yes.

**Jen Willoughby:** Yes.

**Gavin Brown:** We had one response from COSLA and, by my reckoning, eight responses from local authorities. Although the local authorities did not give many specific figures, there seemed to be a broad consensus about the level of funding.

Angus Council stated that the funding “falls short of even our most conservative estimates”.

Dundee Council stated that costs beyond 2014-15 “should be acknowledged”. East Ayrshire Council stated:

“The savings ... are concerning as there is” no “evidence to support this.”

Glasgow City Council—one of the local authorities that you based your figures on—stated that “costs and timescale are under estimated”.

Perth and Kinross Council stated that costs will be “significantly higher” than estimates. Scottish Borders Council stated that “training costs will be double” and “the bridging ... costs will be higher”.

West Lothian Council stated that “the memorandum ... very significantly underestimates the costs”.

Those are the views of only eight local authorities, but they were the only ones that submitted evidence, so theirs are the only written submissions that we have. However, there seems to be a consensus among those local authorities that the costs that you put forward are not high enough. How do you respond to eight local authorities all saying that?

**Jen Willoughby:** In its response, East Ayrshire Council lists estimated costs and compares them to the amounts that it will be getting from the Government, which are more than the council’s estimates. However, it says that there are other costs that it does not know about yet and which it has not been able to estimate. That is the problem. There are a lot of costs that people are not sure about yet. They suspect that there might be further costs, but they cannot quantify them. Despite the absence of that quantifiable information, we have tried to make the best estimates that we can.

**Gavin Brown:** I will take Angus Council—just because it is first alphabetically—as an example. It states that the funding “falls short of even our most conservative estimates”.

After reading that, does the Government then liaise with Angus Council to ask what its estimates are and what they are based on, to try to work out why there is a difference? If the Government says £24 million and COSLA says £90 million—the figures at the two extremes—does the Government follow up with individual authorities to find out what their figures are based on and try to flush out where the differences lie in order to work out what the real picture might be?

**Craig Flunkert:** We have had a limited amount of time to look at the detailed responses from councils to the committee. There was more detail in the responses to the committee—although, as you said, there is not 100 per cent detail on the estimates and the explanations of how councils arrived at them—than there was in the responses to the two phases of Scottish Government consultation. We certainly wish to follow up with the ADSW, COSLA and, as necessary, individual councils, to ask them to share a bit more information about their estimates, particularly with
process and beyond to enactment, to discuss the programme board throughout the parliamentary group recently agreed to continue to meet as a has been very useful to have their input. That ADSW and Glasgow City Council officials, and it involved stakeholders including COSLA, the review period.

respect to the point beyond this current spending review period.

At the Health and Sport Committee meeting yesterday, the director of social work at Dumfries and Galloway Council mentioned the need to constantly monitor and review the costs. Some of the councils’ concerns might well be tied to a concern that ministers will impose a deadline by which councils should have reviewed all existing clients. We wonder whether the length of time allowed for reviews of existing clients might make a big difference to the level of costs and the time period during which costs would be incurred for transforming how councils do things. The difficulty for ministers and the Finance Committee is that that time period has not been decided yet—it could be three, five or eight years. We suspect that if a longer time is taken to review existing clients, that should lead to a spreading of costs, with costs perhaps being at the lower end of the estimates.

Jean Maclellan: While we are on the subject, perhaps it would be helpful for Craig Flunkert to talk about the wider work that he has been involved in to consider regulations, guidance and commencement dates, which are all part of our collaborative work.

Craig Flunkert: The bill steering group has involved stakeholders including COSLA, the ADSW and Glasgow City Council officials, and it has been very useful to have their input. That group recently agreed to continue to meet as a programme board throughout the parliamentary process and beyond to enactment, to discuss the issues again.

In its response, COSLA was relatively measured in owning up—as we have done—to the uncertainties around costs. At yesterday’s meeting, a COSLA official used the word “generous” to describe the amount of money that is being provided for transformation compared with the minimal compliance approach that is taken in respect of some bills. Councils are often supported to provide some training for practitioners on their duties and powers, but a constant criticism is that investment is needed to deliver practical change on the ground. The £23 million is being provided to enable local authorities to make that investment. Nevertheless, we plan to follow the matter up with the ADSW, COSLA and councils now that—perhaps because of the point that we have reached in the legislative process—they are starting to be a bit more specific about where the costs lie.

Gavin Brown: The committee is asked to take a view on the financial memorandum. The bill team says that £24 million is about right—it may be generous or slightly above what is required. COSLA says that the cost will be £90 million. All the local authorities that have contributed evidence—although not all have given specific figures—say that that is an undervaluation or a significant undervaluation. Whose estimate is correct? I simply do not know from the evidence before me, and the disparity is very big. There will always be slight differences of opinion, but the disparity between a £24 million cost and a £90 million cost is pretty substantial. I do not think that it is satisfactory that the committee has to take a view on the financial memorandum on the basis of the figures that we have.

Jean Maclellan: What would your normal practice be in relation to local authorities that have not responded? Would you note the position of COSLA and eight local authorities out of a larger number of councils?

Gavin Brown: My understanding—the clerks or the convener may correct me—is that we write to all local authorities and COSLA and make judgments on the basis of the evidence that is put before us. However, I think that, because we review a number of financial memorandums every week, we do not approach every local authority. I stand to be corrected by the convener on that.

The Convener: Sorry—the clerk was speaking to me and I did not catch what you just said. We wrote to all 32 local authorities—was that the point that you were making?

Gavin Brown: The question was about what we do when councils do not respond.

John Mason: We do not get back to all local authorities.

The Convener: No, of course we do not. It is a matter for them. If they want to raise concerns, they are fully able to do so. We will often raise concerns, as Gavin Brown is doing at present.

Jean Maclellan: The position is the same for us.

The Convener: We assume that you do not have any concerns.

Jean Maclellan: Through extensive consultation, we have tried to give people the opportunity to contribute to the position that we find ourselves in.

Craig Flunkert: We can only guess because we have not seen the detail of the responses, which are coming in quite late, but I suspect that some of the disparity may be to do with the fact that, as I mentioned, there is an assumption in some local authorities that the change that will be imposed by the bill will have a much more radical and quicker effect than the effect that we understand the provisions will have. Perhaps councils assume that a very high percentage of individuals will be required to take a direct payment and have made
modelling assumptions about the choices that those individuals will make.

It is impossible for us to know the basis on which councils’ assumptions are made, because we have not seen the detail that shows where they are coming from. Although we have asked for the information a number of times, we have not been provided with it. We acknowledge that any forecasting on the matter is imperfect, but the table on page 24 is based on a published report—we can provide more detail about how the Reid report came up with the estimates in the table—that looked in quite a lot of detail at what the cost might be if 3 per cent or 5 per cent of people went for option 1 in the bill and then chose to take their custom away from the local authority. The issue was generally around bridge financing.

We can provide more information, if you feel that more information to back up where our estimates have come from would be helpful, and local authorities could be invited to provide much more detail about the modelling and assumptions that lie behind their figures, so that those are evidence based, rather than a statement being made that the cost will be £90 million. We did not see a huge amount of detail behind how councils arrived at the figures. An itemised list with detailed modelling would be useful to all parties.

Jean Maclellan: The committee should be clear that there has been no lack of effort on our part; our effort has been sustained and considerable.

Gavin Brown: Thank you.

The Convener: To be fair, nine local authorities actually responded, plus COSLA. You are right that, although the local authorities that have given evidence have raised concerns, they have not provided the same level of detail about why they have specific concerns. That is understandable, as they perhaps do not have the capacity or ability to do so, but it is important for them to ensure that their concerns are brought to our attention so that we can raise them on their behalf.

John Mason: Like everybody else, I am supportive of the concept of self-directed support and of individuals making choices rather than just being put in boxes and so on. In the big picture, Ms Maclellan said that there is no sense that greater expense will result from changing the model. I find that a wee bit strange because, if you put six people who are in a centre with two staff servicing them out into the community, the same two staff—assuming that they continue to service the same six people—will spend less time with them. I presume that, for the cost to stay the same, each of the six people gets less time from the staff.

Jean Maclellan: Not necessarily, because in a day centre the staff ratio will vary from place to place and the number of personal assistants that people require vary. Some people may require only one personal assistant, if the level and type of support required is not substantial. There are huge variations.

John Mason: I accept that there are huge variations but, if you provide a service in one place, it requires fewer staff and would appear, at least on the surface, to be cheaper than spreading provision out. You mentioned the hospitals that have been closed. We had Lennox Castle and Gartloch near Glasgow. Individuals I used to visit in those hospitals, where they were with friends and staff 24 hours a day, were moved into flats where they were very isolated and received one visit a day.

Jean Maclellan: You are talking about quality of life as well as the cost. In some places, people were put out into the community with substantial care packages and those were not reviewed. Not everyone has been isolated as a result of going into the community. Some people have had rich and fulfilling lives that are much better than those that they had in long-stay hospitals. They have made friendships and have the same circles of support that you and I have, which do not necessarily involve money changing hands.

John Mason: You mentioned friendships. You probably know that the Accord Centre is in my constituency. It caused something of a stir when Iain Gray was chased into Subway. The First Minister has been out to the centre a number of times. The matter has been extremely insensitively handled by Glasgow City Council because, whereas the picture that is being presented in the bill is that people will have a choice about whether they carry on in a day centre or do something else with the money that might be available, exactly the opposite has happened in Glasgow. Even before people get their hands on the budget, Glasgow City Council has announced that the day centre is closing.

People’s great fear is that they will lose friendships and be isolated. Parents come to me and tell me that they do not want their adult with learning disability child just wandering around Argos every day—they cannot store all the catalogues that get brought back—or going to the same college course year after year.

I suggest that the situation has been badly handled in Glasgow. If the costs that Glasgow is proposing are as low as they are but, under pressure, the council has had to create a new centre, where does that leave all the costs in this?
Jean Maclellan: My sense is that there is not a new centre. Modification to the Tollcross centre has been offered in relation to the Accord Centre.

Your points about quality of life for people with learning disability generally are recognised for some people. The impact that the 10-year “The same as you?” programme, which was completed in 2010, has had on the lives of people with a learning disability has just been evaluated with a view to having a second major strategy for those people. It will address many of the points that you have made.

John Mason: But is it the case that the weight is against the day centres, even if people want them, because, as Elaine Murray suggested, if the number of people going to them reduces, the natural conclusion is that, sooner or later, they will close?

Jean Maclellan: People said in the consultation on “The same as you?” that they did not want building-based services. A number of authorities have gone down the road of not having such services, but not all have done so. For example, it is recognised in Glasgow that people with autism would prefer a building-based service, which they have in the form of the number 6 service for adults who choose to spend their time there. Some of those adults want to spend some of their time outwith that building, but at least they have that building to go to. Local policies on building-based services vary a lot, though.

John Mason: You have obviously studied, consulted and all the rest of it, but my impression is that certainly the social work department in Glasgow is very much pushing against ghettos—I agree with that policy—but the resistance is coming from the users and the carers. Another issue is the extent to which councils have consulted both the users and the carers. Certainly, it has been my gut feeling at times that the carer and the user have had a different agenda. I wonder whether the money that we are talking about for advocacy is really going out for that. Are all users getting the opportunity of an advocate, even if the carer thinks that they do not need it?

Jean Maclellan: Some users and carers have very good relationships and understand and are respectful of each other’s positions. Part of our consideration in relation to the current exceptional circumstance for a family member to be the employee centres on what you are alluding to, which is whether there is any potential for abuse in the relationship. A simple example is that, if you are my relative and you are caring from me and I want you to do something in your employee capacity at 10 in the morning but you fancy doing something else, you could say, “Och, Jean, never mind. I’ll do that at half 11.” Sometimes, the relationship between user and carer in the exceptional circumstance in which the latter is the employee can have its difficulties. I endorse the point that you make.

John Mason: Another point that you made was about the fact that, in some councils at least—I think that it would be the case in Glasgow—there has been a cut in the budget and a realignment between some people getting a lot of care and some people getting very little, which is all happening in among the introduction of SDS.

Jean Maclellan: Yes. The overlayering is unfortunate, as I think several committee members have said and as I said in my opening remarks.

John Mason: I accept what you have said on that, as have other people. I just wonder whether we will ever be able to get underneath that and separate out the reasons for things. I get people coming to me who used to have two days of a service of some kind but have now had that cut to one day, and there are similar kinds of issues. Do we trust local authorities not to push the service level down to meet the budget and to say instead, “Well, this is the need, and the budget follows on from that”?

Jean Maclellan: Craig Flunkert might have something to say on that point, as he is closer to some aspects of Glasgow than I am.

Craig Flunkert: As I think you have alluded to, some of the issues that you are raising are general social work and social care issues. The question of whether the amount of support that an individual gets, in financial terms or otherwise, meets their level of need is a fundamental one. That is a challenge that local authority practitioners must weigh up on a daily basis, regardless of the options that the person is choosing.

Jean Maclellan: It is the duty of care.

Craig Flunkert: Yes. The bringing together of the fact that social work budgets are being pressed and sometimes reduced and the fact that councils are rolling out changes to people leads to a mixing of the two. You mentioned a constituent whose service provision was reducing from two days to one. That person is not taking control of the budget; they are experiencing a reduction in the service that they receive. If the choice is between a flat reduction in services across the board or translating provision into individualised budgets that people can control and which deliver better-quality services, the latter choice is the better one.

John Mason: The problem is that the two things are happening at the same time and people are being given control over the lower amount, which means that they cannot buy the same service that
they had before. There are issues with that, of course, and I take your point.

Mark McDonald: Like Gavin Brown, I was struck by the forceful tone of Angus Council’s submission, until I got to the final paragraph, in which it basically suggested that it was implacably opposed to self-directed support, which might explain the tone of the rest of its submission. Nonetheless, a number of concerns have been raised by authorities around the costings.

One of the things that disappoint me is the number of local authorities that we have not heard from. In particular, I am disappointed that we did not hear from Aberdeen City Council, of which I was a member for five years, until I stood down last week. I know that it has done a lot of work on the cost of individual packages, as there were some learning disability packages that cost six-figure sums. What is your assessment of the landscape with regard to local authorities’ transformation of social care services? Is it the case that some of the local authorities that have written to us have not gone through the kind of transformation that Aberdeen City Council went through to reassess the delivery of social care services? Might the background to some of the concerns that have been raised with us relate to the fact that councils are looking at the issue in the context of what they deliver rather than in the context of the kind of transformation that other authorities have gone through?

Jen Willoughby: You might have a good point there. We know that all local authorities are at different places, and it is hard to gauge precisely what stage they have all reached. For example, in the direct payment statistics that the Scottish Government collects, North Lanarkshire comes right at the bottom of the list, with the smallest number of direct payments per 10,000 people. However, we know that North Lanarkshire is quite advanced in terms of the transformation to a more personalised way of doing things. We suspect that it is offering what we might call a direct payment but it calls something else, which means that that is not being measured in quite the same way.

We know that there are a lot of pockets of good practice, where people are being innovative and flexible. We also know that other local authorities have not made the same degree of progress on strategic commissioning that North Lanarkshire has made. We are thinking in the longer term about what services will be required and where they will be required.

I would not like to comment on the stages that the various local authorities that responded to you have reached, but we know that they are all at different places.

Mark McDonald: Yes. We will have to factor that into our thinking. Obviously, you will have to do some work with regard to how you liaise with the authorities about the impact that the bill will have. I suspect that some authorities will find it easy to adapt to the new legislation and others will have to have their hands held for a little while in order to get them to a better place.

You have talked about the £23 million or £24 million that will cover costs that are associated with the policy. How do you see that being spread across the various authorities? If what I have just said is accurate, and you appear to be suggesting that it is, one would assume that there will need to be more front-loading of spend in some areas than in others, and some authorities will need more financial support during the transition than others. Have you assessed which authorities are likely to need more intensive financial support?

Jen Willoughby: In conjunction with COSLA, we recently finalised the breakdown of the £23 million over three years. We consulted COSLA quite closely on the formula for the breakdown.

We decided that the fairest way to do it was to have a base amount per local authority, to ensure that the smaller local authorities did not lose out completely. For the next three years, there will be a base amount of £50,000 per year per local authority. We thought about weighting the remainder of the funding by local authority, depending on where they were in the stages of transformation, but COSLA has asked us not to do that. It thought that that would penalise local authorities that have already used funding and progressed substantially. We have considered that argument and we think that there might be some merit in it. We should not penalise local authorities that have transformed; we should encourage them to use that money to continue to transform. That is the formula that has been agreed with COSLA for the transformation funding.

Jean Maclellan: I want to go back slightly to elaborate on a point that Jen Willoughby made. Commissioning strategies are key to this whole agenda. We have not talked at all about scrutiny bodies and the part that they play in measuring what is going on in each of the authorities and in getting into some of the underbelly that John Mason described. Dating back to 2009, the Social Work Inspection Agency has expressed its dissatisfaction with commissioning strategy progress across Scotland. That is also a critical component.

Mark McDonald: I am interested in what you said about the argument that COSLA has posited. I do not see it as a penalty if one local authority does not get as much money as another if that local authority does not require the same level of support to get to where it needs to be. Some
authorities have got their houses in order and got to the stage at which they can implement the legislation seamlessly, and some authorities will need quite intensive support. There is an argument that funding should be directed towards those authorities that will need assistance, rather than being spread more evenly so that those authorities that need intensive support do not receive it and do not get to where they need to be while other authorities that are already there get money thrown at them that will not do anything other than be added to their pot. I can see where COSLA is coming from but, at the same time, I think that it is a risky strategy.

Jen Willoughby: I accept your point, but there is a difficulty with identifying the stage that local authorities have reached. It would be incredibly difficult to draw up a league table of where everyone has reached, so it would be hard to divide the money in that way.

Craig Flunkert: I have one thing to add to what Jean Maclellan and Jen Willoughby have said. Mark McDonald talked about future engagement with councils about the transformation money. At its most recent meeting, the bill steering group agreed that officials, in conjunction with the ADSW, should send out a questionnaire to ask local authorities for their early plans for the funding. That will start quite soon as part of the ongoing dialogue and communication between Government officials and local authorities about what they are doing.

The other aspect that has not been mentioned is the 32 self-directed support leads who have been identified in councils. Those people have come forward with our assistance and volunteered to be a lead co-ordinator in their local authority. It will be their job, partly funded through the transformation funding, to co-ordinate their local authority’s readiness or preparedness, and to share information with other lead co-ordinators. It is not all just about money going to local authorities; it is also about those leads sharing their experience of what they have done so that others do not repeat the same mistakes. They will also share a lot of the good things that they are doing so that local authorities that are a bit behind in their journey can pick up and go a bit quicker. It is not just about the level of transformation resource that authorities get; it is about making the right decisions in managing the implementation of the legislation.

Jen Willoughby: There are also plans for us to visit every local authority. Dates are being set for us to do just that.

Mark McDonald: Thank you.

The Convener: I thank colleagues for asking those questions and I thank the bill team for answering them so comprehensively.

12:45

Meeting continued in private until 12:53.
Consultation

1. Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?
Yes, Angus Council has responded to the consultation exercises which preceded the Bill and has commented on the financial assumptions in the Self Directed Support (SDS). This is outlined in Angus Council’s consultation response to the financial memorandum and potential costs which was submitted to COSLA in July 2012.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?
No, based on Angus Council’s projections outlined in the financial memorandum, the proposed allocation of funding over three years identified falls short of even our most conservative estimates of the cost we may face in relation to implementing the SDS legislation. The net effect of this is a risk that the new duties may place additional financial burdens on Angus Council at a time when resources are diminishing and demand is rising.

Angus Council recognises that the bridging finance that will be required to support infrastructure and cultural change is difficult to estimate with any certainty. Despite this Angus Council’s case for bridging finance was made on the basis that we currently social care contractual commitments spread over several years with a provider or groups of providers, and significant investments in buildings-based facilities such as day centres.

Should a significant number of service users choose to move away from Council-arranged services to personalised budgets there is a risk that Local Authorities would continue to be expected to comply with commitments to retain building based facilities or block contracts until the end of their agreed contract period (dual running costs). Based on this assumption it is likely that there will be increased demands on Commissioning and procurement resources, both in terms of arranging and monitoring different types of contract and supporting the shift towards outcome based commissioning. There are also likely to be implications for the Care Management and assessment Services in relation to increased activity of assessments and the processing of applications for SDS.

3. Did you have sufficient time to contribute to the consultation exercise?
Angus Council is currently developing its policy position in relation to SDS legislation. We would argue that there has been limited time to formulate a position on the finance being made available for implementation since the bill was introduced to Parliament on the 1st of March. We would argue that there is a need to further debate the level of resources that will be required to support SDS in the future, both in relation to any residual transformation costs, and any increases in service costs that might emerge as a result of moving to new commissioning models.

Costs

4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details?
No, the proposed funding allocation outlined in the financial memorandum to support the implementation of the self directed support bill is considerably less than we had estimated. This excludes the additional funding proposed for an implementation manager. This estimate is detailed in Angus Council’s response to the Self Directed Support consultation
on financial memorandum and potential costs which was submitted to Cosla in July 2011. It is important to emphasise that if insufficient resource is not made available, the pace and timing of the implementation of the legislation could be affected as a result.

While Angus Council broadly supports the distribution of financial resources and is committed to transformational change, it recognises that the extent and timing of cultural change and the shift away from existing service models is difficult to predict. While SDS may deliver savings over the longer term through improving outcomes and thereby reducing demand, such savings will take time to emerge and will require transformational changes to cultures and existing service models.

5. Do you consider that the estimated costs and savings set out in the financial memorandum, and the timescale over which they are projected, are reasonable and accurate?

While Self Directed Support may deliver savings over the longer term through improving outcomes and thereby reducing demand, such savings will take time to emerge and will require transformational changes to cultures and infrastructures. Angus council would argue that council’s across Scotland are at different stages in this transformation. We do anticipate that we will incur costs over the short to medium term in relation to:

- Workforce development – mainstreaming the SDS approach across relevant services
- Increased care management time – developing an outcome based approach to assessment.
- Withdrawing from existing service arrangements and the potential decommissioning of services.
- Entering into new contracting arrangements.
- Maintaining existing services (‘dual running costs’)
- Building a support infrastructure to support change i.e. IT systems.

The detailed costings for these areas of development are outlined in financial memorandum and potential costs which was submitted to COSLA in July 2012.

6. If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?

In terms of the broader costs of implementation, it is difficult to accurately estimate this for a number of reasons. The precise extent and timing of the shift away from existing service models will depend in part on the choices individuals make in relation to their preferred option of receiving care. An outcomes based commissioning model will also need to be accelerated and developed to support this shift.

7. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

While Angus Council broadly supports the distribution of financial resources and is committed to transformational change, it recognises that the extent and timing of cultural change away from existing service models is difficult to predict. While SDS may deliver savings over the longer term by improving outcomes and thereby reducing demand, such savings will take time to emerge and will require transformational changes to cultures and structure.

Angus Council is committed to supporting the personalisation agenda and believes that SDS should be available to everyone with assessed care needs. If the proposed legislation is to be effective in supporting progress in this area, issues relating to the scope
of the Bill and the resources required to support its implementation need to be further debated in the context of the legislative timeline.

Wider Issues
8. Do you believe that the Financial Memorandum reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?
As SDS is developed and imbedded there could be a reduction in the workforce in relation to the delivery of direct care. There could lead to savings in terms of staff that deliver training, workforce development, personnel, payroll and other staff based costs, as well as building and transport related costs. These reductions may be offset by additional contracting, monitoring and quality assurance costs. Angus Council would also need to invest in augmenting our IT system and there would be recurring costs to maintain the IT system (resource allocation system).

9. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?
Angus Council has been clear throughout the consultation process that it does not support the use of direct payments to purchase residential accommodation this is reflected in Angus Council's response to the consultation in respect of the Self Directed Support bill.

The introduction of direct payments to purchase residential care may lead to variable rates being charged by providers would not link well with national contracts, top up fees may become an issue, and there is a risk that service users or their circle of friends would not pay. Angus Council would argue that there are no clear benefits to service users, providers or the local authority in implementing direct payments to purchase care.

SELF-DIRECTED SUPPORT (SCOTLAND) BILL
FINANCE COMMITTEE QUESTIONNAIRE: RESPONSE OF ARGYLL AND BUTE COUNCIL

Consultation Questions
1. Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?
Argyll and Bute Council did send a very short response to the financial implications concerning SDS. The Council was not in a position to estimate potential implications of the Bill.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?
N/A.

3. Did you have sufficient time to contribute to the consultation exercise?
Yes.

Costs
4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details?
Argyll and Bute Council are not in a position to comment on this question in specific terms. However in general the financial memorandum appears to highlight the main areas where a financial impact is anticipated.

5. Do you consider that the estimated costs and savings set out in the Financial Memorandum, and the timescale over which they are projected, are reasonable and accurate?
Given the level of uncertainty attached to the costs and savings it is difficult to comment on whether or not these figures are reasonable, particularly given the early stage that the council are currently at a local level.

6. If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?
As highlighted in the financial memorandum there a number of areas of uncertainty, mainly in relation to transformation costs and requirement of bridging funding. Until further detailed investigation has taken place and the allocation of Government funding for this has been agreed (i.e. outcome of SG and COSLA negotiation) then it is difficult to comment on the council’s ability or otherwise to meet these costs in the short to medium term.

7. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?
Timescale is over a 3 year period, given that the Bill is expected to come into force during late 2013/14 then this would mean that additional funding would cease at the end of the first full year of implementation (2014/15). Given the level of uncertainty, particularly in relation to bridging costs and the ability for local authorities to move away from block / minimum level contracts, internally provided services (where staff costs are fixed) and buildings based costs, then there may be an additional financial burden on local authorities in the medium terms (2015 onwards).

Wider Issues

8. Do you believe that the Financial Memorandum reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?
It appears to capture the majority of potential direct and indirect costs associated with the Bill. One area worth consideration is the potential indirect impact on externally provided services, where reductions in either block contracts or service levels either lead to sustainability issues for providers (particularly an issue in more rural areas) and / or an increase in provider rates. This has the potential to increase the cost of the remainder of externally provided services.

9. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?
The Council believe one possible further expense may be an increase in activity in relation to Adults with Incapacity legislation with the potential for interventions under AWI to increase. Activity concerning a range of adults who lack capacity may well require the Local Authority to seek a range of interventions involving Mental Health Officers and registered social workers.
Introduction
1. COSLA welcomes the opportunity to provide evidence to the Finance Committee on the financial implications associated with the Social Care (Self Directed Support) (Scotland) Bill. The Committee should note that our submission focuses on the financial implications of the Bill and also longer term strategy, rather than focussing on the specific questions which have been set out in the Committee’s call for evidence.

2. The Committee should also be aware that COSLA is also submitting evidence as part of the policy scrutiny of the Bill by the Parliament’s Health and Sport Committee, which will set out COSLA’s wider policy position around the Self Directed Support Bill and longer strategy, and we would be happy to provide the Finance Committee with a copy of this to provide a wider context.

Self-Directed Support Strategy
3. The Finance Committee should be aware that Scottish local authorities have been working with their community planning partners, including the communities they serve, to develop more personalised services that put individual outcomes, choice, and control at the heart of service delivery. COSLA is fully committed to self-directed support (SDS) as an approach to advancing the personalisation agenda and supporting people to live independently in the community. In order to take this forward, COSLA has been working closely with the Scottish Government and launched a joint national strategy for self-directed support in October 2010. This strategy sets out a ten-year vision for delivering social care that is fit for the future.

4. The strategy recognises that councils are at different stages in the development of SDS, with many facing challenges in relation to moving to new procurement models to support commissioning for individuals; developing and embedding resource allocation systems to identify individual budgets; shifting cultures and mainstreaming the SDS approach across relevant services and winding down traditional group model services. The strategy therefore has a 10 year implementation horizon in recognition that public services require sufficient time to put the required infrastructure in place and to bring about shifts in culture.

5. Whilst overall we remain supportive of the SDS approach, it is our view that the self-directed support strategy needs to be given sufficient time to fully influence practice, before there can be a clear case for taking the next step of introducing legislation. Nevertheless COSLA firmly believes that self-directed support has the potential to deliver a step-change in the way support services are provided.

Resource Implications
6. Specifically in terms of the resource implications, COSLA acknowledges that £23m of funding has been made available to local government across the next three years from 2012/13 to 2014/15. These resources are intended to support the necessary transformation, including associated infrastructure costs, required to deliver the new Bill duties and wider requirements of the SDS strategy.

7. COSLA has worked with the Scottish Government SDS Bill team over recent months to help identify anticipated implementation costs and influence the financial memorandum to the Bill. This new approach to working has been welcomed and has provided the opportunity for Councils to outline some of the financial costs that will be required to deliver the wider SDS strategy, and associated duties as outlined within the Bill. Part of this work included carrying out a survey of councils in November last year. The responses
received raise significant concerns regarding the resources identified to support the Bill. In addition, given that this will require a fundamental shift in both culture and infrastructure, and that this will take time, there needs to be much wider consideration around the overall period for which resources are made available to enable this shift to be delivered. Whilst this more joined up approach has managed to secure some additional resources for local government than originally intended, it is clear that the level of resources which have currently been provided fall significantly short of initial Councils projections required to deliver both the duties of the Bill and indeed meet the wider strategy requirements.

8. COSLA recognises that SDS may deliver savings over the longer term through improving outcomes and thereby reducing demand, however any such savings will take time to emerge and will require transformational changes to both cultures and supporting infrastructure. The 10 year strategy recognises the longer term benefits that this approach will entail, however it also recognises that Councils are at different stages in this transformation process. Whilst the level of resources which have been identified may go some way to supporting this required change, clearly there will be differing resource requirements across Councils depending on; their current stage in the personalisation agenda, local contracting arrangements, and indeed the level of demand for differing services away from those that are currently offered, much of which will take time to fully realise. Given this it is difficult to completely separate the short term transformational costs from the wider resource requirements which will be necessary to support the longer term SDS strategy.

9. In addition, the overall resource requirements for Councils in relation to the overall delivery of SDS will also depend on the extent of demand for social care services, and indeed the overall choices that individuals make in relation to how these services are provided. We are all faced with financial challenges as a result of the economic downturn, and in turn this has placed significant pressure on the wider local government settlement. Clearly the nature of demand led services is always challenging, and indeed makes it difficult to secure economies of scale where there is no certainty around the level of demand. The nature of SDS requires Councils to offer a number of options around how their care should be provided and supported, and indeed this creates challenges particularly in the short term around the ability to budget appropriately and to accurately estimate the associated take up of specific services.

**Transformational Costs**

10. The financial memorandum acknowledges that fully implementing the principles of the Bill will require councils to make fundamental shifts in both culture and infrastructure. While recognising that councils are at different stages in this transformation, our survey showed that the majority anticipate they will incur costs in relation to:

- Workforce development – mainstreaming the SDS approach across all relevant services, including social work services and housing
- Increased care management requirement – for example, to explain the four options and support decision-making; to formulate individual service budgets and deal with any concerns; to support the purchasing services from a more diversified market; to repeat these processes when packages are review and reconfigured
- Withdrawing from existing arrangements – for example, costs associated with closing services that are no longer viable due to reduced client numbers
- Entering in to new contracting arrangements – for example, additional time from administration and finance staff to deal with a higher number of smaller payments and contracts; processing a higher number of direct payments
Maintaining existing services until they can be closed or scaled down ('dual running costs') – for example, meeting fixed overheads for services running below capacity, maintenance costs for buildings until alternative uses can be found.

11. Both the financial memorandum, and indeed previous research studies, acknowledges it is difficult to accurately estimate the costs that will arise from the changes outlined above. Indeed, the timing and extent of these shifts in commissioning arrangements, administrative costs, and dual running costs are partly dependent of the choices individuals make under SDS. That said, the £23m identified falls far short of even councils’ most conservative estimates. Whilst it is difficult to fully estimate the exact cost for all Councils, from the information provided by Councils even the lowest estimate for each of the cost areas outlined above over three years would total just over £50m nationally. Given that councils are at different stages in implementing SDS, it is highly likely that these costs would be higher, and indeed even based on the median of the estimates which were received the total cost to councils, over the next three years would be over £90m. Clearly this is very different to the actual level of funding which has been provided.

12. These estimates are of course subject to the limiting factors outlined earlier and COSLA is in no way presenting these figures as definitive. What we do wish to highlight however, is the level of disparity between even our most conservative estimates and the resource being made available.

13. The need for initial set up costs has also been highlighted as part of the recent research which has been undertaken by Stirling University around the costs relating to SDS. What still however remains unclear is the actual amount that is required for these set up costs, and these will vary significantly across Councils. Many Councils will face significant costs associated with bridging finance and dual running costs which will be required to allow Councils to maintain or potentially scale down existing Council led services. There will be costs associated with the traditional infrastructure of running the existing service, including buildings costs and staffing costs, on top of the costs associated with commissioning new contracts with service providers, many of which may be at a substantially higher cost, given the inability for economies of scale associated with many larger block contracts. The difficulty around estimating the overall cost associated with bridging finance will depend on local circumstances, including; the demand and take up of alternative options in relation to how their care and support is provided, and indeed the overall cost of commissioning new contracts, and ‘spot purchasing’ which has traditionally higher unit costs.

14. In addition there may be implications for other parts of the social care markets, where Councils may be required to withdraw from current block contracts. This will vary substantially depending on the local market, where many private or third sector providers rely on existing council contracts for a high proportion of their income. Income from individual SDS contracts is likely to be spread across a diversified local market, and may take time to realise. This may create additional financial challenges for providers, and indeed may risk destabilising the market and reducing client choice, particularly at a time where the overall aim is to develop the market and indeed improve client choice. Furthermore this may in turn place pressure on Councils should a provider collapse, where particularly in the short term Councils may be faced to step in and provide services, particularly should there be a reduction in in-house capacity.

15. Furthermore it is anticipated that there will be costs associated with increased care management time including ensuring the overall assessments and reviews explore the SDS options and support the individual’s decisions. These additional costs will arise from; the need for Councils to review their current systems to ensure that they appropriately
support the duty for Councils to offer and indeed support the range of SDS options, an
anticipated increase in the overall volume of SDS assessments as these will be offered to
all new clients and other client groups will also be reviewed; an increase in care managers
time required to spend with clients, including initial assessments and also the need to
review and purchase individual arrangements.

16. Whilst it is difficult to estimate the overall transition costs which Councils will be faced
with to support the duties of the Bill, it is clear from initial Council estimates that the costs
which they are anticipating will be significantly greater than the level which is provided,
and indeed could be greater than double the level of resources required. It is recognised
that Councils are at differing stages of implementing SDS locally, but the precise extent
and timing away from traditional service models, will depend in part of the choices that
individuals make in relation to their preferred option. Nevertheless given the Bill will place
new duties on Councils, they will be required to provide the necessary systems and
infrastructure in place to support not only existing services but also to commission new
services, and all of this will come at a cost.

Future Resource Requirements
17. In addition, the Financial Memorandum to the Bill anticipates that implementing SDS
thereafter will be cost neutral. Whilst COSLA recognises that SDS may deliver savings
over the longer term, the SDS strategy is a 10 year vision. Whilst resources have been
provided to support the next 3 years, it is clear that both changes to culture and
associated infrastructure often take time to emerge, and will require resources to support
the necessary changes. Given the Bill places new duties on Councils, it is difficult to
estimate what level of savings may be realised going forward. Whilst the Scottish
Government have made it clear that the level of resources which are currently provided
are for the next Spending Review only, there will be a need to consider any future
anticipated resources going forward. COSLA will work closely with the Scottish
Government to review the actual costs incurred by Councils and anticipated future
resources to meet the requirements of the longer term strategy aims.

SELF-DIRECTED SUPPORT (SCOTLAND) BILL
FINANCE COMMITTEE QUESTIONNAIRE: RESPONSE OF DUNDEE CITY COUNCIL

Consultation
1. Did you take part in either of the Scottish Government consultation exercises
which preceded the Bill and, if so, did you comment on the financial assumptions
made?
Dundee City Council did participate in the Scottish Government consultation exercises
with particular involvement through COSLA with regards to the Financial Memorandum in
the form of completion of the COSLA survey regarding the potential financial impact of the
introduction of the Self Directed Support Bill and subsequent follow up workshop with
COSLA, Scottish Government, Local Authorities and other stakeholders.

2. Do you believe your comments on the financial assumptions have been
accurately reflected in the Financial Memorandum?
Some limited consideration has been given around the costs of implementation of SDS
but real concerns regarding the longer term sustainability should Scottish Government
funding not be continued past 2014/15 have not been addressed in the Financial
Memorandum.

3. Did you have sufficient time to contribute to the consultation exercise?
A reasonable amount of time was given to contribute. The Scottish Government has acknowledged that local authorities are at different stages of implementing SDS (para 84 of the Financial Memorandum) and Dundee City Council is making progress but still at a relatively early stage of the process therefore it has been difficult to determine the implications across all areas (e.g. finance, staff development, procurement, IT, assessment etc).

Costs

4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details?

The categories of additional costs are widespread but arguably have been accurately reflected although there are concerns regarding the potential shortfall in funding by the Scottish Government. These are explained in more detail in the response to question 5 below.

5. Do you consider that the estimated costs and savings set out in the Financial Memorandum, and the timescale over which they are projected, are reasonable and accurate?

The COSLA lead survey on the potential cost of the implementation of SDS highlighted how difficult it was to predict what the costs may be with considerably different responses from local authorities. Notwithstanding this, there are real concerns that the amount of Scottish Government funding for implementation is insufficient in both the level of funding and the length of funding period. For instance, at a local level, the identified estimated costs of implementation (with a number of significant expenditure areas not yet costed) equates to the maximum possible share of Scottish Government funding available to Dundee.

There are a number of assumptions made in the Financial Memorandum impacting on the level and length of funding which we would challenge:

Transformation Costs:
Arguably these could be the most significant costs of implementing SDS as current “fixed” infrastructure is dismantled over time (in terms of buildings, local authority direct services and block contract funded services). The Scottish Govt highlights at para 102 that it does not anticipate a “big-bang” shift in individuals directing their own support. If this is indeed the case, local authorities could be faced with the situation of running under capacity, inefficient services while funding SDS packages (double running costs) for a longer period than expected as people gradually move away from traditional services. With the increases in demand for services due to demographic changes unlikely to be met through additional Scottish Government Funding given the current financial environment, local authorities cannot afford to carry this inefficiency. This would indicate that a longer term fund for transformational change would be more appropriate.

Cost Neutrality of the Bill:
In para 79 the Scottish Government suggests that the shift towards self-directed support will be cost-neutral and notes that savings should be possible (para 78) with people electing to arrange support at home as opposed to residential accommodation. While this may be the case, this has been the general national policy direction over a number of years through shifting the balance of care and more recently through the creation of the Change Fund for Older People with major developments in the way care at home can be provided therefore this potential saving has perhaps been over-emphasised.

There is also reference to some administration costs transferring to individuals thereby reducing bureaucracy (and presumably costs) with the cost of liaising with providers
shifting to individuals. However, if a "big bang" is not anticipated, local authorities cannot reduce their administrative infrastructure accordingly. In addition, many individuals will choose to rely on external agencies to provide the support services they need to manage their self-directed budget, which they will have to pay for therefore reducing the amount of self-directed budget available to purchase the services they need.

In addition, Dundee City Council's experience of Direct Payments is that there is still a significant administrative burden to the council as monitoring of the direct payment is still required, payments still have to be made (to individuals rather than organisations), debt recovery action still needs to be taken if clients contributions aren't made and unused balances at the year end still need to be pursued.

The potential reduction in the use of resources identified in para 78 through reducing "unwanted" provision of arranged services is a possibility but it could be reasonably expected that any such efficiencies would be required to meet increasing demographic demand.

Recurring costs through increased support to independent advice and support services, ongoing increased staff training costs the management and monitoring of SDS will all require to be funded. With no clearly identifiable recurring savings, it is difficult therefore to conclude that the Bill will be cost neutral.

Demand Levels:
The Financial Memorandum cites evidence that demand levels shouldn't increase significantly due to the introduction of the Bill with parallels drawn with the experience of the introduction of Direct Payments and the limited shifts to this method away from traditional services. However it could be argued that SDS is higher profile and with £7m being provided to provide information and advice there is potential for there to be a "woodwork effect" and therefore a significant increase in demand. This would be over and above the demographic demand increased expected generally.

Sustainability
Tied in with cost neutrality is the longer term sustainability of the ongoing infrastructure required to support SDS with the increased capacity of advice and advocacy services a particular concern. Within Dundee, current available funding to these organisations is already insufficient to meet increasing levels of demand faced by them. With no large "resource release" anticipated as outlined above, and increasing levels of demographic need, additional funding is unlikely to be found from within local authority budgets to provide support funding to these organisations. Without these services the whole SDS strategy could be undermined.

6. If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?
As highlighted in 5 above it is anticipated that the longer term financial costs associated with the Bill cannot be met. The ongoing costs should be met through a continuation of Scottish Government funding.

7. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?
The Financial Memorandum does attempt to reflect this but as outlined in 5 and 6 above falls short of providing a realistic longer term view of the ongoing resource requirements to meet the additional costs. Costs for 2015/16 and beyond should be acknowledged even if funding cannot be guaranteed.
Wider Issues

8. Do you believe that the Financial Memorandum reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?

While most costs are captured there are some potential consequences of the Bill which could result in additional expenditure incurred by local authorities. For instance as more and more people are supported to lead independent and individualised lives in the community there will be a demand for more housing which will require investment. The restrictions in Scottish Government funding for Housing Association Grants continue to restrict investment thereby creating demand and unnecessary admission to care homes. Similar considerations around OT equipment and adaptations exist.

9. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?
None identified

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**SELF-DIRECTED SUPPORT (SCOTLAND) BILL**

**FINANCE COMMITTEE QUESTIONNAIRE: RESPONSE OF EAST AYRSHIRE COUNCIL**

Consultation

1. Did you take part in either of the Scottish Government Consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?

East Ayrshire has responded to previous consultations with respect to the Bill, including the financial assumptions made.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

On the basis the information contained in the Financial Memorandum is the same allocation detailed in the Health and Social Care Integration Directorate this does not reflect the financial assumptions previously submitted to the Scottish Government.

Initial financial assumptions based on available information but in the absence of estimates for a number of elements, were £138,956 £142,430 and £145,980 for years 12/13, 13/14, 14/15.

The East Ayrshire allocation identified in the Health and Social Care Directorate communication detailed as £152,960, £269,960 and £152,520 for years 12/13, 13/14, 14/15. Given that there were a number of areas not quantified specifically there is potentially a significant shortfall. In addition a minimal cost estimate of £84,458 was identified for years 2015 and beyond which does not feature in the Financial Memorandum as it is restricted to the current Spending Review.

3. Did you have sufficient time to contribute to the consultation exercise?

No, the timeframe was short and did not facilitate opportunities to consider the complete impact of the Bill across all services and systems both within the Council and with our partner providers including Independent Advocacy services.
Costs
4. If the Bill has any financial implications for your organisation, do you believe those have been accurately reflected in the Financial Memorandum? If not, please provide details?
No, as previously stated there was a significant number of areas for which no cost was available. Implications for self-funding residents of care homes, systems required to process payments, collect charges if gross direct payments are to be made, debt processing, electronic system developments, dual running costs, increased monitoring arrangements, developing the workforce including partner providers and shifting the culture across staff, service users and carers were not costed in the original consideration of financial implications.

5. Do you consider that the estimated costs and savings set out in the Financial Memorandum, and the timescale over which they are projected, are reasonable and accurate?
The savings and cost neutral assumptions are concerning as there is limited evidence to support this. While it may be fair to anticipate there would be minimal difference in costs of direct service provision and self-directed arrangements, consideration is required to the supports required to deliver this both in terms of supporting vulnerable people directly and robust systems to monitor and deliver this route of support where there are audit and regulatory imperatives along with an underlying duty of care by the local authority. The time frame for allocation being restricted to the current Spending Review is a risk as there is no means to anticipate what the take up will be, implications for current service providers including local authorities and the potential need to decommission services.

6. If relevant, are you content that your organisation can meet the financial costs associated the Bill which your organisation will incur? If not, how do you think these costs should be met?
Reduction in public sector resources, increased service demands and the Health and Social Care Integration agenda are all pressures which will impact on the capacity to meet financial costs associated with any new legislation. The systems changes required to facilitate the Bill including audit, care management, review and monitoring, electronic systems, billing, debt collection and contract and commissioning will all have associated costs. The potential impact on closing down current service provision at a “tipping point,” where demand transferring to self-directed support requires service reconfiguration will have costs attached, particularly where there are staffing implications including the potential for redundancy payments.

The fact that the finances identified relate specifically to the current spending review poses significant risks to local authorities therefore it is not possible to state confidence in the capacity of East Ayrshire Council to meet additional costs associated with the Bill.

In terms of sources for costs to be met there may be potential if there are savings from the Health and Social Care Integration agenda and specifically the Integrated Resource Framework to support implementation of the Bill but this would be a long term solution.

7. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?
No, there are greater margins of uncertainty associated with other policy developments and presumptions of cost neutral outcomes.

Wider issues
8. Do you believe that the Financial Memorandum reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?
The Financial Memorandum fails to recognise the systems changes required as previously referenced, the regulatory and duty of care implications and the impact of potential double running costs for services.

9. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

In spite of concerns expressed regarding the financial projections for the Bill, East Ayrshire Council fully supports the principles of the legislation with respect to service users having full involvement, informed choice and collaborative solutions to their care needs. Our current practice aspires to reflect those principles however, full scale systems change at a point of diminishing public sector funding, increasing demand and the Health and Social Care Integration agenda poses risks in terms of the capacity to provide a robust system without the appropriate resources to support this.
| Consultation paper section | Area of potential cost impact | Response - Please provide as full a narrative response as possible to each question in the boxes below. Please use the 'Council Estimate' and 'Estimated Savings' columns to the right to provide quantified estimates where possible. Where it is not possible to provide an estimate, please tell us more about the types of costs, or other pressures, you expect to arise, why and when. | Estimated costs - initial estimates provided by the Scottish Government (where available) including indication of nature of cost (recurring / non-recurring) | Council Estimate - please provide estimated costs per annum, including any transitional costs for preparatory work in 2012/13. For all years, please indicate whether costs are one-off (o), or recurring (r). | Estimated Savings - please provide any estimated savings which are anticipated. Please indicate whether savings are one-off (o), or recurring (r). |
|--------------------------|-------------------------------|---------------------------------------------------------------------------------|--------------------------------------------------------------------------------|--------------------------------------------------------------------------------|
| 8.1a)                    | What are the likely requirements for costs of increased capacity within council advice and support services (including those provided) | At present we have one support assistant grade post which responds to both the financial monitoring and practical support of 100 people who currently access self-directed support. In order to extend the capacity and separate the financial monitoring from the Recurring - No estimate. | 30,264 31,021 31,786 32,591 0 0 0 0 | 30,264 31,021 31,786 32,591 0 0 0 0 |

848
8.1b) What is the likely requirement for increase in funding from local authorities for independent advice and support services?

We currently fund Ayrshire Independent Living Network £13k as a third share of costs for provision of independent support and advice across the three Ayrshire Councils. We recognise that this requires to be enhanced to reflect growing demand and would consider £15k to be a more realistic third contribution. While it is difficult to anticipate future demand we would base assumptions on £15k per 100 service users.

<table>
<thead>
<tr>
<th>Year</th>
<th>Non-recurring</th>
<th>32,750</th>
<th>33,569</th>
<th>34,408</th>
<th>35,268</th>
<th>0</th>
<th>0</th>
<th>0</th>
<th>0</th>
</tr>
</thead>
</table>
8.1c) What are the likely requirements for developing skills of staff members within in-house and/or commissioned advice and support services?

In order to maximise knowledge and understanding across all stakeholders with respect to self-directed services, a programme of awareness raising and training will require to be developed and delivered on a rolling programme basis. The provision of learning materials in terms of written information will also be required. While this is delivered at present by current staff involved in self-directed services it will require to be enhanced and include outcomes based practice sessions in order to shift the culture across all organisations including the local authority, NHS, partner providers, service users and carers. This will require the enhancement of provision in the training section. Given the considerable agenda we would anticipate the need for one additional training officer post in East Ayrshire and a third share of a post for a Pan Ayrshire role across NHS
8.1d) What other pressures, including knock-on effects for other services, might arise from increased demand for advice and support?

<table>
<thead>
<tr>
<th></th>
<th>Ayrshire and Arran and partner providers.</th>
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<tbody>
<tr>
<td>N/A</td>
<td>tbc</td>
</tr>
</tbody>
</table>

8.1e) What savings might be realised through more people accessing advice / support and SDS packages?

<table>
<thead>
<tr>
<th></th>
<th>It is difficult to quantify at this point what savings might be achieved through increased uptake of self-directed service packages. It could be anticipated that there will be savings across all administrative functions concerned with commissioning and monitoring contracts and the management and audit of payments to</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recurring - No estimate</td>
<td>0</td>
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</tbody>
</table>
contracted services and in
house staffing costs
however, it is possible
that any savings will
require to be utilised to
support and facilitate
enhanced monitoring of
the use of self-directed
supports to ensure
people's needs are being
met safely and risks to the
most vulnerable service
users are minimised in
terms of adult support and
protection.

<table>
<thead>
<tr>
<th>8.2</th>
<th>Appropriate person provisions</th>
<th>costs associated with assessing appropriate persons applications</th>
</tr>
</thead>
</table>

<p>| 8.2a) | What additional requirements and costs might the 'appropriate person' option lead to? | Costs would be associated with establishing processes including training and monitoring of &quot;appropriate person&quot; arrangements. Until further clarity is provided with respect to the actual role and function of an &quot;appropriate person&quot; this is difficult to quantify. | Recurring - No estimate | tbc | tbc | tbc | tbc | 0 | 0 | 0 | 0 |</p>
<table>
<thead>
<tr>
<th>8.2b)</th>
<th>How are these likely to change over time?</th>
<th>As Councils continue to have ultimate responsibility for monitoring care arrangements particularly with respect to protection and use of the public pound, it is unlikely the training and monitoring costs would fluctuate over time.</th>
<th>Recurring - No estimate</th>
<th>tbc</th>
<th>tbc</th>
<th>tbc</th>
<th>tbc</th>
<th>0</th>
<th>0</th>
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</thead>
<tbody>
<tr>
<td>8.2c)</td>
<td>To what extent could guardianship applications be expected to reduce in line with uptake of the appropriate person option?</td>
<td>The use of Access to Funds facilities should minimise the need to make application for financial guardianship. It is unclear what the difference between the &quot;appropriate person&quot; and access to funds arrangements might be at this time until there is further clarity with respect to the role and function.</td>
<td>Potential savings to OPG (not quantified)</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
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<td>0</td>
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<tr>
<td>8.2d)</td>
<td>If, as expected, the Bill focuses on more informal “circles of support” what implications might this have for councils; and what, if any, costs would be incurred?</td>
<td>In addition it is anticipated safeguards would require to be in place to ensure informal circles of support are meeting the needs of the individual. It is anticipated additional independent advocacy and care management capacity may be required as a consequence.</td>
<td>Recurring - No estimate</td>
<td>tbc</td>
<td>tbc</td>
<td>tbc</td>
<td>tbc</td>
<td>0</td>
<td>0</td>
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</tbody>
</table>
### 8.3 Services to carers - costs associated with offering self-directed support to carers

#### 8.3a) What are the wider implications for local authorities of offering self-directed support to carers - both in terms of i) assessment and ii) support?

There should be minimal implications with respect to the provision of carers’ assessments given this is current practice however there is acknowledged low take up. In terms of support provision it is anticipated there is considerable unmet need at present which will have an impact financially to the council regardless of how this is provided. | Recurring - No estimate | tbc | tbc | tbc | tbc | 0 | 0 | 0 | 0 | 0 | tbc | tbc | tbc | tbc | 0 | 0 | 0 | 0 | 0 |

#### 8.3b) Do you currently provide direct payments to carers and if so, at what levels? (Please provide numbers of carers and costs)

We have not to date provided direct payments to carers. | N/A | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a |

#### 8.3c) How is demand likely to change over time, with It is difficult to anticipate how demand may change on account of the bill proposals. In East | N/A | tbc | tbc | tbc | tbc | 0 | 0 | 0 | 0 | 0 | tbc | tbc | tbc | tbc | 0 | 0 | 0 | 0 | 0 |
<table>
<thead>
<tr>
<th>8.3d)</th>
<th>To what extent do you see this meeting current unmet need?</th>
<th>Ayrshire we have moved from Carers' Assessments to Carers' Support Plans in order to enhance uptake.</th>
<th>N/A</th>
<th>n/a</th>
<th>n/a</th>
<th>n/a</th>
<th>n/a</th>
<th>n/a</th>
<th>n/a</th>
<th>n/a</th>
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</thead>
<tbody>
<tr>
<td>8.3e)</td>
<td>To what extent do you anticipate the power to support carers will allow councils to 'spend to save'? For example, by enabling carers to provide more care, or provide care for longer, thereby reducing demand for services by the individuals they support?</td>
<td>It is difficult to anticipate how this might meet unmet need as we are aware there are a significant number not in contact with services at present.</td>
<td>N/A</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>tbc</td>
<td>tbc</td>
<td>tbc</td>
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</tbody>
</table>
### 8.3f) What might be the likely savings from any overall reduction in demand?

It is difficult to quantify what overall savings might be achieved by enhancing the support to carers.

<table>
<thead>
<tr>
<th>8.3f</th>
<th>8.4 Residential care - costs potentially arising from the use of direct payments for the purchase of long term residential care</th>
<th>8.4a) What is the risk of individuals paying for their residential care through direct payments being classified as self-funders?</th>
<th>8.4b) Would this risk create any financial liabilities for local authorities?</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>tbc</td>
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</table>

### 8.4 Residential care - costs potentially arising from the use of direct payments for the purchase of long term residential care

There is a risk that residents might fall outside the National Care Contract and the protection that it affords.

<table>
<thead>
<tr>
<th>8.4a) What is the risk of individuals paying for their residential care through direct payments being classified as self-funders?</th>
</tr>
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<tbody>
<tr>
<td>N/A</td>
</tr>
</tbody>
</table>

### 8.4b) Would this risk create any financial liabilities for local authorities?

If people become self-funded on account of utilising self-directed services and arrangements fail there may still be a liability on the council to continue meeting the care needs

<table>
<thead>
<tr>
<th>8.4b) Would this risk create any financial liabilities for local authorities?</th>
</tr>
</thead>
<tbody>
<tr>
<td>No estimate</td>
</tr>
</tbody>
</table>
and associated costs on an interim basis until alternative legal solutions can be identified.

<table>
<thead>
<tr>
<th>8.4c)</th>
<th>How would adjustments to payments (as part of the quality award element of the national care homes contract) be dealt with under direct payments? What financial or administrative pressures might this bring for councils?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The payment adjustments would be cumbersome as they may require to be adapted on a case by case basis resulting in additional administrative costs to process.</td>
</tr>
<tr>
<td></td>
<td>No estimate tbc tbc tbc tbc 0 0 0 0 0</td>
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<tr>
<th>8.5</th>
<th><strong>Payment methods - costs associated with changes to payment methods</strong></th>
</tr>
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<tbody>
<tr>
<td>8.5a)</td>
<td>If payments were to be made gross, what difficulties might arise for councils?</td>
</tr>
<tr>
<td></td>
<td>At present we pay net. If paid gross there would be associated costs with issuing bills for charges and pursuing payments and possibly debt recovery.</td>
</tr>
<tr>
<td></td>
<td>Recurring - No estimate tbc tbc tbc tbc 0 0 0 0 0</td>
</tr>
</tbody>
</table>
### 8.5b
**Would there be any administrative costs arising from gross payments and if so can these be quantified?**

At points where debt was amassing, if they are subsequently written off then there would be effective double funding by the council. Monitoring and processing of gross payments would have additional administrative resource implications.

<table>
<thead>
<tr>
<th>Recurring</th>
<th>No estimate</th>
<th>tbc</th>
<th>tbc</th>
<th>tbc</th>
<th>tbc</th>
<th>0</th>
<th>0</th>
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</tr>
</thead>
</table>

### 8.5c
**What other implications might arise from each payment method, for example, where individuals wish to purchase services from neighbouring authorities?**

The implications with respect to gross payment methods are described above as payments would be made then charges applied in line with policy. Where charges are taken at point of payment administrative costs are minimised with respect to the process.

<table>
<thead>
<tr>
<th>Recurring</th>
<th>No estimate</th>
<th>tbc</th>
<th>tbc</th>
<th>tbc</th>
<th>tbc</th>
<th>0</th>
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</table>

### 9.1
**SDS implementation managers based in local authorities - costs associated with employing additional staff for 3 years**
### 9.1a) Which of the low and high end assumptions is the most appropriate for additional staff to support transition?

Across Ayrshire there may be potential to have one post covering the three council areas, however this would require to deliver high level advice and guidance given the different structures and cultures within each council area. The majority of tasks are currently undertaken within existing staffing arrangements which will require to be enhanced to meet the aspirations of the bill.

Non recurring (first 3 years only) - Between £0.96m to £3.8m over 3 years. £3.4m over 3 years, to be made available by the Scottish Government.

### 9.1b) Are the costs associated with these posts accurate?

Any posts would be subject to job evaluation. The money identified would only realistically provide input if there was a shared post across all three Ayrshire Councils providing a project management type function. Alternatively, this resource could be targeted to enhance current arrangements which would result in the integration of tasks within mainstream work arrangements, reducing the risk of self-directed supports being considered outwith day to day operations.

Non recurring (first 3 years only) - £40,000 on-costs per post, per annum.
<table>
<thead>
<tr>
<th>9.1c)</th>
<th>What pressures might arise as SDS manager posts come to an end?</th>
<th>If posts are time limited there is considerable pressure to ensure practice is mainstreamed at an early point as possible. It would be more valuable to ensure this is the case from the outset by funding additional capacity within existing structures in the short term with a view to free up resources to sustain this input rather than having specialist posts.</th>
<th>Recurring - No estimate</th>
<th>n/a</th>
<th>n/a</th>
<th>n/a</th>
<th>n/a</th>
<th>n/a</th>
<th>n/a</th>
<th>n/a</th>
<th>n/a</th>
</tr>
</thead>
<tbody>
<tr>
<td>9.2</td>
<td>Training, information and awareness raising; publicity on the new legislation</td>
<td></td>
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<td></td>
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<td></td>
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</tr>
<tr>
<td>9.2a)</td>
<td>What other training or development requirements might arise from the SDS Bill? (please exclude any requirements that are likely to met by the SDS managers)</td>
<td>Training will require to support a shift from process to outcomes focussed practice across social work staff, service users and carers.</td>
<td>No recurring - No detailed estimate. Assumed costs unlikely to exceed similar Bill costs e.g. £200k for materials and £600k to deliver training.</td>
<td>0</td>
<td>0</td>
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described in section 9.1 above, or through SSSC activity described in section 9.2 of the consultation document)

<table>
<thead>
<tr>
<th>9.3</th>
<th>Bridging finance - costs associated with winding down of existing contracts</th>
<th>Significant training already planned through SSSC over next 3-5 years.</th>
</tr>
</thead>
</table>

9.3a) What additional requirements and costs might arise from the winding down of existing contracts?

Third party providers may require a level of incentive to remain operational within areas where there is no continuation of specific contract commitments by the council. There is the potential for additional costs arising from TUPE transfers.

9.3b) To what extent is the case for bridging finance dependent on the speed or pace of SDS roll-out?

The practicalities of reviewing all service users following the introduction of legislation will have an impact on all elements of service delivery in terms of capacity. It would be preferable, as happens
example, is the case stronger if local authorities decide proactively to review all clients or particular groups on the back of the legislation?

| 9.3c) What additional administration costs might arise from increased numbers of direct payments, e.g. in relation to volume, or changes to financial systems? | Note response in 8.1d Non recurring - No estimate. Decisions yet to be taken on whether there is sufficient evidence to support the case for bridging finance. | tbc | tbc | tbc | tbc | 0 | 0 | 0 | 0 |

| 9.3d) What is the likelihood of a requirement for dual running costs? Over what period and at what cost? How much of this is to | Dual running costs may be required at the tipping point between people wishing self-directed supports as opposed to established care. At this point it is difficult to anticipate when this might occur and what direct impact there may be as it | tbc | tbc | tbc | tbc | 0 | 0 | 0 | 0 |
release resources from a) buildings-based services and how much from b) block contracts?

will be completely dependent on the uptake of self-directed supports although strategic planning can take account of potential changes and reflect this in service redesign i.e. not replacing a traditional day service but providing a resource centre.

<table>
<thead>
<tr>
<th>10</th>
<th>Other costs and wider implications - please also tell us about any other areas where you anticipate additional costs, or other implications for councils, which need to be reflected in the financial memorandum.</th>
</tr>
</thead>
<tbody>
<tr>
<td>10.1</td>
<td>Please tell us about any additional recurring or non-recurring costs or savings for councils.</td>
</tr>
</tbody>
</table>

At this point it is difficult to anticipate costs and savings associated with self-directed services. Across the council and support services it is likely there will be additional costs in facilitating a fundamental switch in service delivery however
in the long term this may be reduced as systems are adapted. There will however require to be continued and potentially enhanced monitoring of support provision associated with legislative requirements to support vulnerable adults.
1. Did you take part in the Scottish Government's consultation exercises which preceded the bill and if so did you comment on the financial assumptions made?
Yes

2. Do you believe your comment on the financial assumptions have been accurately reflected in the financial memorandum.
The estimates provided were based on our early experience of implementing personalisation. We believe that although the financial memorandum attempts to incorporate most comments, more could have been included.

3. Did you have sufficient time to contribute to the consultation exercise?
Yes

4. If the bill has any financial implications for your organisation do you believe these have been accurately reflected in the financial memorandum? If not please provide details?
Our concerns lie in the main with growth of advice and support services, services to carers, payment methods (requirement to provide gross payments), along with the bureaucracy that it would entail, and bridging finance for service redesign.

5. Do you consider that the estimated costs and savings set out in the financial memorandum and the timescale over which they are projected, are reasonable and accurate?
We believe that the costs and timescale are under estimated

6. If relevant are you content that your organisation can meet the financial costs associated with the bill which your organisation will incur? If not how do you think these costs should be met?
The Council will continue to review the implementation of Personalisation, and look to improve efficiency and effectiveness within the emerging policies. Additional support will be required for short to medium term transformational costs.

7. Does the financial memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to rise?
We believe that the costs and timescale are under estimated

8. Do you believe the financial memorandum reasonably captures costs associated with the bill? If not which other costs might be incurred and by whom?
As above.
9. Do you believe that there may be future costs associated with the bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

We would suggest that future subordinate legislation consider potential costs of bureaucracy and consideration should be given to net payments not just gross payments. Prescriptive guidance in legislation on local authorities to pay DP’s on gross may inadvertently result in funds being redirected from service provision to back office costs.

SELF-DIRECTED SUPPORT (SCOTLAND) BILL
FINANCE COMMITTEE QUESTIONNAIRE: RESPONSE OF PERTH AND KINROSS COUNCIL

1. Are you generally in favour of the Bill and its provisions?
   Yes.

2. What are your views on the principles proposed?
   While these principles – involvement, informed choice and collaboration – are fundamental to the underpinning values of social work, they have been compromised by the service led model of provision which has developed during the 20 years since the National Community Care Act was implemented. This Bill is a welcome change in direction and will promote a greater leaning towards person centred planning models and personalised solutions to support the achievement of agreed outcomes.

3. What are your views on the four options for Self-directed Support proposed in the Bill?
   3.1 Option 3 of local authority arranged support is, to all intents and purposes, the status quo, excluding people who opt for Direct Payments. The inclusion of this as an option implies that this is Self-directed Support. While it is necessary to ensure a full range of options for people and their families, and while the principles of involvement, informed choice and collaboration may be incorporated to a certain extent, its inclusion creates confusion.

   The culture shift required to embed the model of working which the Bill aims to promote is considerable. The workforce needs a clear message of a fundamentally new direction which this dilutes.

   Perth and Kinross would like to see this option as a fall back position to ensure local authorities can carry out their statutory duties where people eligible for support are unable/refuse to make choices for whatever reason and who have no-one to take these decisions for them. A separate section encouraging application of the principles to “traditional” care packages would provide for those who effectively are unable or chose not to opt for Self-directed Support. Clearly it can still be used together with options 1, 2 and 4 when required.
3.2 The “direct available resource” or managed package as referred to in other guidance, while necessary to promote choice and control raises some problematic governance and auditory issues. The local authority’s liability in commissioning personalised, one-off, non-regulated resources, where PVG cannot be enforced raises safety and protection issues. The purchase of individual items e.g. computers to promote independence and equipment to support independent living is indicated by the Bill but raises issues of safety. Some clarity around the intentions of the Bill committee is necessary to ensure consistency of implementation across Scotland.

3.3 The employment of personal assistants by local authorities under option 2 imposes duties in relation to continuing employment. How can this be resolved? Perth and Kinross has the view that the range of options available under options 1 and 2 should be as near as possible the same.

7. Do you have any views on the provisions relating to adult carers? In Perth and Kinross a resource allocation system for carers is being developed which is seen by the carer consultation group as a positive step. Individual budgets for carers will offer greater choice and control, however there are some challenges in relation to the application of charging/contributions policy. To date, the cared for person has been charged, following financial assessment, for residential short break to give their carer respite. If carer respite is seen as part of the carer support package for which they are allocated their own budget, to be managed according to the options under the Bill, the responsibility for financial contribution transfers to the carer. What is the view of carer organisations on this matter?

8. Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill? Perth and Kinross would seek clarification on whether this means that family members can now be employed, and what the definition of family member in this context would be. If the family member is also managing the direct payment they would, in effect, be paying their own wages. This introduces contractual complications and conflict of interest. Liability insurance is also problematic. While Perth and Kinross welcomes the greater flexibility some clarification is required around these matters.

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum? The Financial Memorandum to the Bill anticipates that implementing SDS thereafter will be cost neutral. Although the assumption that SDS may deliver savings over the longer term it is clear that both changes to culture and associated infrastructure will take time to emerge. It is likely that there will be additional costs for Councils in the first period of the 10 year SDS Strategy. It is clear that we have the same view of most other Councils that the level of additional costs anticipated will be significantly higher than those estimated by the Scottish Government.

Acknowledging that our Council is at an early stage of developing SDS it is difficult to express any evidence based comment on the calculations within the Financial
Consultation
1. Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?
Yes, SBC contributed to both the Scottish Government and COSLA consultation and the Stirling University study commissioned by the Scottish Government.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?
The financial assumptions have on the whole taken into account the key areas that are likely to have a cost implication. However, we would also expect there to be additional costs for care management support/support planning during the transition time. We expect care managers to take longer with the processes as they adapt to the SDS approach and processes.

3. Did you have sufficient time to contribute to the consultation exercise?
Yes we did.

4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details?
We consider that the training costs will be double those reflected in the memorandum (i.e. 2 days per staff member); that the bridging finance costs will be higher as we make the change from investing in buildings to individual packages; that during the introduction of SDS care management time will be costly as staff develop new approaches.

5. Do you consider that the estimated costs and savings set out in the Financial Memorandum, and the timescale over which they are projected, are reasonable and accurate?
The profile of funding over the 3 year period, with highest funding in year two is beneficial. We consider that there are potential savings in the long term from people managing and making decisions about the use of the funding based on a range of options.

However, we are concerned about the timescale of funding – we note that there is recognition, from the continued funding of the test sites, that there is a substantial cost implication over at least 6 years for these local authorities.
6. If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?
To meet the costs we will need to seek funding from other sources e.g. Change Fund. We will work in partnership with organisations who have been funded by the Scottish Government to support change, for example, through the fund for capacity building, to assist us in providing information and support to individuals.

We are concerned about the impact of double funding costs whilst we have decreasing use of building based services with fixed costs whilst people choose to use individualised support.

7. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?
We feel that margins of uncertainty are captured. It is also accurate to capture the likely increase in demand due to demography. In our experience to date we are also aware of people choosing SDS because of the flexibility where the ‘traditional’ approach would not have suited them, so there may be the ‘woodwork’ effect noted by Stirling University. We feel that the timescales could be longer than 3 years – please see question 5 above - before there are potential break even/efficiencies.

Wider Issues
8. Do you believe that the Financial Memorandum reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?
Please see above.

9. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?
We view the potential to pay individual budgets as net as a potential saving on administrative and payment collection time. If payments can be either gross or net then there will be less of a saving as systems will need to be in place for gross payments.

SELF-DIRECTED SUPPORT (SCOTLAND) BILL
FINANCE COMMITTEE QUESTIONNAIRE: RESPONSE OF SOUTH LANARKSHIRE COUNCIL

Consultation
Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?
1. Yes. South Lanarkshire Council submitted information to Cosla and ADSW in relation to the Bill and its financial assumptions.

Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?
2. In part. The Financial Memorandum covers the main areas for development and change. It rightly identifies that individual authorities are at very different stages in the transition to SDS models. Many of those who have achieved some success to date have been able to do so because they were able at that point in time to withdraw from many traditional building based services, primarily due to capital investment and poor conditions of the estate infrastructure. For those authorities who have invested significantly in their buildings over the last few years, the change presents challenges in maintaining a balance for those individuals who may still wish to access more traditional forms of support with those seeking a new direction under SDS.

Did you have sufficient time to contribute to the consultation exercise?
3. Yes

Costs
If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details
4. The memorandum appears to cover the main areas that affect the Council. The area where there is insufficient detail is in the discussion on contracts, in particular where the person chooses option 2. This option places a duty on the local authority to arrange support as directed by the person. This is likely to make significant demands on Councils in relation to establishing and monitoring contracts on behalf of the person. It is our view that the cost implications for Councils are not fully addressed in the memorandum.

Do you consider that the estimated costs and savings set out in the Financial Memorandum and the timescale over which they are projected, are reasonable and accurate?
5. Timescale
The Bill is a major component in 10-year national SDS strategy. Para 69 contrasts the “weak and ineffective” delivery of Direct Payment legislation against the aim of transformational change envisaged through the SDS legislation. It is our experience that such transformational change will require longer than the proposed three year funding programme. We recommend this should be a minimum of 5 years. Like most Councils we have an existing programme of transformation. The delivery of the aims of the SDS agenda requires transformation in practice and outcome, in processes, systems and culture. It requires transformation in the way we engage with people who use supports, with carers, with local communities, with partners and with provider agencies. Our experience is that this requires long-term investment. The assumption in para 107 of one days training per person is wholly inadequate to support transformational change among the workforce. Our view is that this demands a long-term learning (rather than training) programme that is modelled on a co-design approach, involving people who use support, carers, partner colleagues and people offering support. We consider the statement that “significant costs are not expected beyond 2014/14” (para 70) to be optimistic.

Estimated costs
• Learning programmes
The SDS National Strategy lays heavy emphasis on an outcomes-based approach and on co-design and co-production. This Council, in line with others, has invested substantial money and time in transforming our practice, procedures and systems. We have found that it is over simplistic to assume that because a worker has attended a training event, this will support changes in practice. Our ambition is to free up frontline practitioners with significant expertise to support and guide staff to deliver person centred practice. In a recent article that discusses self-directed support, Slasberg (2011) argues for the need for “best, person-centred practice moving from desirable to essential.” Current practice is dominated by a care management approach that is based on a deficit model of social care. This approach affects social workers, occupational therapists, allied health professionals, medical staff, and people accessing supports, carers and providers. Freeing frontline staff over an extended period to support the transformation will require backfilling those posts. Monies should be available to meet those costs. There will be similar costs for provider agencies. Monies should also be available to support training programmes for people accessing support and for carers.

- Bridging costs
  The memorandum rightly states this has been most difficult to estimate with any certainty (para 102). The experience in England, despite their targets, is that the journey is a long one, making the estimate of the financial impact of people opting to move away from building based services more difficult to predict. This Council has invested heavily in buildings that are inclusive. We anticipate that many of the people who currently use these as part of their support plan will continue to do so. We need security to explore how we can manage a fall off in the use of these buildings which results in their remaining viable, but with reduced numbers of people whom receive support in other settings. It is our view that the allocation of bridging finance should reflect the pattern of resources provided by each Council.

There appears to be an underlying assumption that building based services are not fully compatible with SDS and the personalisation agenda. This may be true of buildings that offer a segregated service. Research into benefits and deficiencies of integrated centres as part of a wider support plan as opposed to those which exclude totally centre based services would be relevant to future commissioning strategies. There are also some people who require a safe environment appropriately equipped to meet their needs.

We have argued that transformation change is required across practice, processes, systems and cultures. One area that the framework gives insufficient attention to is systems transformation. IT systems must support best practice in assessment and support planning. This will require additional resource to renew IT systems, with an accompanying training programme.

If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?

6. Meeting financial costs
Not known. The assumption is that this three year funding package will allow authorities to develop and bed in an SDS approach and that resources will be released from more traditional forms of service provision to continue beyond this
period. The National Strategy is a ten year programme. The likely uptake of SDS is unknown. Clearly a major challenge is in the timescale required to offer alternatives that meets people’s aspirations and needs which do not form part of a building based service.

Other areas requiring more detailed work will include amending or upgrading IT systems to support and SDS outcomes based approach. This will vary according to the current functionality and configuration of systems.

If the pace of service redesign is slower than anticipated it may force authorities to make hard choices in terms of redirecting resources from other service areas.

**Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and timescales over which such costs would be expected to arise?**

7. Margins of uncertainty

Yes. The issues here have been addressed in response to question 5.

**Wider Issues**

Do you believe that the Financial Memorandum reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?

8. Costs associated with the Bill

The memorandum appears to cover the areas where the implementation of the Bill will attract costs, with the exceptions of those identified above.

**Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?**

9. Subordinate legislation

While subordinate legislation appears inevitable since the Bill is part of the 10-year strategy, we do not consider it possible to identify what these will be – or the associated costs.

**Conclusion**

The inclusion of financial memorandum is essential if the Bill is to engender the projected transformation. The timescale for the spend sets ambitious targets. The monies committed appear conservative at best. We argue that a longer term implementation period is necessary, with a more flexible funding package.

South Lanarkshire Council is committed to the approach and has for a number of years promoted independence for service users in decision making. Challenges remain, but this is the correct direction of travel. It is essential we take service users, carers and staff with us to achieve success.
SELF DIRECTED SUPPORT (SCOTLAND) BILL
FINANCE COMMITTEE QUESTIONNAIRE – RESPONSE OF WEST LOTHIAN COUNCIL

Consultation
Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?
Yes, West Lothian Council fully supports the personalisation agenda and the roll out of Self Directed Support as a means of better meeting individuals care needs and achieving improved outcomes. West Lothian provided comments on the financial assumptions in both of the previous Scottish Government consultation exercises.

Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?
The costs contained in the Financial Memorandum do not reflect the estimated costs previously identified and provided by West Lothian, as above. Over the three year period 2012/13 to 2014/15, the costs/funding contained in the memorandum for local authorities very significantly underestimates the costs indicated by West Lothian.

In addition, the council’s view that recurring costs will also be incurred has not been reflected in the Financial Memorandum.

Did you have sufficient time to contribute to the consultation exercise?
Satisfactory time provided.

Costs
If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.
The Bill will clearly have financial implications for the council. In the short to medium term these are likely to relate to:

- Mainstreaming the SDS approach across relevant services
- Ensuring assessments and reviews undertaken by Care management staff explore the SDS options and support decision making
- Withdrawing from existing arrangements e.g. existing block care contracts are likely to result in double running costs for a period
- Administration of more direct payments and individual budget allocations for clients

Based on the overall local authority funding noted for the period to 2014/15, the allocation for West Lothian over the 4 years will be significantly lower than the costs identified and submitted.

The West Lothian submission also highlighted substantial recurring costs resulting from the Bill as a result of the new duties and commissioning models that will be put in place. Duties on the council regarding care assessment and provision of care will increase as a result of the Bill. While it is acknowledged there may be offsetting savings as increased direct payments reduce traditional care management costs,
there remains a great deal of uncertainty regarding the assumed cost neutral recurring position adopted in the Financial Memorandum. It is proposed that the costs of implementing the Bill are closely monitored on an ongoing basis and this is taken account of in future financial settlements.

Do you consider that the estimated costs and savings set out in the Financial Memorandum and the timescale over which they are projected, are reasonable and accurate?
See above response

If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?
Given previous comments, West Lothian would not consider itself as content that the financial costs of the Bill can be funded via the additional funding so far confirmed. As noted, it is proposed that the costs of implementing the Bill are closely monitored and amended for/reflected in funding provided to councils.

In addition, as the Bill places statutory duties upon the local authority, any costs incurred in meeting these statutory requirements which are not met under the provisions of the Financial Memorandum will have to be met from elsewhere and this may have implications for existing service delivery.

Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and timescales over which such costs would be expected to arise?
While the Financial Memorandum includes reference to the uncertainty surrounding the net costs resulting from the Bill, the position adopted on costs is very much lower than the costs identified by West Lothian and other councils. It is not considered therefore that the memorandum accurately reflects the margins of uncertainty associated with costs.

Wider Issues
Do you believe that the Financial Memorandum reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?
See above

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?
This would depend what the subordinate legislation is but if it were to increase the duties placed on local authorities then this would inevitably lead to increased costs but it is not possible to quantify these
Present:
Chic Brodie
James Dornan (Deputy Convener)
Michael McMahon
Nigel Don (Convener)
Mike Mackenzie
John Pentland

Apologies were received from John Scott.

1. **Decisions on taking business in private**: The Committee agreed to take items 7 and 8 in private.

3. **Social Care (Self-directed Support) (Scotland) Bill**: The Committee took evidence on the Bill at Stage 1 from—

   Bette Francis, Head of Self-directed Support Team, Craig Flunkert, SDS Bill Team Leader, and Chris Birt, Scottish Government Legal Directorate, Scottish Government.

8. **Social Care (Self-directed Support) (Scotland) Bill (in private)**: The Committee considered the evidence it heard earlier in the meeting.
Social Care (Self-directed Support) (Scotland) Bill: Stage 1

The Convener: Agenda item 3 provides an opportunity for members to ask Scottish Government officials questions on the delegated powers in the bill. I welcome the officials: Bette Francis, who is head of the self-directed support team; Craig Flunkert, who is the self-directed support bill team leader; and Chris Birt, who is from the Scottish Government legal directorate. Thank you for waiting patiently.

Before I start the questions, it is worth putting it on the record that committee members have received and considered a submission from the national carers organisations. It is fair to say that although we understand the substance of their comments, we do not believe that they necessarily relate directly to the subordinate legislation that we are looking at—a point that officials may be in a position to comment on as we go.

James Dornan: It is also worth putting it on the record that we received a submission from the Scottish Council for Voluntary Organisations on the same matter.

The Convener: I invite Bette Francis to make an opening statement.

Bette Francis (Scottish Government): Thank you for allowing us to give the committee some information on the development of the definition of self-directed support in Scotland and the background to the four options for self-directed support in section 3 of the bill.

Since 1996, legislation has provided for direct payments as a mechanism whereby eligible people can receive a cash payment to purchase their own care. Initially a power for councils to use when they considered it appropriate, the duty to offer direct payments was introduced in 2003. Over that period, eligibility for direct payments was also extended to wider client groups.

Despite the shift to a duty to offer direct payments and wider eligibility for them, the uptake of direct payments remained variable across Scotland and was lower than in England. A review of the reasons for that low uptake included scrutiny by the Scottish Parliament’s Health Committee in 2006.

The policy intention behind direct payments was to provide flexible and responsive support by allowing individuals to have more control over tailoring support to their needs. In practice, local authorities implemented direct payments in different ways. At worst, rigid criteria on the use and governance of direct payments have permitted little, if any, flexibility. At best, direct payments have empowered citizens to shape their support around their lives and to live independently. When they work, direct payments contribute significantly to the improvement of individual outcomes.

Around 2009, personalisation became a term that was used in health and social care policy to describe that drive to give citizens power to shape the care and support that they want. Building on that positive experience of direct payments, the personalisation agenda has aims of empowerment, choice and control. A 2010 literature review commissioned by the Scottish Government highlighted confusion about the use of terminology in this area of policy and a lack of clarity about the existing legislation at that time.

The definition of self-directed support—in the national strategy and in this bill—has been developed through significant consultation and engagement with a range of interested parties and individuals. The Scottish Government's first consultation on potential new legislation sought views on making direct payments the default position for social care. There was significant opposition to that proposal. The main concern was that it would not achieve the goal of providing people with real choice. The Scottish Government therefore developed the bill with choice as the default position. Option 3 in the bill—for services to be allocated by councils—has in effect been the default position until now.

Option 2 in the bill enables individuals to select their provider and to have more control over their support, without taking responsibility for handling the cash payment. It addresses concerns that were highlighted in evidence about barriers to direct payments for those who do not wish to and are not in a position to handle the additional responsibility of commissioning their own support.

Option 2 extends the options for those who want more say in the provision of services locally. In recent years, some retendering activity has resulted in people who might not have wanted to take a direct payment opting for that route to secure support with the provider of their choice. The approach is sometimes referred to as an individual service fund.

Option 2 is not widely available. However, as with direct payments in the past, the option has evolved from small pockets of innovative practice, which in this case providers have mostly led. As in the past, legislation is catching up with innovation in practice, to make an option available to everyone who could benefit from it.
The bill aims to provide a statutory framework for the current and future evolution of personalised approaches to service delivery. As the bill is enabling legislation, the intention of its additional powers is to respond to new and innovative approaches that might suggest further or amended options for the bill.

Self-directed support has evolved and will continue to evolve as public services take account of the aspirations, capabilities and skills of people who use them. The Scottish Government believes that the four options in the bill are defined broadly enough to deliver flexibility, but history suggests that unforeseen restrictions on delivery might occur. The bill has therefore been developed to allow sufficient flexibility to respond to changing circumstances.

The involvement of a broad range of interests in developing the bill will continue through a group that has been convened—it will begin its work tomorrow—to help to develop draft statutory guidance and the regulations that will need to be in place for the bill’s enactment.

The Convener: Thank you for that substantial discussion of the bill’s purpose. We have little disagreement with that, although policy is not our remit.

What will follow is quite a large number of questions on the detail. I will give you the headline. We understand the basic principles, which are pretty clearly laid out, and we understand the need for flexibility. Most of the questions will be along the lines of asking why the building in of flexibility through subordinate legislation is so complicated. I think that we will often suggest that there is conflict between some of the provisions that might not be helpful.

After that brief introduction, I will let Chic Brodie lead the way.

Chic Brodie: Indeed, we shall do what you suggest, convener. I am sure that the group that will be convened will look after customer interests and financial interests as appropriate.

Section 12 provides the power to modify section 3, which contains the options for self-directed support. In what future circumstances and for what purposes does the Scottish Government envisage that power being exercised?

Craig Flunkert (Scottish Government): As you point out, section 12 provides the power to modify the options, of which the bill presents four. I return to what Bette Francis said—ensuring flexibility and future proofing the range of options that is available to individuals were the main reasons behind including in the bill the power to modify the options.

As Bette Francis explained, the power reflects the experience of direct payments. The feeling in some quarters was that narrow definitions of the direct payments option could lead to narrow interpretations of what could be done. During the consultation on the bill, there was quite a lot of debate about how to define each option. That experience is the main reason why the power was taken.

I will draw out an example for the future. Option 2 is

“The selection of support by the supported person and the making of arrangements for the provision of it by the local authority on behalf of the supported person.”

That describes an individual directing their support, but not necessarily taking the cash payment. In the consultation period, a number of consultees pushed for the description of the financial resource that someone would direct to be somewhere in that definition. Other consultees did not think that that was a big issue. There are certainly no plans to amend any of the options in the immediate term if the bill gets through the parliamentary process successfully. However, if in future a consensus built around including the financial resource in the description of the option, the bill could be amended by way of regulation. Such amendment would not justify an entirely new bill, given limited parliamentary time—

15:15

Chic Brodie: We are talking about options. What other options have been considered and discarded, not necessarily in relation to financial resource?

Craig Flunkert: Do you mean other options for people to direct their support?

Chic Brodie: Yes.

Craig Flunkert: There was consultation and the four broad options that people came up with probably accurately reflect the options that the sector wants, as Bette Francis said. It is difficult for me to predict a fifth option that might appear. In some cases—

Chic Brodie: I am surprised. Did the consultation come up with only four options that were worth considering, or were there other options?

Bette Francis: There were no other options. When the discussion about defining self-directed support began, the direct payments mechanism was the only option. Option 2 is a new mechanism, which allows people to have some control. The initial policy discussion was about whether there could be options other than direct or third-party payments.
Chic Brodie: Section 12 will give the Scottish ministers the power to modify section 3 in any way that they see fit, which could include adding options. You carried out a consultation. Why is it necessary to give ministers such a broad power to achieve the Government’s aims?

Chris Birt (Scottish Government): As Bette Francis and Craig Flunkert explained, it is impossible for us to foresee additional options that might arise in future. In the not-too-distant past, individual service funds had not been contemplated. The power in section 12 could have been drawn differently. For example, it could have allowed ministers to vary, remove or add an option. What it does is allow ministers to modify section 3.

The power to modify is bound by the terms of section 3; we can modify only what is in section 3, which is four options and the definitions that go with them. The power is wide, but a narrower drawing up of it would have amounted to the same thing.

Chic Brodie: I was not talking about narrowing the power per se. That is why I asked how many options had been considered as part of the consultation.

Was consideration given to limiting the scope of the power that ministers will have? If so, why was that not considered appropriate?

Chris Birt: As we said, the power in section 12 reflects the policy intention, which is to provide flexibility to move with social work practice in future.

Chic Brodie: The power to modify section 3 by regulation will be subject to the affirmative procedure. Why does the Government think that that will provide a sufficient level of scrutiny?

Chris Birt: It is a similar story to the one that you heard from the bill team for the Local Government Finance (Unoccupied Properties etc) (Scotland) Bill. The options had been widely consulted on prior to the bill’s introduction. I assure you that there are no plans to use the power at present, and that any making of regulations would be done with extensive consultation with stakeholders.

The affirmative procedure means that the Government will not be able to do anything if the Parliament does not approve of the proposal. We think that that is the appropriate level of scrutiny.

Chic Brodie: Okay. I will move on. Given that the right to choose one of the four options in section 3 is fundamental to the bill, does the Government accept that, regardless of this Administration’s intentions, the power in section 12 could be used in future substantially to restrict the effectiveness of that choice?

Craig Flunkert: Would you clarify exactly what you are asking? Are you asking whether ministers would ever use that power to restrict or remove options?

Chic Brodie: Yes.

Craig Flunkert: There is certainly no expectation that that is how the power would ever be used. The principle and fundamental policy purpose of the primary legislation is to provide a range of options and choices to individuals, and it would be against that policy intent to use that power to restrict. The modification is really around modifying technical descriptions of options or, if new options came about, to add to them.

Chic Brodie: I do not think that the matter is very technical; if it were, I would not understand it. What the four options are looks very clear. At heart, the issue is whether the power in section 12 could be used in future substantially to restrict the effectiveness of the choice.

Bette Francis: That would certainly not attract any stakeholder support whatsoever, and such a move would be very difficult to justify without sufficient evidence that all the parties concerned felt that it was necessary.

Chic Brodie: Okay.

The Convener: I would like to come in on that, to support what has been said. Forgive me—this is not a criticism. We respect and do not have a problem with what the current Government wants to do, of course, but it will be a Government only for the next four years. In principle, we are putting things on the statute book for ever, so part of our remit is to consider what a future Government might be empowered to do and whether it is appropriate to give it that power. The fundamental question is therefore whether the variability that is inherent in the provision is consistent with the basic purpose of the bill. Should it be possible to get rid of the options by delegated legislation?

Craig Flunkert: Bette Francis and I have answered from a policy perspective in respect of what the current Government would do, but there may well be a question for Chris Birt on how wide the legal effect of the power is.

Chris Birt: Obviously, there are different ways of saying the same thing, and we are open to suggestions about how the power might be drawn more narrowly to achieve the aim. However, if, say, the power were drawn so that options could be added or removed, all the options could just be removed. It is simply theoretical. The Parliament could refuse to agree to regulations under the affirmative procedure. If a future Government with different intentions with regard to the use of the power rejected the original intentions, the Parliament could refuse it.
Chic Brodie: Let us move from the theoretical to the practical. What consideration has been given to safeguards to protect the fundamental principles of the bill? We have talked about the affirmative procedure, but has any consideration been given to the use of a super-affirmative procedure—for example, to ensure that there is an opportunity for detailed consultation on draft regulations?

Chris Birt: As I have already said, we can assure members that there will be detailed consultation on any provisions, and that will follow the affirmative procedure. The super-affirmative procedure is ill defined as it is, but we understand that it involves detailed consultation followed by the affirmative procedure. As we have said, we can assure members that that will take place.

Chic Brodie: Okay. I have a final question. Section 12(b) of the bill confers a specific consequential power to modify sections 4, 6 and 7 when using section 12(a) to modify section 3. Section 20(1)(b) confers a general bolt-on power to make ancillary provision in any regulations that are made under the bill. Does the section 12(b) power exclude the possibility of using the bolt-on power in conjunction with the section 12(a) power?

Chris Birt: No, I would not say so. The specific power in section 12(b) would allow us to make any consequential changes to the bill. We thought that it was preferable to have an explicit power to do that rather than rely on the general power in section 20(1)(b).

Chic Brodie: Okay. Thank you.

James Dornan: Why, then, is it considered necessary to be able to exercise both the power in section 12(b) and that in section 20(1)(b) in conjunction with section 12(a)? In what circumstances do you envisage the Scottish ministers needing such extensive powers to make ancillary provision in connection with a modification to section 3?

Chris Birt: It is not possible to speculate without knowing the terms of any changes to section 3. As I said, the specific power in section 12(b) would be used to amend the bill consequentially. If another amendment were needed to a further enactment—say, regulations regarding direct payments—we could use the power in section 20(1)(b) to make a consequential change there. However, we cannot speculate without knowing—

James Dornan: The specifics.

Chris Birt: Yes.

James Dornan: Okay. Thank you for that.

The Convener: Let us move to section 13 and questions from John Pentland.

John Pentland (Motherwell and Wishaw) (Lab): You will be pleased to know that I have only one question to ask about section 13. As you will be aware, section 13 allows the Scottish ministers to make further provision via subordinate legislation about direct payments. The negative procedure would appear to be appropriate in respect of administrative and technical provision, but as section 13(2)(a) and section 13(2)(b) might be operated substantially to restrict access to direct payments, provision under those paragraphs seems to be substantive rather than technical. Why does the Scottish Government consider that the negative procedure provides a sufficient level of parliamentary scrutiny in making such regulations?

Craig Flunkert: Section 12B of the Social Work (Scotland) Act 1968 is where the current direct payments primary statute sits, and the regulation-making powers attached to that are currently subject to negative procedure. That includes the power to restrict access to direct payments for specific persons and in specific circumstances. So there is precedent and the bill would carry on those same regulations, albeit perhaps in a different form and following consultation.

I invite Chris Birt to add to the general reasoning about what provisions are appropriately subject to negative and affirmative procedures, although I think that we have stated that in relation to the previous provisions, too.

Chris Birt: I simply reiterate what Craig Flunkert said. If the committee considers it more appropriate for regulations made under these provisions to be subject to affirmative procedure, we will consider that in due course. As we have said, we have simply reflected what was in the previous statute.

John Pentland: Okay.

The Convener: Thank you very much. We move on to section 21. The questioning will be led by Mike MacKenzie.

Mike MacKenzie: Given the overlap between the power in section 21 and that in section 13(2)(b), why are both powers considered to be necessary? Does section 13(2)(b) confer power to do anything that could not otherwise be done under section 21?

Craig Flunkert: The potential application of section 21 cuts across all the options for SDS. In relation to option 2 in the bill, which is not the direct payments option, there have been discussions with consultees around some of the recipients of social care who are at the outside edges of those whom social work departments support—people whose need arises from homelessness, drug addiction or alcohol addiction. The sector may not be ready to respond to the
increased flexibility of option 2—the individual service fund option—in the short term, at least. Therefore, it was felt that a power to modify the application of the act was necessary as well as the DP option. Chris Birt may want to add something on the technical legal background.

**Chris Birt:** Section 21 is intended to be used, as it says, to disapply section 4(2) or section 7(2)—that is, in essence, the choice. Any way in which section 21 was used would say, “You have no choice. In these circumstances, the local authority will provide the services as the local authority sees fit.” However, sections 13(2)(a) and 13(2)(b) would be able to restrict the choice and to say, “You have a choice, but your choice is between options 2 and 3 and option 4”—in as far as you could mix options 2 and 3—whereas section 21 would say, “You don’t have a choice.” That is the distinction. Is your question simply whether you could do what sections 13(2)(a) or 13(2)(b) would do by use of section 21?

**Mike MacKenzie:** Yes. If both powers are thought to be necessary, what criteria will be applied to determine which of the two powers ought to be exercised in any given case?

**Chris Birt:** One of the bill’s principal aims, along with increasing flexibility and so on, was to consolidate the law on direct payments and bring it all into one place. Practice has diverged from how the Government wanted direct payments to operate and we thought that one of the reasons for the divergence was the complexity of section 12(B) of the 1968 act and regulations made under it. Our intention is to bring direct payment regulations into one place so that where services or people were ineligible for direct payments, that would be stated in the regulations that deal with all other matters regarding direct payments.

We foresee the section 21 powers being used separately and only for the purposes of taking away the choice. We would not intend at all to use section 21 to relate to a particular option; it is about removing the options.

**Mike MacKenzie:** Thank you. The committee was concerned to note from the delegated powers memorandum that when the bill was introduced the Scottish Government did not know what the power in section 21 would be used for. Have the divergent views mentioned in paragraph 24 of the delegated powers memorandum been reconciled? Can you advise the committee as to the circumstances in which the power in section 21 might be exercised? I appreciate that you have partially answered that.

**Craig Flunkert:** It might be useful to provide another example. Paragraph 24 of the delegated powers memorandum refers to the Children (Scotland) Act 1995. We should bear it in mind that the provision of the four options applies not only to adult support under the Social Work (Scotland) Act 1968 but to support provided to children under section 22 of the 1995 act. That section is quite wide-ranging in terms of council powers to provide support to children in need and I believe that it links to later sections in the 1995 act that are much more about child protection and intervention. That is probably a good example of where a regulation may potentially be introduced under section 21 to clarify for practitioners that the provision of the other three options would not apply where the support that has been provided is about intervening and protecting a child. In other words, there is a restrictive aspect to it, rather than a choice and flexibility aspect.

That example of how section 21 may be used in practice has come up in discussion with stakeholders, and the Association of Directors of Social Work mentioned it recently in evidence to the lead committee.

**Chris Birt:** I clarify that section 22 of the Children (Scotland) Act 1995 is similar to section 12 of the Social Work (Scotland) Act 1968 because it is a power to promote the general welfare of children in a local authority’s area. We are not experts in the child law aspects but, as far as we understand it, that is often used for the softer edge of child protection services, although not the compulsory elements of the 1995 act.

**Mike MacKenzie:** I have one further question. I am still a bit confused, but if the power was exercised to disapply sections 4(2) or 7(2), to what extent would the other provisions in those sections continue to apply? In particular, would sections 7(3) and 7(4) continue to apply, or is it your view that they would be disapplied by necessary implication?

**Chris Birt:** Essentially, yes. If your choice was removed, then clearly the other provisions in the section that relate to that choice would be disapplied.

**James Dornan:** Section 6 makes, in respect of adult carers, similar provision to that in sections 4 and 7, but the choice for carers in section 6(2) has been exempted from the scope of the power in section 21(1). The DPM states that it would not be appropriate for the power to apply to the choice in section 6(2). Why does the Scottish Government consider the power in section 21(1) to be appropriate in respect of adults and children who receive support, but not in respect of adult carers?

**Chris Birt:** That comes back to the point that I made about the breadth of section 12 of the Social Work (Scotland) Act 1968 and section 22 of the Children (Scotland) Act 1995, which relate to the
power to promote social welfare. That is an enormously wide power that affects a range of people—not just disabled people, who often become the focus of the power. Our new power to provide support for carers is a limited power that relates to people who provide care. We have already said that it is difficult to foresee our limiting the choice in sections 4 and 7, but we can envisage situations in which that would happen. However, we could not come up with a justification for using the section 21(1) power in relation to section 6, so it was intentionally excluded.

James Dornan: To clarify, does that mean that adult carers will not lose out in any way under the proposals?

Bette Francis: The specific intention is not to restrict carers. By dint of the fact that they provide care, they probably are not subject to some of the more restrictive levels of support or protection to which other people are subject.

Chris Birt: I return to the examples that I gave about the use of section 7. We could all foresee when an element of choice would not be appropriate in a child protection situation, but when would a choice not be appropriate in giving support to a carer?

James Dornan: In what circumstances might the supplementary power in section 21(2)(b) be exercised to modify or disapply any other section of the bill in consequence of a disapplication of section 4(2) or 7(2)?

Bette Francis: Chris?

James Dornan: You got the easy one, Mr Birt.

Chris Birt: The power would be used for, for example, the provisions on providing information. I forget which section those are in—I think it is section 8. It would be sensible to disapply local authorities’ duty to provide information on choices if somebody did not have a choice. That is one example.

James Dornan: Would the aim be to avoid giving people unnecessary information?

Chris Birt: Yes.

James Dornan: Do you accept that, on the face of it, the supplementary power could be exercised to disapply section 6(2) in consequence of a disapplication of sections 4(2) or 7(2)?

I think that we are leaving that one to you again, Chris.

Chris Birt: It appears that way. [Laughter.]

It certainly has not crossed my mind that that would be the intention. It would be for Parliament to decide, but that would clearly be a strange use of the power.

James Dornan: Regulations that are made under section 21 will be subject to affirmative procedure. As we have asked previously, why does the Scottish Government consider that that procedure provides sufficient scrutiny?

Bette Francis: The answer is the same as it was previously.

Chris Birt: It is a broken record, I am afraid.

James Dornan: The right to choose one of the options that are specified in section 3 is fundamental to the bill, and that right is found in sections 4(2) and 7(2). What consideration has been given to safeguards that would protect the fundamental principles of the bill from being circumvented by exercise of the delegated power in section 21(1)? In particular, has any consideration been given to the use of super-affirmative procedure? I think that the response will be the same as previously.

Bette Francis: Yes, it is.

The Convener: Thank you. That makes the point that the same question has been asked in relation to different sections. We respect the fact that very rarely will there be different answers.

We will continue with the various ancillary and transitional provisions, on which subject we are in the hands of Michael McMahon.

Michael McMahon: My question is almost the same as those that were asked by Chic Brodie about how sections 12 and 21 relate to section 20(1)(b), but it comes at the matter from the other direction. The bill contains only three substantive delegated powers. We have already mentioned sections 12 and 21 and the ancillary powers and provisions in sections 24 and 25, but what is the purpose of having another section that gives powers to ministers? Is it just a belt-and-braces thing? Is it overkill? Is it a power grab?

Bette Francis: You can choose the terminology.

Chris Birt: It is a power grab. [Laughter.]

Michael McMahon: Thanks very much for that. At least you are being honest about it.

Chris Birt: The powers in section 20(1)(b) are parasitic, or are a bolt-on, to the other regulation-making powers and are consequential on the regulations. However, sections 24 and 25 provide an order-making power that is to be used separately. As we have said in the delegated powers memorandum, we foresee section 24 being used to make consequential amendments on the repeal of section 12B of the 1968 act, which is referred to in a number of other enactments.

Michael McMahon: I suppose that we are simply seeking clarity; I am sure that you want the
bill to be as clear as possible. The point is that even though all those powers are separate, they will still interact with each other. Can the powers in section 20(1)(b) be exercised concurrently or do they have to be exercised separately? Can you give us some clarity about how they sit together?

Chris Birt: I cannot speak for every other bill, but the provision in this bill seems to me to be a reasonably common way of putting together ancillary powers. Certain ancillary powers are made to go with other regulation-making powers to ensure that there are not two sets of regulations doing two connected things. We could, for example, make provisions on direct payments under the section 13 power and then set out amendments consequential to those provisions in the same instrument. However, if we have to use the power in section 24, we will need a set of regulations and an order; in such a situation, I would see no benefit to the statute book in having more than one instrument.

Michael McMahon: I know that you responded light-heartedly to my earlier question and I realise that the provision might not necessarily be a power grab. However, under sections 24(2) and 25(2), the power can be used to “modify any enactment”. That reference seems to be quite wide-ranging. Does it include powers to modify the bill itself, or does that assessment go too far?

Chris Birt: I know that on a number of occasions the committee has considered the use of the phrase “including this bill” after the phrase “any enactment” but it is not really appropriate for me to share with the committee my views on what that might or might not mean. The phrase “any enactment” in section 24(2) is intended to refer to primary and subordinate legislation, which means that we would consequentially amend any references to section 12B of the 1968 act in both primary and subordinate legislation.

Michael McMahon: So, that is a possible yes. You could modify the bill with the provision.

Chic Brodie: It is a possible maybe.

Chris Birt: We have no intention of modifying the bill. That is as much as I can say.

Chic Brodie: Convener—

The Convener: Forgive me, Chic; I will come in briefly, here. With respect, the Government’s intentions are completely irrelevant because the statute will, in principle, be around for our grandchildren. The question to which I do not think we have had an answer is whether the provision will enable regulations to modify the bill when enacted. However, if you are not sure—

Chris Birt: As I see it, I might be sneaking into the territory of giving legal advice to the committee, which is not appropriate. If the committee wants to consider the matter in its report, we will be happy to respond to it in due course.

The Convener: In that case, I make the obvious suggestion that if that is the intention and if such an intention is within the Government’s grasp, it could simply say “amend this and any other enactment” or whatever wording would be appropriate.

Chris Birt: As I have said, there is no intention that the power will be used.

Michael McMahon: In the Police and Fire Reform (Scotland) Bill that phrase was used in order to get the clarity that we are talking about. Could that not also be used in this bill?

Chris Birt: As I have said, there is no intention that the power will be used to amend the bill as enacted, so those words are not necessary.

15:45

Michael McMahon: Can I ask one more question?

The Convener: Yes—unless Chic Brodie has a specific follow-up.

Chic Brodie: If Chris Birt believes that, I am not sure that I understand the restriction on his giving us advice. If you do not envisage the power being used, why is it in the bill?

Chris Birt: The power to modify any enactment will enable us to modify enactments, other than the bill as enacted, that we require to amend.

Chic Brodie: So, you do see the power being used.

Chris Birt: Yes—we see it being used to amend enactments other than the bill as enacted.

Michael McMahon: I want to get this pinned down. Would it not be better to do what has been done in the Police and Fire Reform (Scotland) Bill and clarify the position in the bill?

Chris Birt: As I said, we do not need such wording, but we will consider the matter.

Michael McMahon: You will watch out for what we say in our report, so that you can consider it.

Chris Birt: Absolutely.

The Convener: I want to come back to the issue that we raised with regard to sections 20(1)(b), 12(b) and 21(2)(b). It seems to me that this is far worse than any exam that any of you will ever have had to take. I sympathise. As you will be well aware, the powers in those sections are all about modification. I guess that the question that worries our advisers, and which still worries me, is whether you are happy that those three powers
can interact in a way that is not potentially obstructive.

**Chris Birt:** I would be lying if I did not say yes. It would perhaps be easier for us to consider in more detail, once we receive your report, the exact problems that you foresee with the interaction of the powers. As I have explained, the powers in sections 21(2)(b) and 12(b) are specifically for amending the bill as enacted. They are there because we think we need those specific powers. We would prefer not to rely on general powers.

**The Convener:** Okay. Thank you. I hear what you say. We have no desire to trip anyone up; we just want to ensure, as you do, that we get legislation that works and which will survive the courts and any misdemeanours on the way.

**Chris Birt:** I appreciate that.

**The Convener:** I am being pointed in the direction of what is a standard question, but one that has not been asked in this connection. Although an order that is made under section 25 may modify any enactment, the negative procedure will apply—if I read the provision right—even when textual amendments are made to primary legislation. That is not consistent with general practice; there is a recognition that textual amendments to primary legislation should be made by way of affirmative procedure. We have heard that many times from other officials. Is that an issue that you considered?

**Chris Birt:** It is. I had thought that it was general practice that such revisions would be subject only to negative procedure, because I cannot think of ways in which transitional or transitory provisions would modify the text of primary legislation. We intend to use the power in question for the continuation of direct payments that are made under the existing system, which we want people to continue to be able to use.

We consider that the negative procedure is the correct procedure to use. If the committee wishes us to reconsider the matter, we can deal with that in due course.

**The Convener:** Thank you for that answer. I understand that there is no expectation that such an order will be used to alter the text of primary legislation. It is quite likely that the committee would like to stick to the principle that we have enunciated on several occasions—that affirmative procedure should be used when the text of primary legislation is to be altered—even should that turn out to be irrelevant, as we accept is the case here.

As colleagues have no further questions for this long-suffering panel, I thank the witnesses for their excellent answers to some extraordinarily detailed questions, for which I am very grateful. I suspend the meeting briefly to allow our visitors to escape.

15:49

*Meeting suspended.*
Background


2. The Minister for Public Health has responded to the report. His letter is reproduced in the appendix.

Government response

3. The Minister welcomes the Committee’s report and addresses each of the substantive points raised as follows:

Section 12 – power to modify section 3

4. In its Stage 1 report, the Committee drew the power in section 12 to the attention of the lead committee, believing it to be particularly broad in scope. In addition, the Committee concluded that the power could be used to defeat the entire policy and purpose of the Bill by reducing the options for choice in section 3 to a single option. Accordingly, the Committee asked the Scottish Government to consider revising the power and recommended that the power be subject to a statutory requirement to consult interested bodies on any draft regulations.

5. In his response, the Minister acknowledges the significance of section 12 but disagrees with the Committee’s interpretation of the breadth of the power. The Minister states that rather than reducing the options for choice, the power instead allows for choice across a number of sections of the Bill which is the overall intention of the Bill. For that reason, the Minister deems a revision of the power unnecessary. However, in response to the Committee’s concerns, the Minister is happy to support the recommendation that the power be subject to a statutory requirement to consult interested bodies on any draft regulations, and furthermore, commits to bringing forward an appropriate amendment at Stage 2.

Section 20(1)(b) – Regulations: general

6. The Committee recommended in its report that the Scottish Government consider whether it is appropriate that the significant powers in section 12(a) and 21(1) are capable of attracting two separate sets of ancillary powers, and whether as a result the power in section 20(1)(b) is necessary save in relation to section 13.

7. The concerns of the Committee are noted by the Minister but he remains minded to retain section 20(1)(b) as it stands as regards sections 12 and 13. The
Minister sees section 20(1)(b) as a general power to be used to amend other enactments, whereas the powers in sections 12 and 21 are specific powers to amend the Bill. Whether or not it is necessary for the power in section 21 to also attract the powers in section 20(1)(b) is something that the Minister wishes to consider further. If he concludes that the power is indeed unnecessary then the Minister will bring forward an amendment to remove it.

Section 21 – Power to modify application of Act

8. Whilst accepting that the power in section 21(1) to disapply section 4(2) or 7(2) of the Bill is appropriate, in its report the Committee recommended that the Scottish Government explain whether it considers it necessary to remove the element of choice entirely using section 21(1) if Option 2 is considered not to be appropriate. If this is not the case, then an explanation is required as to how this can be reconciled with the Scottish Government’s stated position that section 21 should only be used to remove choice entirely, and not to interfere with the available options.

9. The Minister reassures the Committee that section 21 would only be used to remove choice completely, citing confusion over the examples given by officials as the reason for the Committee being misguidedly concerned that section 21 could be used to restrict access to a particular option as well as being deployed to remove any element of choice.

10. The Committee suggested that subsection (4) could continue to operate despite the Scottish Governments reliance on section 4(2) or 7(2) to disapply those sections in their entirety.

11. The Minister disagrees with this interpretation and confirms that it is the Government’s view that the disapplication of section 4(2) or 7(2) clearly means that the remainder of those sections fails to operate.

12. In its report, the Committee questioned the appropriateness of the supplementary power in section 21(2)(b) to modify or disapply any section of the Bill in connection with the removal of choice under section 4(2) or 7(2). The Committee called for clarification on the sections of the Bill to which the power might apply and asked the Scottish Government to consider whether it is in fact necessary that the power in section 21(2)(b) should permit the modification of any other section of the Bill. Specifically there was a concern that the generous wording of the provision could allow for modifications beyond those immediately concerned with the power to which section 21(2)(b) attaches.

13. The Minister agreed to consider whether section 21(2)(b) is needed but disagrees with the view that the power could be used to modify distinct provisions such as section 6(2). Since the Minister cannot foresee any connection between removing choice under section 4(2) or 7(2) and modification of support for carers he considers that the power in section 21(2)(b) cannot be used to do so. In his view a specific power would be required if that was what was intended.

14. The Committee stated that exercise of the section 21 power ought to be subject to a statutory requirement to consult with interested bodies on any draft regulations and that were it subject to such a requirement, would be content that the regulations are subject to the affirmative procedure.
15. Regarding any regulations made under section 21, the Minister pledges to bring forward an amendment to create a statutory duty of consultation prior to the exercise of the powers in this section.

Section 24 – Ancillary provision
16. In its report, the Committee recommended that the Scottish Government, in light of its stated intention not to use the power in section 24 to modify the Bill itself, consider whether section 24(2) might be revised so as to put the matter beyond doubt.

17. The Minister confirmed that there is no intention to use the power in section 24 to modify the Bill and as a result does not consider that section 24 needs to be amended.

18. While the Minister has confirmed the current administration’s intentions as regards their proposed use of the power this has not resolved the underlying question of whether the provision is capable of being used to modify the Bill once enacted or not. The intended scope of the provision therefore remains unclear. Also it is not possible for this administration to bind any future administration as regards the use of the power within its limits.

Section 25 – Transitional provision
19. Similarly, the Committee suggested that the Scottish Government consider whether section 25(2) might be revised so as to put it beyond doubt that the power in section 25 may not be used to modify the Bill. The Committee recommended that the power in section 25 should also be subject to the affirmative procedure given that it could be used to make textual amendments to primary legislation.

20. The Minister confirmed that there is no intention to use the power in section 25 to modify the Bill and does not consider that an amendment is required. Nor does the Minister deem it necessary for the power to be subject to the affirmative procedure, considering the negative procedure to be appropriate in the context of this particular Bill and in connection with the exercise of powers which are by their nature time limited in their effect.

21. Once again, while the Minister has confirmed the current administration’s intentions as regards their proposed use of the power this has not resolved the underlying question of whether the provision is capable of being used to modify the Bill once enacted or not. The intended scope of the provision therefore remains unclear. As noted above it is not possible for this administration to bind any future administration as regards the use of the power within its limits.

Recommendation

22. Members are invited to note the Government’s response on the Bill and to make any comments they wish at this stage.
Appendix

Correspondence from the Minister for Public Health dated
23 July 2012

Social Care (Self-directed Support) (Scotland) Bill: Report by the Subordinate Legislation Committee

I write in response to the Report of the Subordinate Legislation Committee on the Scottish Government’s Social Care (Self-directed Support) (Scotland) Bill. I would like to thank the Committee for the time and effort you have put into producing this report, which I found extremely thorough, and I will address each of the substantive points you raise in turn.

Section 12 – power to modify section 3

26. The Committee draws the power in section 12 to the attention of the lead Committee as it considers it to be particularly broad in its scope, and observes that it appears to be possible for it to operate in the future so as to defeat the entire policy and purpose of the Bill by reducing the options for choice in section 3 to a single option.

27. The Committee accordingly recommends that the Scottish Government consider whether the power might be revised so that it may not be used in that manner, while still enabling the Government to achieve its stated aim of preserving sufficient flexibility to adapt the Bill to keep pace with changing social work practice in future.

28. The Committee considers that the section 12 power ought to be subject to a statutory requirement to consult interested bodies on any draft regulations. Were it subject to such a requirement, the Committee would be content that the regulations are subject to the affirmative procedure.

Section 12 is, as you have recognised, significant, as it ensures that the Bill can adapt to any future innovation in social work practice. I do not believe that the power in section 12 is as broad as you suggest, as such an interpretation is not supported by the generality of the Bill. The Bill is about choice. If the power in section 12 was used to remove all choice other sections of the Bill beyond sections 3, 4, 6 and 7, which section 12 allows to be modified, would cease to make sense. For example, sections 8-11 and 17 all talk about options in the plural. The clear overall intention of the Bill is to have more than one option. Because that is so fundamental, I do not think that revising the power is necessary.

As my officials confirmed when they gave evidence, the Scottish Government has developed this Bill in meaningful partnership with stakeholders and intends to continue this approach in developing any Regulations which were required under section 12. The comparison my officials made to the Local Government Finance (Unoccupied Properties) Bill was in the context of rejecting the necessity for the “super-affirmative” procedure (in whatever form that would take). In the Scottish Government’s view, it is important to exercise care in what comparisons are drawn.
across Bills. In this case, I do not think that there is a relevant comparison between the procedures under that Bill and this Bill.

Having said that, as we would have every intention of consulting on any such Regulations and I think it is appropriate for this Bill, I am happy to support your recommendation to make this a statutory obligation and will commit to bringing forward an appropriate amendment at Stage 2.

**Section 20(1)(b) – Regulations: general**

44. The Committee accordingly recommends that the Scottish Government consider whether it is appropriate that the significant powers in section 12(a) and 21(1) are capable of attracting two separate sets of ancillary powers, and whether as a result the power in section 20(1)(b) is necessary save in relation to section 13.

I note your concern that the powers in sections 12(a) and 21(1) attract two separate sets of ancillary powers. The powers in sections 12(b) and 21(2)(b) are specific powers to amend the Bill, whereas section 20(1)(b) is a more general power to amend other enactments. They therefore have different, but equally necessary, functions. We would not, however, characterise this as complex; it simply reflects the fact that we have provided for an explicit limited power to amend the Bill itself while attracting what are standard “bolt-on” ancillary powers. While those powers could be redrawn by bringing the power to amend other enactments into sections 12 and 21 directly it is not clear what this would add.

With regard to the power in section 20(1)(b), I believe that it is necessary for it to be wider than just section 13. For example, in relation to section 12, consequential amendments to regulations such as the Direct Payment Regulations (made under section 13) may be required if the options are changed. Whilst this could be achieved through the ancillary power in section 24, this would require 2 separate instruments, which would take up valuable Parliamentary time and clutter the statute book. I am therefore minded to retain section 20(1)(b) as it stands as regards sections 12 and 13.

I will, however, give further consideration as to whether it is necessary for the power in section 21 to also attract the powers in section 20(1)(b). If it is concluded that the power is, in hindsight, unnecessary I will bring forward an amendment to remove it.

**Section 21 – Power to modify application of Act**

69. The Committee accepts that the power in section 21(1) to disapply section 4(2) or 7(2) of the Bill is, in principle, appropriate.

70. However, the Committee recommends that the Scottish Government explain whether it considers it necessary to remove the element of choice entirely using section 21(1) if Option 2 is considered not to be appropriate in any given situation. If this is not the case, then it is asked to explain how this may be reconciled with its stated position that section 21 should only be used to remove choice entirely, and not to interfere with the available options.
As my officials confirmed, section 21 powers are only intended to be deployed to remove any element of choice, not to restrict access to a particular option. There appears to have been some confusion around the examples given to you - I can clarify that, in the examples given of homelessness or drug or alcohol addiction, officials were referring to Option 2 being inappropriate in addition to Option 1 being unavailable. Therefore there would be no choice, not simply the removal of Option 2 which is entirely consistent with our stated position that section 21 would only be used to remove choice entirely.

71. The Committee also recommends that the Scottish Government consider whether it is sufficient to rely on the disapplication of section 4(2) or 7(2) impliedly to disapply the remainder of those sections, given that it is arguable that subsection (4) could sensibly continue to operate despite such a disapplication.

I note your point but respectfully disagree and believe that the disapplication of section 4(2) and 7(2) clearly means that the remainder of those sections fail to operate.

72. The Committee does not accept that the supplementary power in section 21(2)(b) to modify or disapply any other section of the Bill in consequence of a disapplication of section 4(2) or 7(2) – as presently drafted – is appropriate.

73. The Committee calls on the Scottish Government to identify the sections of the Bill to which section 21(2)(b) might apply, given that a number of sections are expressed to apply only where a local authority has given a person the opportunity to choose one of the options.

74. Given that it appears to be intended that certain sections of the Bill, such as section 6(2), should not be modified, the Committee invites the Scottish Government to consider whether it is necessary that the power in section 21(2)(b) permit the modification of any other section of the Bill, or if it could feasibly identify the provisions which should be protected from modification using this power.

I am grateful for your observations on this point. I will consider whether section 21(2)(b) is needed although I do not accept that it could be used to modify section 6(2). I cannot foresee any way in which limiting the choice available for carers’ support could be made in connection with removing choice for other forms of support. To do so a clear power to disapply section 6(2) would also be needed.

75. The Committee also considers that the section 21 power ought to be subject to a statutory requirement to consult with interested bodies on any draft regulations. Were it subject to such a requirement, the Committee would be content that the regulations are subject to the affirmative procedure.

As stated above, the Scottish Government has involved stakeholders fully in the preparation of this legislation and would be happy to commit to do so as regards any regulations made under section 21. For this reason, and because I think it is appropriate for this Bill, I will bring forward an amendment to create a statutory duty of consultation prior to the exercise of the powers in section 21.
Section 24 – Ancillary provision

83. The Committee recommends that the Scottish Government, in light of its stated intention not to use the power in section 24 to modify the Bill itself, consider whether section 24(2) might be revised so as to put the matter beyond doubt in order to make it clear that it may not be used to modify the Bill itself.

I can confirm that there is no intention to use the power in section 24 to modify the Bill. That being the case, I do not consider that section 24 needs to be amended.

Section 25 – Transitional provision etc.

92. The Committee recommends that the Scottish Government consider whether section 25(2) might be revised so as to put it beyond doubt that the power in section 25 may not be used to modify the Bill itself.

93. The Committee recommends that, as is the case with the power under section 24, the power in section 25 should be subject to the affirmative procedure where it is used to make textual amendments to primary legislation, and to the negative procedure otherwise.

Again, there is no intention to use the power to modify the Bill. I therefore do not consider an amendment is necessary.

We also do not feel that it is necessary for the transitional, transitory and saving provisions to be subject to the affirmative procedure and, hence, consider that the negative procedure is appropriate. The equivalent provision in the Police and Fire Reform Bill must be seen within the context of that Bill. Clearly care should be taken in treating use of similar provisions elsewhere as a precedent and in any event I do not accept that it is the reflection of wider Government practice.

As I think you will accept, it is often difficult to determine the appropriate dividing line for procedure when dealing with supplementary, incidental, consequential transitional, transitory and saving provisions. While determining procedure based on textual amendment can be used, it is not always appropriate, particularly in the case of time-limited powers such as section 25.

I trust this is helpful and remain, as before, very grateful to you and the members of your Committee for their work on this Bill. I am copying this letter to Duncan McNeil MSP, in his role as Convener of the Health and Sport Committee, for his Committee’s information.

Michael Matheson
Dear Duncan

SOCIAL CARE (SELF-DIRECTED SUPPORT) (SCOTLAND) BILL (SDS BILL): STAGE 1 REPORT

I write in response to the Health and Sport Committee’s Stage 1 Report on the Social Care (Self-directed Support) (Scotland) Bill, published in July 2012.

I would like to thank the Committee for its careful consideration of the Bill.

I welcome the Committee’s recommendation to the Parliament that the general principles of the Bill be agreed to. I would like to respond in more detail to some of the specific recommendations contained in the Report. My comments, provided in Annex A, deal with the particular sections in the report where the Committee asked for a response in advance of the Stage 1 debate.

Michael Matheson
General principles

17. The Committee recognises that the principles of independent living, in which all citizens have the same freedom, choice, dignity and control in their lives, is at the heart of what this Bill is striving to achieve.

18. Whilst independent living is implicit, the Committee recommends that consideration should be given to making the principles of independent living more explicit with direct reference being made on the face of the Bill. The Committee therefore welcomes the commitment by the Minister to give further consideration to this issue.

Response:

I have asked my officials to explore the possibility of an amendment which would result in a direct reference to independent living on the face of the Bill.

Allocation of budgets

62. The Committee heard strong views expressed about the implementation of self-directed support alongside a reassessment process in Glasgow. The Committee is firmly of the view that self-directed support must not be, or be seen to be, a cover for cuts.

63. The Committee recommends that the Scottish Government makes clear that in implementing self-directed support, local authorities must ensure that the assessment process is robust and service users are offered a package which meets their needs.

Response:

Local authorities must ensure that they meet their statutory duties under the Social Work (Scotland) Act 1968 (“the 1968 Act”) . The support provided to individuals must meet the person’s needs as they are assessed under Section 12A of the 1968 Act. Professionals should work with individuals and carers and empower them to contribute to their assessment. The statutory and best practice guidance will reiterate these points.

Calls for a formal appeals process

81. The Committee acknowledges the strength of feeling among witnesses about the perceived need for a formal appeals process to adjudicate over disputes arising from social care assessments. The Committee considers that the statutory complaints procedure is inappropriate for this purpose and believes that local authorities need to make a clear distinction between complaints and appeals.

82. The Committee notes the evidence from the Minister that a review of the outcome of a social care assessment can already be requested by a service user. The Committee also notes that some local authorities have established risk panels to review disputed decisions. These represent two alternatives to the creation of a statutory appeals system. The Committee therefore invites the Scottish Government to provide its view on how best practice in this area can be identified and shared.
Response:

I agree that it is important to appreciate the distinction between complaints, which are about process, and appeals, which deal with decisions and the impact of those decisions.

In March 2012 the Scottish Government concluded a consultation on how social work complaints procedures might be updated. We have now published a report on the findings of the consultation, which is available at http://www.scotland.gov.uk/Publications/2012/08/9288.

Taking account of the responses from the consultation, a working group will be set up to consider what additional provisions are needed for social work services in recognition of the importance of these services and the impact they have on people’s lives. One of the tasks of the working group will be to look at whether there is a need for a separation of appeals and complaints procedures and to report with recommendations for any changes. My officials will ensure that the Committee’s views on appeals procedures – including the relevant extracts from the Stage 1 report – are passed on to the group.

Support for adult carers

111. The Committee believes that it is extremely important that carers’ health and wellbeing is supported to ensure that they can continue to provide their caring role. The Committee acknowledges the desire of many carers and their representatives to strengthen the Bill’s provisions, so that the discretionary power proposed becomes a duty on local authorities to provide support following an assessment. During Stage 1 scrutiny, the Committee did not obtain the view of the Scottish Government on this request. The Committee therefore invites the Government to reflect on this issue and confirm its position in its response to this report.

Response:

It is important that we create the right legislative and policy framework for carers to be supported appropriately and that local authorities, working in partnership with others, take decisions on how and when to support carers. Introducing a duty to support carers would inevitably be linked to strict eligibility criteria where only those carers experiencing substantial need would be supported. I prefer that we do not impose such restrictions which would also work against our stated ambition to provide early, preventative support to carers.

The Scottish Government is investing substantially in supporting carers through the Change Fund (at least £46 million over three years), Carer Information Strategies (£15 million over three years) and through the voluntary sector Short Breaks Fund (£9 million over three years). These initiatives, together with those aimed at carers through our work on dementia, autism, mental health and others, are enabling local authorities, NHS Boards and others to reach decisions on how best to support carers. They are allowing local partnerships to identify and support carers in urgent need of support as well as supporting other carers so that they avoid the need for crisis-led intervention. I realise, however, that more needs to be done and am in no way complacent. Moreover, most local authorities are now implementing local carers strategies.
Power to charge for services provided under section 2

116. The Committee notes that local authorities currently have discretionary powers to charge for non-personal care services. The Committee invites the Scottish Government to clarify its policy intention regarding the power contained in section 16 of the Bill when it responds to this report.

Response:

The Bill creates a separate power for councils to provide support to carers. This means that a distinct power to charge is necessary. The current power in Section 87 of the 1968 Act does not cover support provided pursuant to section 2 of the SDS Bill. I would stress that this is a discretionary power to councils and it would not require councils to charge for carers support.

Specific choice provisions related to children and their families

136. The Committee received evidence which raised concerns regarding how transition planning from children’s services to adult services (particularly from school to further education) was currently being managed and the role self-directed support could play within this. The Committee seeks further information from the Scottish Government on how those involved in transition planning will be made aware of the support available under the Bill and whether guidance on transition planning will be amended to reflect this.

137. The Committee also received evidence calling for implementation of the provisions relating to children and young people to be delayed until a full analysis of current projects regarding self-directed support and children and families had been analysed. The Committee seeks further information from the Scottish Government regarding how the findings of these pilots would be incorporated into the development of SDS for children and their families.

Transition planning from school to further education

I note the report’s reference to transition planning from school to further education. The importance of transition planning for those in need of support is well recognised, particularly in relation to post-school provisions. The Education (Additional Support for Learning) (Scotland) Act 2004 (as amended) provides the framework for schools to support pupils post-school transitions. While there are areas of very positive practice the Scottish Government recognises that more needs to be done to support those working with children and young people with their transitions, particularly post-school. The Scottish Government will shortly publish a long-term plan of support for implementation of the guidance which will include a series of actions to support improved practice in transition. In addition the statutory code of practice, which provides guidance to practitioners, will be reviewed as part of the long-term plan. We will seek to draw attention to the guidance of SDS as part of both of these pieces of work, and any others which may be appropriate.

The role of SDS in transition planning

I note the further reference to the role that SDS options can play in transition planning. Where there has been a joint assessment, the young person’s budget may include money for both health and educational/training needs. I would acknowledge that more needs to be done to make this a reality for much larger numbers of disabled young people. The Scottish
Government’s national strategy on SDS includes a commitment to discuss with Education leads whether and how Disabled Students Allowance and other relevant funds in further, special, and higher education can be included in self-directed support packages. The statutory guidance on the Bill will include a section dealing with support to children and transition planning. Practical examples will be provided to practitioners and providers via the various good practice guides which are planned for both social work practitioners and providers.

The further roll out of SDS options to children and families

Direct payments have been available for children’s support since the introduction of the direct payment legislation in 1996. Figures on the number of DP packages for children are not published as part of the national Scottish Government DP statistics. However, I am aware that the number of Scottish DP packages for those under the age of 18 has risen steadily from 32 in 2004 to 584 in 2011. Direct payments for children are, therefore, an established option, albeit one where there is considerable scope to extend availability to many more children. I agree that the further roll out of SDS for children should take full account of the learning from current and previous projects in Scotland and throughout the UK. My officials, working in partnership with both local authorities and providers, will ensure that this is done.

Assistance

151. The Committee welcomes the Minister’s commitment to engage with the Mental Welfare Commission, Office of the Public Guardian, and the Law Society of Scotland regarding the drafting of these complex sections of the Bill. The Committee wishes to receive an update on the outcome of these discussions in advance of the Stage 1 debate.

Scottish Government officials met with representatives from the Mental Welfare Commission, Office of the Public Guardian and Law Society on 10 July to explore the points that were raised in relation to the technical drafting of Sections 5 and 15 of the Bill. I have asked my officials to consider what amendments could be made to those sections.

Employment of personal assistants

171. The Committee noted in its earlier report on the regulation of care for older people that there were concerns about the regulatory framework for social care as self-directed support was rolled out. It concluded that the Scottish Government would need to address these concerns through provisions in this Bill.

172. The Committee notes the Scottish Government’s decision not to regulate personal assistants, but instead to rely upon the protecting vulnerable groups scheme in order to mitigate some of the risks for those who wish to employ a PA. However, the Committee considers that more could be done to reduce the risks associated with this form of self-directed support, while at the same time enhancing the status and value of the PA workforce. To this end, the Committee invites the Scottish Government to give consideration to the recommendations made by the SSSC in its submission to this Committee and to set out its views in its response to this report.

1 This is because publication at local authority level would possible lead to identifying individuals.
The SSSC’s submission contained five recommendations. I address each one in turn below.

Regulation of PA employment agencies

The first recommendation was that agencies providing personal assistants, and indeed other social service workers, should be regarded as care services and required to register with the Care Inspectorate.

Response:

If an individual is contracting with a care agency to be provided with a service by a personal assistant then that agency would be required to register with the Care Inspectorate.

The Scottish Government will consider in the context of our Reshaping Care project the question of whether an agency which simply introduces PAs to service users should be registered.

PA awareness of the SSSC Code of Practice

The second recommendation was that all personal assistants should be made aware of the Code of Practice for Social Service Workers and encouraged to adhere to them, and all employers of personal assistants should be made aware of the Code of Practice of Social Service Employers and encouraged to adhere to them.

Response:

I agree that personal assistants and employers of personal assistants should be made aware of the SSSC Codes of Practice.

Our guidance and training to local authorities will emphasise the role of social work in making sure that potential PA employers have a clear understanding of the responsibilities they will have as an employer, and in providing information about sources of expert advice to support them in this role.

Similarly, good quality training and awareness raising for Personal Assistants is a key aspect to our SDS Workforce Action Plan, which is being delivered with SSSC and other partners. The Scottish Personal Assistant Employer Network (SPAEN) and a number of local organisations already support employers with recruitment and training. We are supporting Self Directed Support Scotland (SDSS), in partnership with the Association of Directors of Social Work (ADSW) to map the range and variation in information and support provided on self-directed support across Scotland. The information from this exercise will inform further activity to ensure comprehensive national advice on PA employment, including information about the SSSC Codes of Practice

Minimum induction training for PAs

The third recommendation was that minimum induction training is made available to personal assistants, and their employers.

Response:
The specific training needs of each PA will be determined by the individual they are employed to support. However, through the delivery of the SDS Workforce Action Plan we will be gathering further information on the size and skill levels of the PA workforce to scope the demand for practice development networks for PAs.

Restrictions on the social care support available for complex care and “particularly vulnerable service users”

The fourth recommendation was that “complex care and care for particularly vulnerable service users” is provided by workers regulated by the SSSC.

Response:

It would not be appropriate – and nor would it be helpful – to attempt to use legislation or guidance in order to define a particular category of individuals, and, as a result of this, restrict at national level the choices available to a particular group of individuals and their practitioners. The emphasis should be on enhancing the capacity of professionals, individuals and their carers to make the right choice that best meets their agreed outcomes. Where the provision of care and support under a PA arrangement, or indeed any other arrangement, fails to meet the needs of the individual then the local authority can consider what alternative arrangements would meet the person’s needs.

Investment in workforce development and planning for PAs

The final recommendation was that the Scottish Government accesses the resource available through their sector skills council to explore workforce development and planning for personal assistants.

Response:

My officials are working with SSSC to identify how their role as the sector skills council can support delivery of self-directed support through workforce development activity. This will include consideration of the attributes, core skills, qualities and general knowledge available to personal assistants and to individuals who employ their own staff.

Employment of close family members

182. The Committee respects the desire of service users to determine for themselves who is best placed to deliver their care and support and that this may be a family member. The Committee considers that the current definition of exceptional circumstances is no longer appropriate. However, the Committee believes that in order to protect the interests of the supported person, appropriate safeguards must be put in place by the local authority. The Committee would welcome additional information from the Scottish Government about how these safeguards can be applied in practice.

183. The Committee welcomes the commitment from the Minister that, through regulations, a more consistent and pragmatic approach to this question may be achieved.

If the Bill is successful in reaching its Royal Assent then I intend to launch a consultation which would consider a fresh set of direct payment regulations. The regulations would
feature a section on appropriate and inappropriate circumstances for the employment of close relatives. These would seek to change the dominant culture from one of exceptional circumstances and towards one which seeks to identify and provide appropriate circumstances.

I agree with the Stage 1 report’s conclusion that safeguards must be in place to protect the interests of the supported person. For instance, I would expect the regulations to include a requirement to the effect that before a local authority could agree to employing a close relative both the family member and direct payment user would have to agree to the family member providing the support. Similarly, I would expect that the local authority would have to be assured that the family member was capable of meeting the direct payment user’s assessed need. These issues would be fully explored in any consultation on the draft regulations to accompany the Bill, as would any further safeguards which local authorities, carers or social care users felt necessary. Again, there is the wider and ongoing safeguard that comes with local authorities’ responsibility to ensure the effective monitoring and review of direct payment arrangements and user’s needs.

**Cost estimates**

| 218. The Committee received assurances from the Scottish Government about the financial resources accompanying the Bill. Following further discussions between the Scottish Government and COSLA, the Committee seeks confirmation from the Scottish Government that these resources are indeed sufficient to facilitate the process of change required in order to implement the provisions of the Bill. |

I am confident that the transformation funding which is being allocated to local authorities, providers and advice and support organisations will be sufficient to support a significant improvement in the provision of SDS options across Scotland. My officials have held several meetings with both COSLA and ADSW. They will continue to meet with them in the run up to implementation phase for the legislation.

**Subordinate legislation**

I refer you to my response to the Subordinate Legislation Committee, sent on 23 July 2012, and dealing with each recommendation in turn.

**Equalities**

| 256. More generally, the Committee considers that in order to enhance the ability of the Scottish Parliament to scrutinise the potential equality impacts of primary legislation, in future an EQIA should become a formal accompanying document to every bill. |

| 257. The Committee therefore recommends that the Scottish Government should work with the Scottish Parliament to consider the practical steps required to implement this change. |

**Response:**

I note the recommendation that the Scottish Government should work with the Scottish Parliament to consider the practical steps required to make an Equality Impact Assessment (EQIA) a formal accompanying document for each Bill.
The Scottish Government's EQIA is a tool that it uses to help it comply with its equality duty under section 149 of the Equality Act 2010 and also its duty under the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 to assess the impact of new policies and practices. When a new policy or practice is adopted the results of any associated EQIA are published on the Scottish Government's website. The Scottish Government endeavours to publish the results of any EQIA associated with a Government Bill at the point the Bill is introduced to the Scottish Parliament. The Scottish Government must also comply with the existing requirement in the Parliament’s Standing Orders that the Policy Memorandum for a Bill contain an assessment of its effect on equal opportunities.

It is important that EQIAs are easily accessible to Parliamentary committees which are scrutinising Government Bills, and the Scottish Government will review how that can best be achieved under existing arrangements (for example, by providing a link to the published EQIA in the relevant section of the Bill’s Policy Memorandum). However, further careful consideration would be required, including the consequences for other impact assessments, before steps were taken formally to designate an EQIA as an accompanying document in the Parliament’s Standing Orders given its existing statutory origin.
Note: (DT) signifies a decision taken at Decision Time.

**Social Care (Self-directed Support) (Scotland) Bill:** The Minister for Public Health (Michael Matheson) moved S4M-04086—That the Parliament agrees to the general principles of the Social Care (Self-directed Support) (Scotland) Bill.

After debate, the motion was agreed to (DT).

**Financial Resolution Social Care (Self-directed Support) (Scotland) Bill:** The Minister for Public Health (Michael Matheson) moved S4M-03851—That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Social Care (Self-directed Support) (Scotland) Bill, agrees to any expenditure of a kind referred to in paragraph 3(b) of Rule 9.12 of the Parliament's Standing Orders arising in consequence of the Act.

The motion was agreed to (DT).
Social Care (Self-directed Support) (Scotland) Bill: Stage 1

The Presiding Officer (Tricia Marwick): The next item of business is a debate on motion S4M-04086, in the name of Alex Neil, on the Social Care (Self-directed Support) (Scotland) Bill.

14:50 The Minister for Public Health (Michael Matheson): I am delighted to open the debate on the general principles of the Social Care (Self-directed Support) Scotland Bill.

I will thank a number of people. I thank Duncan McNeil, his colleagues on the Health and Sport Committee and the committee’s clerking team for the careful and robust way in which they have scrutinised our proposals and for the considered conclusions in the committee’s stage 1 report. I also thank the Finance Committee and the Subordinate Legislation Committee for the part that they have played in scrutinising the bill, and I thank the many witnesses who have provided evidence to the committees.

I offer my thanks to the organisations and individuals who have helped to shape our policy on self-directed support over a number of years. Their input has helped to ensure that the bill will make a difference to the lives of people who access care and support and to the lives of their carers.

At some point in our lives, each one of us in the chamber will need to draw on care and support services for ourselves or for someone in our family. We must ensure that we plan, design and provide services in a way that best meets people’s needs now and in the future. People have told us that greater choice and control are key to better outcomes and we therefore need to empower people to play a full and active part, working in partnership with professionals, in designing their own solutions to their support needs.

That is not only a more sustainable approach to delivering and planning public services, but it is better for people, carers, families and communities as a whole. It is the kind of approach that was called for by the Christie commission. Indeed, the commission recognised the role that self-directed support can play in reshaping social care. However, it also noted the current low uptake of self-directed support and called for more action to build the capacity for and awareness of self-directed support to encourage broader participation.

I am strongly committed to self-directed support, not only as a concept that embodies the ideas of equality, human rights and independent living, but as a mechanism that across Scotland delivers practical, tangible benefits to many people, their families and their carers. It is a privilege to hear directly from people in communities across the country who receive social care services and their carers about the positive difference that self-directed support makes to their lives.

I was particularly pleased that the Health and Sport Committee had a chance at its final evidence session to hear from a variety of individuals, including Omar Haq and Margaret Cassidy, about what self-directed support means to them personally. It is clear from their experience that giving people more choice, more control and a greater say in their support—whatever they choose to do with it—leads to improved outcomes and a better overall experience for them. Such stories strengthen my resolve to ensure that the ambitions of self-directed support are realised for the benefit of all people who are eligible for social care.

I am therefore pleased that there has been significant support for the bill during the earlier consultation phases and in its parliamentary passage to date.

Liam McArthur (Orkney Islands) (LD): Mr Matheson has set out well the benefits of self-directed support. I am sure that he is aware that Orkney Islands Council has in some senses led the way on the number who receive self-directed support, although the amounts are smaller. Does he recognise the constraints on smaller local authorities in delivering packages? Other areas can deliver economies of scale in service provision.

Michael Matheson: I recognise the work that Orkney Islands Council has done. A number of local authorities have a good track record in promoting self-directed support. Rurality and the provision of some services in small communities create challenges, but I know that Orkney Islands Council always works hard to try to deliver the best range of services that it can, within the limitations that it experiences because of the challenges. Self-directed support provides an opportunity to look at other options that might not traditionally have been considered in designing care for individuals that they can develop to meet their care needs.

I hope that Health and Sport Committee members have seen my written response to their stage 1 report, but it is worth while summarising some of the main points, as I have no doubt that they will be touched on in the debate. First, I welcome the widespread support for the principles that we have placed at the forefront of the bill—informed choice, control and participation. I am always open to potential improvements, so my officials are exploring the committee’s
recommendation that the bill should also refer directly to the principle of independent living.

On the allocation of budgets by local authorities, I share the committee’s view that “self-directed support must not be, or be seen to be, a cover for cuts.”

Under the Social Work (Scotland) Act 1968, local authorities have a responsibility to meet a person’s assessed eligible needs, no matter which option that person chooses in self-directed support. We will ensure that that is made very clear in the framework of statutory and best practice guidance that will accompany the bill.

Bob Doris (Glasgow) (SNP): The minister touched on the idea that self-directed support should not be a cover for cuts. Would it be helpful to put it on the record that Glasgow City Council has cut its social work budget by 20 per cent in the past year, although its revenue budget was cut by only 3.4 per cent? [Bob Doris has corrected this contribution. See end of report.] What would he say to people who look for self-directed support in Glasgow and who might see the self-directed support model being used as a cover for cuts in that city?

Michael Matheson: The key issue is that, as I said, irrespective of someone’s choice under self-directed support, their local authority remains under a legal obligation to meet their assessed eligible needs. That stands for any local authority—Glasgow City Council and others. When individuals feel that a local authority’s system is not meeting their needs sufficiently, they should use that authority’s processes to pursue the matter further.

I agree with the Health and Sport Committee that it is important to identify and share best practice in relation to complaints and the appeals process. Following a consultation this year on how social work complaints procedures might be updated, a working group is being set up. Among other things, the group will look at whether disputes need to be separated from the complaints process. My officials will ensure that the committee’s views on that issue are passed on to that group for further consideration.

The committee asked whether the provision in the bill for support for adult carers should be a power or a duty. I am acutely aware of the contribution that unpaid carers make and I share the view that supporting their health and wellbeing is hugely important. The vital point is that we should create the right legislative and policy framework to support carers appropriately. Having a power rather than a duty will give us the necessary flexibility to meet our ambition to provide early preventative support to carers. Through investment from the change fund, the carers information strategy and the short breaks fund and through work on other issues such as dementia, autism and mental health, we are already working hard to help to support carers in Scotland. The bill provides a further important tool to enable local authorities to continue to support carers in the most flexible and appropriate way.

Self-directed support applies to children and their families as well as to adults, and I am pleased to note that the committee supports that position. It is in line with the principles of getting it right for every child, and I believe that it can be of real benefit to children and young people and their families. However, I also note concerns about the specifics of the policy’s application to children, particularly around issues relating to transition.

I assure all members that we will ensure that the guidance that is developed around the bill has specific information on support for children and on transition planning. We will draw practitioners’ and providers’ attention to that guidance through a variety of means. Although direct payments for children’s support are well established as an option, there is considerable scope for extending their availability to many more children. I am confident that, along with the work that we are pursuing at present, we can further develop that area in a positive way.

One of the great strengths of self-directed support is the flexibility that it affords individuals, and a key factor in that flexibility is the workforce. However, I appreciate that there are concerns about personal assistants, who provide some of the most flexible support. There are risks inherent in employing or being employed as a PA, but I believe that those risks are manageable and that the current safeguards are proportionate. Therefore, we have no plans to require the compulsory registration of PAs with the Scottish Social Services Council or with any other body. Nevertheless, I share the committee’s view that we need to enhance the status and value of personal assistants. In my written response, I discussed the wide range of actions that are being developed or which are already under way to support PAs and their employers. I believe that the emphasis should be on enhancing the capacity of professionals, individuals and their carers to make the right choice to best meet their needs.

Closely related to the question of personal assistants is the issue of the employment of family members. I believe that our approach should be one of flexibility and proportionality. I welcome the committee’s agreement that the current definition of “exceptional circumstances” is no longer appropriate. If the bill is enacted, I will launch a consultation on regulations that will include definitions of appropriate and inappropriate circumstances for the employment of a close
Local Authorities and the Association of Directors have held several meetings with the Convention of Scottish Local Authorities throughout Scotland. My officials have held a programme of visits to local authorities, which is aimed at gathering useful information about the Social Care (Self-directed Support) (Scotland) Bill. We will continue to meet them in the run-up to the implementation phase of the legislation. In addition, my officials have started a consultation exercise.

I will say a brief word on costs. The financial resources accompanying the bill have been a source of concern for some. However, I am confident that the transformational funding that has been allocated to local authorities, providers and advice and support organisations will be sufficient to support a significant improvement in the provision of self-directed support options throughout Scotland. My officials have held several meetings with the Convention of Scottish Local Authorities and the Association of Directors of Social Work, and we will continue to meet them in the run-up to the implementation phase of the legislation. In addition, my officials have started a programme of visits to local authorities, which is aimed at gathering useful information about transformational processes across Scotland.

The bill raises a number of important and complex issues, and I am sure that we will hear much more about those during the debate. I remind members that, although the detail of the bill is of crucial importance, and although it is right and proper that it is thoroughly scrutinised and discussed, the overall purpose of the legislation is to make a difference to the lives of those in our society who need to access social care and support. We owe it to them to deliver real change.

I move,

That the Parliament agrees to the general principles of the Social Care (Self-directed Support) (Scotland) Bill.

The Deputy Presiding Officer (John Scott): I call Duncan McNeil to speak on behalf of the Health and Sport Committee.

15:04

Duncan McNeil (Greenock and Inverclyde) (Lab): Legislation and policy making can be an impersonal business, but I want to recount the very human story of Omar Haq, to whom the minister referred. Omar is an intelligent young man with his life and career ahead of him. He graduated a couple of years ago with a masters degree in human resources management and is currently looking for work. Employers take note.

Omar Haq has cerebral palsy and he spoke eloquently to the Health and Sport Committee during its stage 1 consideration of the bill about the positive impact that access to self-directed support has had on his life. The bill has four options for self-directed support, one of which is the use of direct payments to employ a personal assistant. That is what Omar does. He described his personal assistant as fulfilling a personal need by enabling him to go about his day-to-day activities, including travelling on a bus and filling out application forms. Ultimately, the flexibility that is offered by direct payments enables Omar to take more control over not just his care but his life. It raises his ambition to what is possible and drives him on to greater levels of independence. That striving for independent living is at the heart of the aims of the bill.

The committee received compelling evidence from Pam Duncan of the independent living in Scotland project that we should not be too focused on the process of self-directed support as an end in itself; instead, we were urged to look at its ability to empower those who use it to lead independent lives so that they may participate in society and live a full and ordinary life. As in Omar Haq’s case, it is not just the system of support that is important but what the system enables people to achieve. The committee believes that the core principle of independent living should be more explicit in the bill. I welcome the Scottish Government’s commitment to explore the possibility of such an amendment.

There are high expectations that the bill will bring greater freedom, choice, dignity and indeed control for people like Omar Haq, who require social care to maintain a quality of life and fulfil their potential. However, in the course of our scrutiny, the committee heard the changes that will be required of local authorities and independent and voluntary sector providers to ensure the success of the policy described as dramatic, wide ranging and difficult in every area. We heard evidence from practitioners about the individual, rather than collective files that will need to be kept. The changes were described as “seismic”.

Local authorities seem to be in a variety of states of readiness. Some are further down the line than others in areas such as decommissioning group services, creating individual budgets around packages and embedding the concept of self-directed support in their assessment and care management processes. Concerns were raised with the committee about the approach of some councils to implementing self-directed support, and the impact of that on service users. The issue appears to get very complex at that level, although the problems are no less for that.

We drilled down below the usual suspects as we took evidence. We found invaluable the insight that was provided by service users and carers at discussion sessions co-ordinated by the Princess Royal Trust for Carers and the independent living in Scotland project. Strong views were expressed by individuals about the implementation of self-directed support alongside reassessment processes in Glasgow. Bob Doris touched on that.
That negativity was put into context by service users who had been on the receiving end of cuts to their budgets. For them, self-directed support had got off to a bad start and was not an empowering process.

Self-directed support cannot be seen as camouflage for cuts—I was pleased to hear the minister recognise that. The perception of the bill is important in terms of poisoning the process at an early stage. If things seem to be imposed on people, the bill could be seen as having a cuts agenda—that denies the opportunities that the bill would offer people.

The Scottish Government must ensure that the system is robust and that service users are offered a package that meets their needs. I understand that officials are working with COSLA to assess whether there is merit in establishing a national threshold for access to formal support. Perhaps the minister can say something about that later.

The committee believes that the statutory complaints procedure is inappropriate for dealing with disputes that arise regarding an individual’s social care assessment. As the Law Society of Scotland told the committee:

“An appeals procedure is about saying that we think that something has not gone right and asking where we want to get to and what we want to put in place. Complaints procedures tend to be backwards looking”—[Official Report, Health and Sport Committee, 15 May 2012; c 2269.]

and focused on apportioning blame.

Local authorities need to make a clear distinction between complaints and appeals. The committee urges the forthcoming Scottish Government working group on social work complaints procedures to endorse the need for such a distinction. I heard the minister’s comments earlier that that work is going on.

As well as focusing on service users, the committee’s scrutiny took into account the views of unpaid carers, because without Scotland’s army of unpaid carers our health and social care system would grind to a halt. They play a vital role in the provision of care in Scotland. We heard first hand from carers of their desire for the proposed discretionary power to become a duty on local authorities to provide support following an assessment.

Florence Burke of the Princess Royal Trust for Carers suggested:

“Potentially, a small investment for carers ... who want to take up self-directed support in their own right” could go a long way. She told us that it could even “help to maintain the £10 billion savings to the public purse that carers provide by giving unpaid support.”—[Official Report, Health and Sport Committee, 22 May 2012; c 2325.]

The committee recognises that it is vital that carers are given support to protect their physical and mental wellbeing. The bill should underline that most moral of imperatives.

Another key strand is the cost of the bill’s implementation, particularly at a time of reduced budgets. There is a major discrepancy in the estimates of how much the bill will cost to implement, with COSLA estimating that it could cost double the amount claimed by the Scottish Government. That difference is so great that it cannot be explained simply as the result of different methodologies. COSLA’s failure to share with the committee the details of individual cost estimates by local authorities is unacceptable—it is not acceptable for it to come to a committee and not be prepared to back up its argument, because the committee cannot determine whether the funding gap that was identified is real or imaginary.

I am keen to seek assurances that there are sufficient resources to ensure that the bill can be implemented effectively. I look forward to hearing further updates from the minister on the on-going discussions that he described. Seriously, those discussions need to be out in the open—this is not something for back rooms. The committees exist to enable such open discussion.

The bill holds challenges for service users and service providers alike. However, the committee believes that legislating on the policy of self-directed support should ensure uptake and promote greater consistency of approach across local authorities. The committee welcomes the proposed legislation.

The Deputy Presiding Officer: We are very tight for time today. Jackie Baillie has up to nine minutes.

15:14

Jackie Baillie (Dumbarton) (Lab): I welcome the opportunity to contribute to this stage 1 debate on the Social Care (Self-directed Support) (Scotland) Bill and I associate myself with the minister’s thanks to all those who were involved in shaping and scrutinising the bill.

I am sure that the minister will forgive me for saying that the bill has been a long time coming. It was promised for the previous parliamentary session, but I understand that it was sacrificed in negotiations with COSLA just before the 2011 election because there were legitimate concerns about funding. As Duncan McNeil explained, there remain legitimate concerns about funding.
The bill has returned and some would say that it is a pale imitation of its previous incarnation, but perhaps it is a more practical set of measures and therefore a greater opportunity to create some change at a local level. On the basis that the bill will extend choice and control for people who receive social care, Labour members will be pleased to support the bill’s general principles this evening.

Before I consider specific areas of the bill, I want to look at the policy context for self-directed support and, in its widest form, personalisation, which was first advanced by the previous United Kingdom Labour Government, working alongside disabled people. Personalisation is of course much wider than social care, given that it is about all the different things that contribute to the way we live our lives: our education, housing, employment, health, transport and so on. It is not intended to be a narrow focus on social care alone. It is about empowering those with additional needs to shape their lives in a way that suits them. I hope that the Scottish Government will in due course consider the wider possibilities of personalisation.

Let me look to social care for an illustration. Many of us have constituents, many of them older people, who benefit from a tuck-in service that helps them to get ready for bed every night. Nine times out of 10 that tuck-in service is delivered between 7pm and 8pm. I do not know about members, but I do not know anybody who goes to bed that early in the evening. [Interruption.] Jackson Carlaw has put up his hand to say that he does—old age is clearly advancing. Visits at such times are perhaps more about the interests of the service and lack the flexibility to respond to individuals’ needs. Self-directed support is about exercising a degree of choice and control that makes life better.

Let me outline some specific concerns that have been raised. First, the independent living movement is clear that the bill should be viewed as a mechanism to support disabled people and those who live with long-term conditions to realise independent living. In his evidence to the committee, the minister agreed with that and I was pleased to hear today that he will give further consideration to strengthening the bill with perhaps a clear statement of intent about independent living.

That statement should recognise that disabled people have a right to independent living and state that the bill will empower those who use self-directed support to have the same freedom, choice, dignity, and control as other citizens at home, at work and in the community so that they may participate in society and live an ordinary life. That approach is supported by a powerful range of organisations, including Inclusion Scotland, the Health and Social Care Alliance, Self Directed Support Scotland and the independent living in Scotland project.

Secondly, there is the question of advocacy. There is no doubt that, although the bill seeks to extend choice and control so that there is greater direction over how support is provided, there remains a need for independent advocacy. We know from experience that it can be difficult for some people to negotiate through choices that are often different and complex and that they require assistance and guidance in doing so. Including in the bill a right to advocacy will ensure that the bill’s provisions, which we all support, will become a reality for all.

Thirdly, there is the question of an appeals mechanism. As the bill is written, it seems to me that the local authority will determine need and provide what it believes are appropriate services to meet those needs but that there will be only an internal complaints procedure if things go wrong. There may be access to the Scottish Public Services Ombudsman, but it looks only at the process by which a decision was made rather than at the substance. My experience tells me that people generally need money to access a judicial review.

The provision in the bill is not as comprehensive as having an independent and impartial tribunal to ensure that appeals are robust. Indeed, I understand from Capability Scotland that the Scottish committee of the Council on Tribunals—never heard of it before—recommended this month “the establishment of a new tribunal jurisdiction to deal with appeals against community care decisions”.

The absence of an appeals procedure ultimately has the effect of weakening rights, and I hope that the minister will take time to reflect further on that.

Fourthly, there is a concern about the postcode lottery of care and, in particular, care charging. That is not a new issue in the Parliament, as I have been raising it consistently for three, if not four, years. I am genuinely disappointed that the Government and COSLA have taken so long to resolve the issue. There is a working group but, as I have said before, if that group was on performance-related pay, it would not be earning very much. Apparently, the issue is just too difficult. Frankly, in a country of this size, it is not acceptable for a service to have wild variations in charging such as those in my area, where the charge is £30 per week for a service in West Dunbartonshire, but £300 per week for the same service in neighbouring Argyll and Bute. There are different charges and criteria, and a lack of transparency and fairness.
Wherever someone lives Scotland, they should pay broadly the same and the criteria for charging should be the same.

Bob Doris: Will the member give way?

Jackie Baillie: No—not on this point.

The postcode lottery in charging could have a negative impact on disabled people’s ability to direct their support in a meaningful way. Will the minister ensure that rapid progress is made in developing a national framework for the provision of and charging for care? We need fairness and transparency on the issue once and for all.

Fifthly, there is the matter of balance between individual and collective services. For example, day care centres are much valued by their users as a means of providing social interaction, yet their very existence could be threatened because of the withdrawal of funding. Although I absolutely acknowledge that self-directed support would not prevent an individual from continuing to use a day care centre if they chose to do so, that is not the practical experience on the ground. Therefore, more thought perhaps needs to be given to the transition for collective services. Sufficient financial support is needed to underpin the changes so that we do not have the perverse consequence of losing valuable services.

I turn briefly to carers. There is a call from carers organisations and carers that the bill should establish a duty to support unpaid carers so that they can receive direct payments in their own right following an assessment. I sympathise with the carers’ view, and with the minister’s approach, not least because the contribution that carers make is invaluable and because, by supporting carers, we spend to save. I suspect that such a duty will require additional funding and some thought. I am interested to hear whether the minister has made an assessment of that, never mind ensuring that carers have their needs assessed in the first place. Carers already have the right to an assessment, but it is difficult for them to access that. Their view is that a discretionary power is perhaps not enough. I would welcome it if the minister considered that issue.

Finally, I turn to the integration of health and social care. That developing policy, rather than an obsession with separation, should be dominating the Parliament’s discourse. We need nothing short of a transformation of people’s experiences of health and social care so that no one falls through the gaps. We might disagree about the means, but we do not disagree about the need for integration. The challenging demographics alone underline the need to act and to do so decisively. Labour believes in the creation of a national care service, which would be as radical as the creation of the national health service more than 60 years ago, with local delivery and local accountability. It would be a seamless service that joined up health and social care, with a framework of minimum standards and an end to the postcode lottery.

Self-directed support is an important step in that journey, although it is disappointing that it is focused only on social care. The Scottish Government had a pilot on self-directed support in health. I would want to explore the opportunity of taking that further in a limited number of cases in which people’s health needs overlap their social care needs.

The bill is an opportunity not to be missed, but it needs further improvement. We will work with the Government to ensure that the bill truly supports choice, control and independent living.

15:24

Nanette Milne (North East Scotland) (Con): In my nine years plus as a member of the Parliament, I have not been closely involved with a bill that has had such widespread support for its general principles. The bill will become legislation that, if properly implemented, will embody the principles of independent living for everyone, giving to all citizens the same freedom, choice, dignity and control in their lives, whether they are at home, at work or in the community. The bill will give everyone the right to secure practical assistance and support to participate in society and to live an ordinary life—something that, to date, has not been achieved. That point is emphasised in the briefing that was sent to members by independent living in Scotland, Inclusion Scotland and others, for whom it is crucial that the bill is viewed as a mechanism to support disabled people and those who live with long-term conditions in realising independent living.

The current system of direct payments to those who wish to select and pay for some of or all their social care entitlement was first introduced in the late 1990s. That system has not worked as intended, with uptake being less in Scotland than south of the border and patchy across the country. It is widely felt that legislation is now required to enable everyone to choose how they wish to receive the social care that they require. The only dissenting voice has been COSLA, which does not see the need for legislation at the present time.

We have heard about the four options, which are on a sliding scale, that will be available under the legislation to those assessed as requiring a package of social care, so I will not repeat that information. Of course, SDS options are currently available to service users, but the bill would place a duty on councils both to offer them and to act on the service user’s choice, and should result in
greater consistency of provision across local authorities.

Although they are implicit in the bill, I agree with organisations such as independent living in Scotland that the principles of independent living should be made more explicit—there should be a direct reference to them in the bill. I am pleased that the minister is exploring the possibility of an amendment to that effect. I am also attracted to the suggestion of including a statement of intent in the bill, to further strengthen the link between SDS and its role in supporting independent living.

If the legislation is to be effective, there must be a clear focus on the requirements of the service user rather than those of the provider. A market will emerge for service users as SDS develops. It may be that, in the fullness of time, facilities such as council-run day centres will cease to be required if they are generally not what service users want. There are bound to be tensions, and a change of culture will be required in how the public sector meets individual needs, which will no doubt throw up problems along the way. However, the general thrust is that the end result of real independent living is what should be available in a fair 21st century Scotland.

The Royal College of Nursing voiced concern about users opting to use social care resources to pay for health-related provision, such as physiotherapy—or vice versa. However, such provision is precisely what should be happening if that is what would give the user most benefit and if provision is not readily available in the national health service. I hope that that issue will be dealt with as the integration of health and social care develops, on which I personally eagerly await the details of the Government’s proposed legislation. Indeed, I feel that the benefits of SDS will only be fully realised once the promised integration is complete.

There are legitimate concerns about the lack of an appeals process in the bill or the failure to include the right to independent advocacy as a statutory provision. There are issues about support for adult carers, which the minister has spoken about—careers organisations want to see a duty on rather than a discretionary power for local authorities. There are also concerns surrounding the management of transition planning from children’s services to adult services, particularly from school to further education.

Also worrying a number of people is the Government’s decision not to regulate personal assistants but instead to rely on the protecting vulnerable groups scheme to mitigate some of the risks for those wishing to employ a PA, and I am not sure that the response given by the minister will completely reassure those who have raised such concerns. I note that there are plans to launch a consultation exercise on the employment of relatives by service users, once the bill is passed—I look forward to that.

As we have heard, there have been disagreements between COSLA and the Government about the cost estimates for implementation of the bill’s provisions and whether promised Government resources will be sufficient to facilitate the process of change required. I am pleased that those discussions will continue.

Although there are a number of important details and concerns to be dealt with as the bill goes through the parliamentary process, and no doubt there will be amendments from those who think that changes need to be made, I think that, overall, there is consensus that the legislation will be of significant benefit to those who are assessed as requiring social care. Provided that it is perceived not as a cost-cutting opportunity, but rather as the chance to give greater independence and a better quality of life to service users, the bill, particularly when it is seen in conjunction with the forthcoming legislation on the integration of health and social care, will be widely welcomed across Scotland.

I agree with Barnardo’s Scotland that there will need to be robust oversight of the implementation of self-directed support, with sanctions imposed on local authorities that are deemed to be failing. However, Scottish Conservatives will be happy to support the general principles of the bill at decision time.

15:29

Gil Paterson (Clydebank and Milngavie) (SNP): As someone who supports the principle of independence for Scotland—I am doing a bit of multitasking—I fully support the bill, as it will empower people with disabilities to have more control over their lives. That is the key message that drives the bill—giving disabled people the same freedom, dignity and choice as their fellow citizens in all walks of life.

As a member of the Health and Sport Committee, I listened to a great deal of evidence during our meetings on the bill, from organisations with a stake in the issue to individuals who live with it on a daily basis. The evidence was wide ranging and informative, and it gave me more clarity about what is needed to ensure that everyone in Scotland is given every opportunity to achieve some level of choice and control in their lives.

At present, two options for receiving support are available to people with disabilities. Direct payment involves the local authority paying the supported person directly. They then spend the money on the support that is required. There is also the more traditional method, whereby local
authorities are given the responsibility of selecting the support that is required and paying for it without the direct involvement of the supported person. The bill aims to strengthen both those methods and to offer further options.

In some cases, people would feel generally more confident if they could choose the support that they receive without being burdened with having to deal with the financial side of the equation. The bill offers people that option while recognising that individuals have different levels of support needs, which is why I am pleased that the fourth option is a mixture of the three that I have already set out. The bill aims to consolidate, modernise and clarify existing laws on direct payments, which it is hoped will lead, in turn, to an increased uptake of direct funding, thus expanding the empowerment of disabled persons.

The bill is invaluable not just in helping disabled persons to take more control of their lives. For most, if not all, members, a week will seldom go by without constituents contacting our offices to ask for help on carer issues. As the unsung heroes of Scottish society, carers need all the help that they can get, and I am pleased that the Scottish Government has announced a number of initiatives to alleviate their problems. The investment of £24 million in direct support over the next three years will be welcomed by carers across Scotland, as will the allocation, through the change fund, of £46 million to support carers of older people, which will be spread over the next three years. However, more can be done, and I am sure that the Scottish Government will look further into how it can support those who require further assistance.

A major concern for some people who receive support is the prospect of a close family member using undue influence to become the employed provider of support to the disabled person. The fear is that, because money is involved, the family member’s need for additional income may be considered to be greater than the disabled person’s need for high-quality support. The family situation might mean that the strength of being an employer could be lost by people who are unable or unwilling, for whatever reason, to say no to employing a family member to look after them. That is a particular concern in situations in which the family member who would be employed is not equipped to provide the high levels of care that are demanded and expected. If a family member applies pressure to have a particular person appointed, a situation will arise in which the employer—in other words, the disabled person—will be forced, in effect, to fire someone who has been doing the job to a good standard, perhaps for a considerable period of time.

Such family coercion would be completely counterproductive to the achievement of the goal of independent living and giving people with disabilities more control over their own lives. It would create issues that would restrict further measures to empower them to live more independently. Just how difficult would it be to fire a family member who is not up to the job, or to deal with someone who, part-way through a chore, decides that they have done enough for the moment?

I listened carefully to the minister’s speech and I am pleased that the Government has taken the matter seriously, has looked at the possibility of failings in human nature and is consulting on instructions and guidance to ensure that assessments are regular and meaningful, so that the individual who is seeking support is protected.

The Deputy Presiding Officer: You must close now, please.

Gil Paterson: I very much want to thank the Government for attempting to provide solutions to tackle the potential difficulties.

The Deputy Presiding Officer: Please close.

Gil Paterson: We all want people to have control of their choices—that is essential. I very much support the Government in its deliberations.

15:36

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): I welcome the bill, which is the first piece of legislation in this policy area since the Community Health and Care (Scotland) Act 2002, which extended the scope of direct payments to all care client groups. Self-directed support, however, is about much more than direct payments. I particularly welcome the new option 2, whereby the supported person decides the support and the local authority arranges it.

Self-directed support requires profound cultural change to make it work properly, and action on the postcode care issue, which will require some central direction, as Jackie Baillie outlined.

Culture change is certainly necessary. Not that long ago, the City of Edinburgh Council was preparing to change social care provision for hundreds of disabled people without any consultation with those who were about to lose a trusted carer. That was stopped because of a great campaign against it, but it leads me to agree totally with Professor Frank Clark, who said:

“The situation is a bit like what happened with the integration of health and social care, in that there is no point in getting the structure right unless practitioners on the ground behave differently.”—[Official Report, Health and Sport Committee, 15 May 2012, c 2266.]
That is partly about training, and it is certainly about an understanding of the personalisation agenda in health and social care and a determination to do things with people rather than to them.

Self-directed support has to be about promoting human rights and independent living rather than consumerism and the cost of services. To make it work effectively, however, there has to be investment in independent advice and advocacy to help people access it. Age Concern and the Scottish Association for Mental Health argued for help people access it. Age Concern and the investment in independent advice and advocacy to work effectively, however, there has to be consumerism and the cost of services. To make it human rights and independent living rather than making and national decision making — I have

There is always a balance between local decision making and national decision making — I have having a Twitter conversation with Roseanna and others over the weekend about that. My general view is that there needs to be a bit more national direction—a framework of standards—because otherwise people will feel that the system is simply not fair. Charging people very different amounts and assessing them in different ways will be a threat to this excellent bill. That is why we need a framework of standards and an appeal mechanism.

I accept that there are no large sums of extra money available for self-directed support, but it is important to ensure that the policy is not used as a cost-cutting exercise. The principle of equivalence of resource is important in the context of the bill. There are fears about costs—Duncan McNeil talked about COSLA’s view—but we should remember that, in his report, Professor David Bell said that self-directed support costs are similar to the costs of existing commissioned services. The issue to do with bridging costs has been recognised for a long time, and it is interesting that the financial memorandum draws on the direct payments finance project report of 2003—the situation has become easier since then, because of the move from block to spot contracts. Such issues can be resolved.

Many more issues will be discussed in detail at stage 2; I will touch on two or three matters in the remaining time that I have. There is an issue to do with personal assistants, who were not included in the Regulation of Care (Scotland) Act 2001. Barnardo’s is calling for a register of carers and personal assistants who are eligible to be employed. I am not sure that we need to go that far, but we should certainly ensure that all carers and personal assistants are covered by the protection of vulnerable groups scheme. The Government should consider the SSSC recommendations in that regard, because there needs to be protection for vulnerable people. As SAMH pointed out, many potential employers will be vulnerable.

I agree with what the minister said about the employment of family members. The move in that regard from exceptional to appropriate circumstances is entirely right.

The interplay between the bill and the health and social care integration agenda needs greater clarity. In a sense, it is unfortunate that we are not discussing two bills together. The committee said in paragraph 199 of its report:

“the Committee encourages the Scottish Government to ensure that the principles of self-directed support enshrined in this Bill can be extended to address the health needs of people also in receipt of social care.”

I support that.

I strongly support the inclusion of children and young people in the scope of the bill, but I was interested in Barnardo’s comment that not enough evaluation has been done. It is important that there is full analysis of current projects that involve children. In general, I certainly agree that children and young people should be included in the bill.

15:42

Richard Lyle (Central Scotland) (SNP): The bill will enshrine in law the opportunity for adults and children who use social care to exercise choice and control over their care. The Government will support independent living and the right of supported people to participate in society to the full, so that people can be helped, quite rightly, to live an ordinary life. If that is to happen, we must redouble efforts to increase take-up of self-directed support. We must not just shift the balance of care towards home and the community but shift the balance of power towards users of support services.
Independent living means that supported people of all ages have the same freedom—I like the word “freedom”—to exercise choice and control over their lives as is enjoyed by many citizens of this country. Supported people can exercise the rights and duties that come with being a citizen of this country in a full and equal way, participating in society. SDS presents people with essential, practical assistance, to ensure that they are free to live their lives as they want to, with the dignity that they deserve.

The SNP Government is committed to Scotland’s estimated 650,000 unpaid carers. The extension of direct payments to carers, as proposed in the bill, is further proof of that commitment. I note that more than £46 million will be invested during the spending review period.

What happened in the past will not work in modern Scotland. Legislation is needed to ensure consistent provision and to ensure that supported people have greater choice and control over the services that they receive and need if they are to live their lives to the full. Progress has been made on increasing uptake of direct payments, and legislation is needed to ensure that further progress can be made.

The bill will give eligible people four options: direct payment, whereby the local authority makes a direct payment to the supported person, for them to spend on the support that they require; direction of the available budget, whereby the supported person selects support, which is then arranged by the local authority; local authority-arranged service, whereby the council selects and makes arrangements for the support that is to be provided; and a combination of options 1 to 3, to suit the individual’s needs.

As a member of the Health and Sport Committee at stage 1, I thank its convener and deputy convener for the excellent report on the bill. I am sure that the bill will receive the support that it deserves. I will monitor its progress through the Parliament—I am sure that many others will do so, too. I believe that it will receive the full backing of all members.

I also thank all the organisations that sent us briefings on the bill. I note that the minister received a request from the director of the Royal College of Nursing about the possibility of delaying the legislation. I for one would certainly not agree with that. Carry on, minister, with the bill, which I fully support. I hope that he will say in his summing-up speech how he has responded to the letter from the RCN.

15:46

Siobhan McMahon (Central Scotland) (Lab):
There has been a concerted effort in both Scotland and the UK for a number of years to give care recipients greater power and influence over decisions that will have direct and tangible effects on their everyday lives. That effort has been accompanied by attempts at local and national levels to tailor individual care to personal specifications. The general principles of the bill—involvement, informed choice and collaboration—attempt to reconcile those two objectives in relation to social care. The bill’s aim is to ensure that service users are engaged partners as opposed to passive recipients in the commissioning and delivery of care. As a passionate advocate of independent living, I fully support that aim, but as the Health and Sport Committee’s report has already highlighted, there remain aspects of the bill that must be addressed.

The bill in its current form promotes independent living, but I would like that to be strengthened by the inclusion of a statement of intent that would underpin our common right to live an independent life. To ensure that that right becomes a reality, we must continue to work towards integration of health and social care. That is an explicit Government aim, which the Labour Party supports, and that is why we have called for the creation of a national care service. We believe that that is the best route to achieving that aim, but it is not currently on the agenda. Therefore, we must focus on the other obstacles that we must overcome.

The first and foremost of those obstacles is cost. We agree that, where possible, individuals who are currently cared for in hospital should be cared for in the community. The bill is part of the process, but the transition of care necessitates a transition of budget. Significant bridging finance is needed to shift the cultural balance from hospital to home-based care. At present, it seems to be doubtful that the bill will make adequate financial provision for the increased numbers of people who will receive care in their own homes, as is their right. That is precisely the sort of detail that we must have regard to if we are to ensure that the spirit of the bill is matched by its outcome. I would welcome any assurances that the Government can give me on that.

Bob Doris: The convener of the Health and Sport Committee, Duncan McNeil, has already made clear one of the reasons why there is uncertainty about the finances behind the bill. The Scottish Government has clearly stated what it believes the proposals will cost and it has shown the workings behind that figure, but COSLA has simply made broad assumptions and will not share with the committee how it reached its figure. Does Siobhan McMahon agree that that is unsatisfactory on the part of COSLA?
Siobhan McMahon: All the information should have been provided to the committee so that an informed choice could be made. I call on both sides to provide that information so that such a choice can be made.

Statutory access to self-directed support is undoubtedly empowering, but it may also be intimidating. Individual care requirements will vary a great deal in their nature and complexity, so it is imperative that the available options be promoted clearly and consistently across local authority boundaries. That will enable individual service users to make informed choices and will help to ensure that a constantly high standard of care is maintained across the country. That is especially the case when it comes to direct payments.

Taking sole responsibility for commissioning one’s own care is a daunting prospect. In many cases, it will entail the removal of the local authority as the traditional middleman in provision of care, but local authorities must remain part of the process, with a statutory obligation to ensure that the appropriate advice and support are available prior to the allocation of a direct payment.

Service users who choose this path should have access to budget management training and must be made aware of their rights and responsibilities as employers. In addition, the bill must make provision for any incidental costs arising from direct payments.

Capability Scotland cites examples of cases in which direct payments have been discontinued immediately upon the death or long-term hospitalisation of the recipient, which has left families being liable for redundancy payments that are owed to personal assistants. The bill must stipulate that the amount of the award is commensurate with the overall costs of care, including those that arise from sudden death or hospitalisation.

Another matter of note is that the bill will, in effect, create a market in provision of care by placing local authorities and other service providers in direct competition. Some people have argued that many local authorities offer less in direct payments than the equivalent cost of arranged services, in an attempt to keep service provision in-house. As a consequence, it has been suggested that primary responsibility for setting the value of direct payments be passed to an independent arbiter.

In addition, Capability Scotland has argued for the establishment of an independent statutory appeals process to allow for decisions on assessments of needs and the cost of care packages to be effectively challenged. That seems to be a sensible request. The formation of an independent appeals panel would offset the fears of many service users that their challenging of decisions through existing internal mechanisms will result in prejudicial treatment in the future.

As self-directed support becomes more established, there is likely to be increased uptake of direct payments. Although that will be a positive development, it may lead to more use of personal assistants as opposed to service providers. In 2011, 39 per cent of direct payments involved use of personal assistants, with 34 per cent using service providers and 3 per cent using some combination of both.

Personal assistants are not regulated and little is known about the PA workforce. In order to guarantee a consistent high level of care to service users, and to safeguard the PA workforce, the Scottish Government should, I believe, consider developing a register of all carers and personal assistants, as has been suggested by Barnardo’s Scotland. I was disappointed to hear the minister ruling that out in his opening speech. Inclusion on such a list should be made a precondition of funding, especially in the provision of care for children and young people.

Finally, it is imperative that the provisions of the bill be implemented. There should be robust oversight to ensure local authority compliance because we cannot allow any party to fail in its obligations. There is too much dormant legislation on the statute book. Self-directed support must not be allowed to join the list.

Christina McKelvie (Hamilton, Larkhall and Stonehouse) (SNP): The term, “independent living” is defined by the Government as:

“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 to live an ordinary life.”

What does independence mean to members? I believe that its meaning is enshrined in that statement. Imagine having the same choices as a non-disabled person and the freedom to make that choice. Imagine taking part in the same activities as your friends without having to sit on the sidelines. Imagine taking part in civic society, in a work place, in a recreational activity, without the stigma or barriers that can so often stop people, literally, in their tracks. Imagine being empowered not just to take control but to actually be in control, when much of your life is in other people’s hands. Imagine the dignity of not only being consulted, but of being respected in the choices that you make for yourself, without fear or favour, safe in
the knowledge that the choices that you make for yourself are yours to own, to decide, to control.

Those are all things that non-disabled people take for granted. We cannot imagine how difficult life can be in some respects, and as non-disabled people we cannot understand the sense of liberation a person has when they take control and ownership of their life. Imagine how you would feel as a young person trying to make your way in the world and attempting to keep up with your siblings.

The story I am about to tell illustrates the need for underpinning legislation. I have the permission of the people concerned, but I will maintain confidentiality. This is the story as told to me by a father; these are his words and his experiences.

“We first heard about self-directed support via parents at the Scottish Spina Bifida Association and we thought it would be great for my child with the outcome being that Mum gets some respite and my child’s care needs are being addressed, including personalisation, socialising and learning social skills for her to learn independently without her mum; the perfect all-in-one package.

What we did not realise is that we were entering a minefield of events that would have us unnecessarily stressed, resulting in submitting complaints to the local authority to fight for our rights and receive what we are entitled to.

Our first appointment with our local social worker was within 6 weeks of expressing our interest in self-directed support, the meeting went well, we explained that we were interested in self-directed support and the outcome for my child would be care needs being addressed along with independence, personalisation, socialisation and learning social skills independently while her mum gets respite—the social worker went away with our request to report back to her team leader.

A few weeks later we received a call to arrange a follow up appointment—on arrival the social worker asked similar questions to the first meeting, we were confused and said that it was self-directed support that we were looking for for my child. The social worker in surprise looked at us and asked for more information, and so once again we explained why we wanted the self-directed support and the social worker went off to report to her team leader.

A few weeks passed and we received a call to arrange a follow up appointment—on arrival the social worker asked similar questions to the first and second meeting, we were very confused and I asked if she was having a laugh as we had spent the last two appointments discussing this—at this point the social worker admitted that the team leader is unaware of the details of self-directed support—I asked that if I did not quiz her then would we be having a coffee in another few weeks to talk discussing self-directed support? Talk about déja vu. We gave the social worker in-house contact details within the local authority to request the process of self-directed support.

A few weeks passed again and we received a call to arrange a follow up appointment—on arrival the social worker smiled and the assessment began all over again.

A few weeks further passed and we were informed that there was no money in the budget to pay for the self-directed support which would be revised at the next financial year.

And now the complaints start as we arrange meetings with the social workers, team leaders, people at Scottish Personal Assistants Employers Network, Christina McKelvie MSP, the Head of Adult and Older People Services, the executive director of social work in South Lanarkshire Council—resulting in my child being awarded 2 hours per day which was awarded from another budget as there was no money in the children’s budget, even though Scottish Government had awarded SLC with £600,000 every year for the next 3 years, £1.8 million swallowed into other budgets.

The social worker verbally gave us permission to arrange a personal assistant for my child as the first payment would be processed at month end. Lesson number one, take nothing verbal from a social worker as my child’s first payment took 3 months and was not back dated—so who would have paid the wages if I had managed to find an appropriate personal assistant for my child?

A few weeks later we received an email from the social worker and team leader requesting for more information, (remember that I have taken everything to every meeting) which may now result in monies being paid back, 6 months later my child’s 1st review is still waiting to be heard.

This will leave the matter of respite for Mum not dealt with, with her having caring duties for my child’s twin sister who is now recognised as a young carer. We have requested a review to receiving extra hours for respite on a weekly basis to support Mum—6 months later we are still waiting.”

There is nothing more powerful than a person’s experience of trying to navigate a system that does not have legislative backing. For that reason alone, I welcome the plans to legislate and hope that families will not have to experience what I have detailed this afternoon. I ask the minister to pay particular attention to children’s needs during the bill’s process.

15:58

Liam McArthur (Orkney Islands) (LD): I, too, congratulate Duncan McNeil and his colleagues on the Health and Sport Committee on the production of a very thorough report. I am also happy to confirm the Liberal Democrats’ support for the bill. As others do, we think that it is overdue, but it certainly represents an important step in giving adults and children, carers and young carers, more control over meeting their social care needs.

Although the idea of self-directed support is increasingly prevalent, there is still a lack of consistency in the options and where they are available. The headline figure comparing direct payments in England and in Scotland provides a stark illustration, and the Christie commission was right to highlight that further action was needed to increase uptake of self-directed support.

In that respect, I welcome the Government’s intentions behind the bill. Enshrining in law a
requirement for all local authorities to offer people with support needs four distinct options—receiving direct payments, directing available resources, having the local authority arrange support, or a combination of the three—represents a significant step in the right direction and I hope that it will ensure that everyone is able to make the choice that best fits their circumstances.

I understand that questions have been raised in committee about implementation of the new duty. Local authorities and providers will certainly face challenges in adapting to what will inevitably be changing demands for certain services and—as we have heard from Siobhan McMahon, Duncan McNeil and others—providers will, no doubt, be wary of the cost implications. The Coalition of Care and Support Providers in Scotland highlighted, for example, that

“High demand for out-of-hours care and flexible care could mean a more expensive workforce.”—[Official Report, Health and Sport Committee, 22 May 2012; c 2309.]

As I mentioned to the minister earlier, there are specific issues in Orkney. In our small rural island-based community, there is certainly demand for more self-directed support, but the scope for making savings in the provision of other services is limited. That has been our experience to date. I hope that the minister will reflect on the specific challenges that are faced in Orkney and, probably, in Shetland and the Western Isles.

We must ensure that providers can meet the demands that self-directed support might place on them. Key in this is maintenance of levels of funding and of transparency. A number of groups have raised concerns that implementation of self-directed support must not be used as a cost-cutting exercise, so I welcome the strong statement that the minister made on that in his opening remarks. Examples have been cited; Bob Doris and Duncan McNeil both mentioned the situation in Glasgow, which offers a cautionary tale. The Government must ensure that sufficient funding is in place for implementation of self-directed support and that it is clear where the money is going.

I also welcome the requirement on local authorities to ensure that individuals can make informed choices about the options that will best meet their needs. However, concerns have been raised with me about the omission from the bill of the right to access independent advocacy. I know from experience in Orkney that advocacy services are vital in helping people—particularly vulnerable people—to make informed choices, so I support the calls for a right to access to independent advocacy to be included in the bill.

I turn to the second aspect of the bill. It is equally important that, as well as putting in place better options for people with support needs, we ensure that their carers have full access to the help that they need. The bill gives local authorities the option of providing support services to carers as well. At stage 1, the committee heard a great deal about that provision—in particular about the fact that the bill will not impose a duty on local authorities in that regard. Carers Scotland argues that

“enacting the legislation simply as a power will result in inequity with significant variances in practice, and thus support for carers, across local authorities.”

There are readily identifiable benefits to having proper levels of support in place universally. Carers Scotland also stated that

“Providing support at the right time can also prevent carers from having to give up paid employment and activities that sustain their life outside caring, resulting in negative consequences for their finances, health and wellbeing.”

Although I acknowledge the concerns that placing a duty on local authorities could lead to strict eligibility criteria, I believe that the argument for such a duty has much to commend it. Many carers have worried that the bill as it stands would not deliver the necessary improvements for them. I invite the minister to reflect further on the evidence that was presented to the committee on that aspect before stage 2.

A further concern, which is particularly relevant for young carers, is about the impact that the need to manage self-directed support budgets might have on people. Carers might end up having to manage personal budgets for family members on top of their caring responsibilities, which could be an unwanted burden. Several members have highlighted the views of Barnardo’s Scotland, which advocates the introduction of training and support for budget holders. That suggestion certainly warrants further consideration.

Finally, the bill opens up the possibility of unpaid carers being charged for services that help to support them in their caring role. Clearly, that would not be welcome, and the matter needs to be addressed. I ask the minister to clarify the situation.

As we have heard today, although the principles of the bill are sound, a number of details need to be dealt with. The minister touched on a number of them in his opening speech, but I hope that he will cover a few more in closing the debate so that we can be confident not only that the bill will be implemented successfully and smoothly to help people with support needs to manage their care, but will bring meaningful change for carers as well.

The Liberal Democrats will be only too happy to vote in support of the general principles of the bill at decision time. We look forward to working with the Government, other parties and people outwith
Parliament to improve and strengthen it as it progresses through its various stages.

16:04

Dennis Robertson (Aberdeenshire West) (SNP): As other members have done, I thank all the various agencies that provided information for this afternoon’s debate.

I did not intend to stand up and defend social work, but having heard Christina McKelvie’s story, which was very real, I will say a few words on the subject. As a former social worker, team leader and service manager, I think that there is a failure in process. That highlights an essential point about the bill—that it is not about process but about people.

The bill is about enabling people to make a choice, but they cannot make the right choice if they do not have the information. To enable choice, the information must be free of bias and it must reflect the needs of the individual, their family and their carers. In my 30-odd years in social care, I met many families with many different needs. However, the principle of doing the assessment to identify that need must not be and should never be resource driven; it must be outcome based. We must divorce what resources are available from that consideration in order to ensure that we provide an assessment that is free of that information. We must ensure that when we carry out an assessment we assess the need of the individual and their carers at that time. We must come up with an informed care package, not one that is decided for them. As Malcolm Chisholm eloquently pointed out, it is not what we do to people, but what we do with and for them.

The bill is about establishing partnership. It is about establishing what the person needs and when they need it. There are many good examples and we have been given many case studies in the briefing for the debate. I can take members back to a case of my own many years ago when I was practising in social work. In my early days in social work, I came across a young lad in Inverclyde who had very limited communication skills. He had no speech, but was able to smile and laugh. Unbeknown to me, when I walked into the room to come and see the family his eyes apparently lit up, because I sat beside him and he held my hand. He got immense pleasure from that very basic contact.

That is the principle behind the bill. It is about identifying basic needs. It is not complex; it is about identifying people’s basic needs, ensuring dignity and ensuring respect. We cannot lose sight of that.

I remember an occasion when I achieved independence as a result of being able to use a computer through screen-reading technology. That gave me the ability to do things for myself rather than be dependent on others. Fortunately for my wife, the screen reader does not read the bank statements, so I have no idea about those.

Independent living is not about the person living on their own, but about their living with the appropriate supports. None of us lives in isolation. We live with support from others, whether that is through partnership or marriage or the support of colleagues in our profession. We are interdependent, but at different levels. We must respect that and identify it. We must recognise that the person’s needs must be met. As I said, the process must be outcome led, not resource led. We must meet a person’s needs in the best way that we can.

We have heard much about carers. I welcome the fact that Parliament will hold its first carers parliament on 1 October. Carers will come together in the chamber so that we can hear their voice. That is a step forward for Parliament, for our communities and for our carers.

I endorse the work that the Government has done on the bill so far and I endorse the support that it has received from the chamber.

16:09

Mary Fee (West Scotland) (Lab): Given the concerns that I have shared with Parliament in previous debates on care, I welcome the chance to take part in today’s debate. Like my Labour colleagues, I welcome the bill and the general principles that are enshrined in it. The hope must be—as, I am sure, it is—that the bill will increase uptake of direct payments, which has slowly increased in the past decade. It is welcome that carers groups, service users and trade unions have been supportive of the bill and that they have been involved with the Health and Sport Committee through the evidence-gathering process.

After stage 1, changes will be proposed. I feel that an amendment is needed to include in the bill a right of access to independent advocacy. In his response to the committee, Michael Matheson said:

“The Bill will place a duty on local authorities to give people information and advice about the decisions that they make and point them in the direction of independent advocacies.”

I take a slightly different view from the minister; I feel that local authorities will not have the impartiality that independent advocacy services can offer from the outset.
Fiona McLeod (Strathkelvin and Bearsden) (SNP): Will the member take an intervention?

Mary Fee: If I have time later, I will take an intervention, but I am really tight for time and I have a lot to get in.

In its submission, Independent Advocacy Perth and Kinross said that it had

“concerns regarding the quality of information ... provided to people making decisions around whether they should use this method of personalising their care. In some instances”, it has been noted

“that the person has not always been made aware of the responsibilities connected with direct payments and has only been informed of the benefits”.

For the bill to work, service users and carers must know all aspects of what they will be taking on.

In the past year, there has been much discussion about carers and the carers strategy. We all appreciate the important role that carers play, and the bill provides the best opportunity to give something back, by creating a duty instead of a power to offer carers self-directed support. In its submission to the committee, Carers Scotland pointed out that a power will

“result in ... significant variances in practice, and ... across local authorities ... By legislating for a statutory duty rather than simply a power, this Bill presents an opportunity to deliver a limited right to some practical support, subject to assessed need.”

The creation of a duty would give some carers back their normality, let them be themselves again and ensure that their own health and wellbeing are paramount.

I listened with interest to the minister’s comments on personal assistants. I accept that the use of PAs has decreased in recent years, but I still have concerns about their training and qualifications and about monitoring them. Some of my concerns were highlighted by others in evidence to the committee. The Coalition of Care and Support Providers in Scotland called for

“some basic level of accreditation for Personal Assistants, and as a minimum a requirement that they be made subject to PVG checks.”

The Scottish Social Services Council added that

“agencies providing personal assistants, and indeed other social service workers should be regarded as care services and required to register with the Care Inspectorate.”

The need for regulation is a safety net not only for service users, but for the workforce.

During my time on the Health and Sport Committee, many stories that related to care of the elderly attracted national press coverage. To ensure that cases of neglect, abuse or poor care provision do not occur, regulation of PAs is a must. I have a reservation about the employment of family members, which concerns how they are trained and regulated. Much of what I said about PAs can be applied to family members. However, what is most important is that employment of a relative must be in the service user’s best interests. Much unpaid care is provided by family members, so it is right to reduce the restrictions, but training and regulation must balance that reduction.

A constituent contacted me to ask me to use the following quotation in my speech. It is fitting, because it reflects carers’ uncertainty and feelings about the bill. My constituent said:

“As a carer for my husband who has a spinal injury, I find myself increasingly worried for the future. What happens when we really do need support? What hoops will we have to jump through? It took five months and four different professionals when all we wanted to do was put an emergency plan in place. We gave up, and did something ourselves. The first professional we met didn’t know about Direct Payments.

So when things get worse—as they will—will we be able to get help to lift my husband? To get him to bed? Support that means I can continue working?

Or will I have to give up a job I enjoy? Will any help we get in future work around our needs as a family? We don’t mind paying for services which support us ... but they need to work around my husband’s life and let him have some dignity. Will the SDS bill enable this to happen?

I watch with sadness some of the battles my friends have had to go through to get help with caring—and I know some for whom self-directed support has been a godsend. So I want it to be easier for others to get the help they need.

So my plea is to recognise that carers need their own rights—the SDS bill provides a starting point.”

16:15

George Adam (Paisley) (SNP): I, too, welcome the bill and the debate.

I am speaking as a member of the Health and Sport Committee but, unfortunately, I cannot take any credit for the great work that Duncan McNeil and the committee have done on the bill because I have been a member for only two meetings—and, as of 5 pm tonight, I will be a Health and Sport Committee member no more.

In football parlance, I asked for the transfer to the committee not only because it was the only committee that I wanted to play for but because it deals with issues that are close to my heart. My wife Stacey suffers from multiple sclerosis, and seeing her on-going struggle with it I have experienced what it is like for someone who has had to access services as the years have passed.

Stacey is quite lucky compared with others with whom I have worked as an elected member in seeing what difference the bill could make to their
lives. As Dennis Robertson said, the bill is about people, and that is the most important thing.

Part of the evidence that the committee received involved a dialogue between Bob Doris and Margaret Cassidy, who has been a user of social work services in the past. He said to her:

“Your prepared statement mentions that you now do things like go dancing and go swimming, not when you are told to go swimming, but at a time of your choosing”.

She agreed:

“They told me to do things when they wanted.”

Bob Doris then said:

“I suppose that I am trying to give you the opportunity to put on the record whether you thought that enough choice was previously offered to you”.

Margaret then told an interesting story that is a perfect example of why the bill is so important:

“It was so-so. I will tell you a wee thing. One time I wanted milk and the woman who was helping me said that that was not her job. I was only asking for a pint of milk, but she said, “By the way, that’s not my job.” I said to her, “What is your job?” We had a falling out and I told her, “There’s the door. Don’t come back.””—[Official Report, Health and Sport Committee, 29 May 2012; c 2358.]

The bill gives people such as Margaret Cassidy the power to do that and take control of their own lives. That is an important point to take on board.

As the minister and Duncan McNeil have said, the bill should be seen not as an agenda for cuts but as a vision of the independence that it offers families across our nation. I support the core values of the 2010 strategy—respect, fairness, independence and freedom—and I see those values in the bill and in its ensuring that supported people have the independence to lead a fulfilled life.

As others have said, it is important to acknowledge the 650,000 unpaid carers in Scotland. The extension of direct payments to carers is proof that the Scottish Government acknowledges them. The Scottish Government is also providing other investments of more than £24 million over three years in direct support to carers, plus £46 million to support the carers of older people, because we live in a society that is getting older.

Another great addition, which has been mentioned, is the carers parliament. I have already booked my place and look forward to the first carers parliament. It is important that we in this chamber engage with everyone across society. Hearing their stories in that forum, and not just at our surgeries, brings the importance of the issue home and makes this place relevant to the people whom we serve.

The issue is close to my heart because I am, technically, a carer. My wife might say otherwise but, technically, I care for her. I am lucky because I have the support and help of my mother-in-law and father-in-law. Without their support, I would not be able to do the job that I do as well. I have that support, but there are other families who need further support. We must never forget the contribution that those 650,000 unpaid carers make. We must strive to provide as much support as possible, which is one of the reasons why I support the bill.

The most important support that the bill offers is choice. I would like the minister to look at the potential for making the application process for direct payments a wee bit easier at local authority level. I know from various cases that I have dealt with that the process can be quite difficult and that payments can take a long time to go through. Although people who have taken up the idea of self-directed support have done extremely well and have enjoyed it, there is still the traditional local-authority arranged service, directing the available budget and a combination of eligible options.

I am particularly looking forward to the clarification of the existing laws on direct payments as they are haphazard and something of a mishmash at present. The minister spoke about family members being in receipt of direct payments—I welcome that flexibility. That is something that we have to look at because it is a natural process for families to look after individuals.

I add my voice to support for the bill. It carries forward the legacy of the Christie commission and ensures practical support for people and families throughout Scotland. I have mentioned Scotland’s 650,000 unpaid carers and their contribution to our communities. They and their families must be supported and assured of a quality, independent life. This is a strong bill, and I agree with the minister that it can make a difference to people’s lives throughout Scotland.

16:21

Helen Eadie (Cowdenbeath) (Lab): I echo the views of other members who have welcomed the bill, particularly Malcolm Chisholm in his support for option 2, in which the individual chooses and the local authority provides. I do not like the notion or the spectre of individuals hiring and firing at their will, which is the Tory proposition coming down the line at us.

I bring with me experience as a carer of my parents. I watched the tender loving care of my stepmother-in-law before the death of my father-in-law. He needed care at home for almost two years, which was quite a traumatic experience for
her. We watched that experience and did what we could to support her.

I also bring the experience of 13 years as a councillor in Fife and a long-time member of the social work committee. When I first joined the council, home helps were provided free of charge by the Labour administration. In those days, home helps did everything that they were called on to do. Times have changed. The service was free when I first joined the council but by last year, when the SNP lost control of the council, charges in Fife had reached £11 an hour for those not on benefits—unsustainable for individuals who desperately need care.

My work as an MSP has helped to underline that problem for me. Myriad issues come before us in our case load as parliamentarians. I have read with interest much of what has been said before today and have been fascinated by the proposals that have come before us. When I cared for my parents 29 years ago, just before they died, we had none of the support services that will be in place. I welcome that support—it is critical for individuals and carers.

Given that my remaining time is so short, I shall dwell on representations made to me about Capability Scotland, which has been mentioned by others. I will go into no more detail than to say that I found compelling Capability Scotland’s call for the establishment of a new tribunal jurisdiction. Recent case law from the European Court of Human Rights suggests that, even cumulatively, the mechanisms in the bill do not amount to an independent and impartial tribunal. Capability Scotland says that, after extensive consultation, the Scottish Committee of the Council on Tribunals this month recommended “the establishment of a new tribunal jurisdiction to deal with appeals against community care decisions”.

I hope that the minister listens carefully to what Capability Scotland has said.

The minister spoke about having the right policy framework for carers and about whether support for carers should be a duty or a power. The point that came over in the briefings on the bill is that we are talking about a discretionary power. I was moved—as I always am when I hear him speak in the chamber—when Dennis Robertson described a real, compelling situation and what it is like for the individuals concerned. That is why the minister has to think about those carers across Scotland: he has to understand that they will be at the mercy of every local authority’s financial consideration, which is what Dennis Robertson said should not happen. Decisions should not be based on financial consideration; they should be based on the needs of the particular individuals and their carers. It would be a great mistake if the bill goes through and we do not issue the minimum regulation of standards across the whole of Scotland, because we know what a postcode lottery means.

I note from the briefings that carers assessments are not common practice in all local authorities. I note too that there have been calls to ensure that the assessments are better publicised—that is important. There is also the issue of carers complaining that the assessment processes are too long, especially when a short or small intervention is required.

I need to ask the minister about the sheltered housing issue. Perhaps he can talk about how the bill fits in with sheltered housing when he sums up. Across Scotland, sheltered housing associations such as Bield Housing and Care charge for the services that they provide. Some of that money goes towards those services, but what happens when those sheltered housing associations cut back on the services that they provide? The individuals are still paying for the services, but the services are cut. It is an issue in the area that the minister represents and it has been an issue for me in Fife over the past three years. I hope that the minister will address whether that issue is affected by the bill.

Broadly, I welcome the support that all colleagues in the chamber have given to the bill.

16:27

**Fiona McLeod (Strathkelvin and Bearsden)** (SNP): Members have already heard about the vast army of 650,000 unpaid carers across Scotland who save the Scottish purse £10 billion a year through their work. I want to speak about one large section of those unpaid carers—family carers.

As a member of the Health and Sport Committee when it took evidence on the bill, I found it interesting to look at the Government’s decision to change from the payment of family carers under exceptional circumstances to payment where it is appropriate, and I welcome the minister’s comments on that.

When the committee was taking evidence, it was interesting to see the sharp divide on that question. It was perhaps reflected in Gill Paterson’s speech when he talked about the risk of undue influence and coercion by family members if they became paid carers. In the evidence received by the committee, it was councils and organisations such as the Association of Directors of Social Work that, illogically, talked about the right of everybody who receives care to choose the care that they think best and then said that we have to keep in place the exceptional circumstances criterion for paying
family members through direct payments. That contrasts with carers organisations and such organisations as Age Scotland, which in their evidence talked about the facts that most unpaid care is done by family members and that, when those family members are able to provide the care, it leads to better outcomes for the person who is receiving care.

Reflecting on the dichotomy in the evidence that we received on the topic, I thought that I would take members in the chamber on a personal journey. For nigh on 23 years, I have been a family carer. When it happens to you, you start by thinking in a particular way: I thought that I was just being a good daughter and doing the things that my mum needed me to do. However, it escalated over the years, and I ended up doing the banking, the bills and the messages: if my mum said, “I want a pint of milk,” I went and got the pint of milk.

The work escalated: you take the family member you care for to health appointments, you do emergency hospital admissions, and you receive phone calls at work perhaps four or five times a day when they are not coping. There comes a point when there is a realisation and you think, “We need a care package here. This is not something that I’m doing well.” You set off on that route, but very quickly you learn about the limitations of the care packages that are on offer through local councils: the four times a day 15-minute visit, which is inadequate for anything—not just for cooking meals but even for giving company to somebody.

**Dennis Robertson:** Does that mean that the council is doing resource-led interventions and assessments rather than needs-led ones?

**Fiona McLeod:** As Dennis Robertson has suggested in his intervention and his earlier contribution, that is exactly what happens. If the person getting care has control through direct payment, they will choose the care that they need and not what a council says is what its resource limitations will allow it to provide.

I had some other examples of the limitations, but let me just take members to the next step. The next realisation is that the care packages do not work and that what they provide is certainly not support for independent living in the community. All the time that the care package is in place, the family carer is still doing all the jobs, such as paying the bills, doing the messages and taking the cared-for person to hospital.

It is at that point of realisation that you ask, “How do we get a personal service?” I found out about direct payments, but you have to know the system. Dennis Robertson has explained that, but I will give members a little anecdote. My son said to me once, “It feels like you’re having to beat the system, mum.” That is exactly what Christina McKelvie explained that her constituents had gone through. My son said as well, “Mum, you used to be an MSP. If you can’t beat the system, how does anybody else manage?”

When someone does get their direct payment, the family member who has been giving them their care is no longer considered under the exceptional circumstances condition. If a person who needs care gets a direct payment and decides that the family member who has been giving them their care is the most appropriate person to continue to give them that care, they should be able to use the direct payment to employ that family member.

I will just finish by talking about the toll on the family carer of going through all the hoops, processes and so on under the exceptional circumstances condition. You end up as a carer thinking not that you are a good daughter but that you are a bad carer. I ask members: please support this legislation and the move to the appropriate circumstances condition.

**The Presiding Officer (Tricia Marwick):** We move to the wind-up speeches.

**Jackson Carlaw (West Scotland) (Con):** For those in the chamber who were in the previous session of Parliament, this is going to be my Jamie Stone summation, in as much as I am tempted to say that I largely agree with everything that everybody has said and sit down. However, that might be unhelpful to you, Presiding Officer, so I would like to touch on some of the themes that I think emerged during the course of the debate.

First, I thank the minister for his pre-legislative courtesy in entering into discussions with Nanette Milne and me—and, I am sure, with others. I was certainly not in any doubt about his own personal sincerity regarding the bill that the Government has introduced. It is a subject about which he spoke before he was a minister, and it is clearly something that he wishes to see progressed. He clearly understands well the benefits that will come from the legislation succeeding.

The minister said that the overall purpose of the bill is to make a difference to those in society who need support. His response to the Health and Sport Committee was interesting. Mr McNeil detailed that in a fine speech that was characterised by its illustration of the personal examples that moved him and other committee members in taking evidence. He was too quick with Omar’s surname for me to scribble it down, but the name was mentioned several times. Through Omar and others, the committee became clear about the difference that can be made.
Omar’s case, that is through a direct payment to a personal assistant.

I was also interested in Duncan McNeil’s comments on the strength and resonance of the appeal against prescription from Pam Duncan of the independent living in Scotland project, who wanted to ensure that, as a result of the bill, as many people as possible have a chance to plot their own lives.

Mr McNeil identified a conundrum that worries me in relation to the bill and the forthcoming adult health and social care integration bill. It is easy for us in the Parliament to agree that we approve of the principles but, if forces elsewhere are not wholly committed to the process, it will be much harder for our understanding of and support for the principles to translate into the successful introduction and implementation of what we seek to achieve. We know from previous examples such as community health partnerships that such a situation can be unhelpful if we are to make progress.

Mr McNeil talked about COSLA’s inability to produce detailed costings, despite the fact that it challenged the Government’s costings. That inability is extremely unhelpful, because I imagine that the Government would welcome alternative suggestions so that it could robustly test whether its assessment of the costs is correct.

Some bills will get a second chance in the public mind, but this is one bill that will not. The test of whether the bill, when enacted, has succeeded will be whether people, at the start, feel that they can trust the legislation as implemented and that it meets the challenge it seeks to address.

Jackie Baillie warmly welcomed the proposed legislation. She made pertinent points when she said that she supported it on the basis that it extends choice. It was hitherto unknown to me that that was a principle in the Labour Party, but I took that at face value and welcomed it. Jackie Baillie touched on the independent advocacy issue, which Mary Fee returned to, and the appeals process, which several members mentioned.

Gil Paterson touched directly on a difficult area, which is the involvement of family members in the personal assistant role. In a gentle and sensitive way, he made the point that, as the minister said, we need to be able to determine whether there is appropriate involvement and that the circumstances and criteria are appropriate without ending up with a system that is difficult and which obstructs individuals from exercising their first choice.

Malcolm Chisholm alarmed us all with his talk of a Twitter conversation, which I think he said was not with “the minister” or “Ms Cunningham” but with “Roseanna”. I was quite jealous. I thought that I had the perfect working relationship with the previous health secretary, but I called her “cabinet secretary” or “Ms Sturgeon”, and I never got any more familiar than that. Malcolm Chisholm’s point goes back to the point that I tried to make a moment ago that there is an awful lot of detail and that, unless it is properly understood and worked out, there is a capacity for us to trip over it as the legislation is implemented and for the achievement of our aims to be frustrated.

Siobhan McMahon is probably a bit worried about the fact that she, the Conservatives and the SNP are similarly minded to progress on the issues. Normally, she would follow me only if I was walking towards a hole in the ground, but in this instance, as a Parliament, we are agreed that we support the general principles of the bill and want it to succeed.

Christina McKelvie, Dennis Robertson, Fiona McLeod and George Adam all used personal experience to illustrate their points. One point that struck me latterly in the debate was about how common or ordinary it is to have personal experience of self-directed support or care. People in this chamber, as with those outside it, have a first-hand experience of the subject and understand the difficulties and the obstacles that need to be overcome.

The Presiding Officer: Mr Carlaw, you need to close.

Jackson Carlaw: I will close on that point and say that we welcome and support the general principles of the bill and we look forward to the discussion that takes place as we move forward.

16:40

Drew Smith (Glasgow) (Lab): As another member of the Health and Sport Committee, I too associate myself with the remarks that others have made about the clerking team and, as Jackson Carlaw did, pay tribute to Duncan McNeil for the powerful way in which he set out the committee’s approach in examining the bill.

In opening the debate for the Scottish Labour Party, Jackie Baillie made clear our support for the Social Care (Self-directed Support) Scotland Bill at stage 1. If the purpose of the bill is to provide a framework for a more personalised system of social care, independent living or, as Richard Lyle would have it, freedom, the key point that the Parliament should understand is the level of service personalisation that users are able to direct already. I thought that Christina McKelvie, Liam McArthur and Mary Fee made it clear that, despite personalisation being a long-held objective of the Parliament, the situation across the country continues to vary enormously.
Variation in the services that people choose to make use of is no bad thing and, indeed, creating more flexible services that are better tailored to the needs of individuals is the goal of the proposed legislation. Scottish Labour shares the Government's belief that the problem, in that respect, is not too much variation in individual care packages but, rather, too much variation in the choice and control that individuals exercise over their own care or support. In the case of those who require support to meaningfully exercise choice and control, the chances of self-direction are often slim.

The Government has set out in the bill a description of what a budget for self-directed support could be used for. By enshrining in law a right to self-directed support, Parliament is providing users of social care with a menu of four options. Those were set out by the minister, Richard Lyle, Duncan McNeil and others, and I will not repeat them. The committee heard and, indeed, proactively found, a number of examples of how such an approach—or components of it—is working in different parts of Scotland. However, Parliament should be clear that increasing direct payments—we should not forget that that has been a feature of our social care system for longer than the Parliament has been in existence—should not necessarily be the only or most important goal of self-directed support. Increasing direct payments should not be seen as the only measure of success, or the sole indicator of systemic change. Changes in the process of selecting and, ultimately, procuring social care, will not, in and of itself, lead to an improvement in the standards of social care provided or a better experience for those who are assessed as requiring support.

At a time of significant change in the welfare system and budgetary pressures in local authorities, as members across the chamber have said, there is a considerable risk that some will see SDS as an opportunity not to drive up quality, but to cut costs. Malcolm Chisholm pointed out that the bill comes in advance of changes that are needed to ensure adequate integration of health and social care, and that presents a significant risk to the legislation achieving the Government's intended effects.

Scottish Labour believes that the most urgent change needed in social care is an improvement in quality with an emphasis on respect for—yes—choice and control but also for human dignity and fairness across Scotland. To deliver that, Labour believes in a more radical shift towards a national care service, based on local delivery and control, but with minimum standards of care to end the postcode lottery, as Jackie Baillie set out. We look forward to the minister's continuing discussions with COSLA to ensure that postcode charging becomes a thing of the past.

Members have highlighted a number of other areas of concern. Siobhan McMahon talked about the greater focus that is required on how direct payments will be ended, when the need for them has passed. There also remain questions about whether the regulation of those employed through direct payments is all that it should be. Support for carers is spend to save, and there will continue to be questions about whether we are getting the right balance between support to carers and the desire to put the cared-for at the heart of the new regime. Equally, the appropriate role for family members—often—in a system that puts greater emphasis on individuals making their own choices and controlling their own budgets is an issue that I suspect Parliament will return to whether the bill passes in its current form or not, and I hope that the Government front bench will continue to have regard to the comments of both Gil Paterson and Fiona McLeod.

The interests of those who work in the care sector should also be considered, as should the regulation of workers such as PAs. As a member of the committee, I feel that it would have been useful to hear more directly, through oral evidence, from people who work in the care sector—I know that we received written evidence from such people.

The final and most substantial concern that I want to reflect on relates to the call for an enshrined right to advocacy. As well as having a right to make choices and exercise control, service users also have a right—which they may need—to the appropriate level of support to make their choices and control meaningful, as I said earlier.

Fiona McLeod: I draw Mr Smith's attention to section 1(3), which says that a person “must be provided with any assistance that is reasonably required to enable the person” to express their views and “make an informed choice”.

Is that not advocacy?

Drew Smith: I think that Mary Fee made the point when she talked about the relationship of trust that exists between those who rely on care and those who provide care. In that context, the key word in respect of advocacy becomes “independent”.

Individuals' ability to make choices will be heavily influenced by the resource—or the lack of it—that is allocated to them as a result of a needs assessment. It is imperative that that is done properly, with the aid of advocacy, if required, and a system of review. The Government's working
group on appeals and review is welcome but, as Duncan McNeil argued, it is vital that the Government is mindful of the evidence that the committee heard that a complaints procedure is not a substitute for an appeals process. Assessments should be carried out properly in a way that can be monitored and challenged through a review process that recognises that circumstances can not only change but be misunderstood.

As the committee made clear in its stage 1 report, and as the debate has highlighted, the changes that are contained in the bill present significant challenges for service users and service providers, and it is the view of the Scottish Labour Party, in common with the Scottish Independent Advocacy Alliance and many other organisations, that support should include making independent advocacy available by right and ensuring that proper funding is available to local authorities to successfully promote and deliver self-directed support.

In supporting the bill at stage 1, I do not quite echo Richard Lyle’s call of “Carry on, minister”. Scottish Labour urges the Scottish Government to ensure that the best possible system of support is created to deliver effectively the changes that ministers seek to make.

The Presiding Officer: I call Michael Matheson to wind up the debate. I would be obliged, minister, if you would continue until 4.58.

16:47

Michael Matheson: Thank you, Presiding Officer.

This has been a very good debate, involving a range of contributions from members across the chamber. In his remarks, Jackson Carlaw referred to the way in which the personal experience of a number of members helped to shape their views on the personalisation of care and self-directed support agenda.

When Duncan McNeil set out the case of Omar Haq, who gave evidence to the Health and Sport Committee, he spoke about direct payments giving him flexibility and raising his ambitions. I know from meeting people across the country who have benefited from self-directed support that those are consistent traits. The flexibility that self-directed support provides addresses the difficulty that Jackie Baillie highlighted to do with choice for people who receive a tuck-in service. Should the tuck-in service come in at 6 o’clock, 7 o’clock or 8 o’clock? We know that Jackson Carlaw goes to bed early, but I am assured that he also rises early. That illustrates some of the small issues that have a real impact on the quality of someone’s life—but which can often be forgotten—that self-directed support can assist us in addressing. As Pam Duncan said to the committee, we need to ensure that we focus on empowerment and how it can enable someone to lead an independent life.

Nanette Milne referred to the low uptake of direct payments and the variation across local authorities. Direct payments have been in place for several decades. On average, about 3 or 4 per cent of people will make use of a direct payment. In recent years, there has been an increase in uptake, but it has not been sustained to the level that one would expect. Why is that the case? I know that some local authorities actively dissuade people from looking into direct payments by saying that they do not provide them, although the neighbouring local authority happens to do so. People can also be anxious about the implications of and responsibility involved in employing directly a member of staff to meet their care needs.

That is why the four options—to which Malcolm Chisholm referred—that are set out in the bill are drafted in such a way as to maximise the opportunity for individuals to have much greater control over their personal care. It will be their choice whether they want to make a direct payment, direct the way that the resource is used by the local authority, have the local authority provide everything, or have a mix of those three options. I say to Helen Eadie—and I may disappoint her—that the bill clearly sets out that the local authority must offer those four options. It will not be a case of just offering option 1 or option 2. Helen Eadie obviously thinks that option 1 is a Conservative type of privatisation agenda, but I disagree. A person’s ability to choose when someone comes in to meet their care needs is about their personal needs and independent living, rather than about any political ideology.

Helen Eadie: Will the minister take an intervention?

Michael Matheson: I will let Helen Eadie in shortly.

What is important is allowing people to have choice on these issues and putting in safeguards that empower people and allow them to fall back on the safety net of the local authority when they do not have the confidence to take forward their care arrangements on their own.

Helen Eadie: The minister misunderstands what I meant. My concern is fundamentally this: the Conservative Government is introducing legislation that Vince Cable has talked about, which will erode all the workers’ rights that we have across the United Kingdom. If we go down the route that the minister proposes by not following option 2, we could find that we are leading the charge on that. Many individuals just
do not have the human resource capabilities that we would expect them to have.

Michael Matheson: The bill is about empowering people to be able to make a decision that best suits their needs. It is not about laying down that people must choose option 2, option 3, option 4 or option 1—it is about giving people choice. Individuals in the independent living movement have been calling for that for years. My understanding was that it had broad support in all political parties in Scotland and the UK.

I do not want to intervene in the Twitter conversation that Malcolm Chisholm was having with Roseanna Cunningham over the weekend. I have never understood why someone would have conversations over Twitter rather than phone someone for a discussion. However, the conversation illustrates the point that the debate about national and local will go on and we should continue to have it. Christina McKelvie illustrated in her speech why we need to have statutory underpinning of people’s rights and choices around how their care is managed. Her case illustrated the types of hurdles that can often dissuade people from moving forward and arranging care in their own way.

I want to try—in the limited time available—to touch upon a number of points that members raised. Several members raised the issue of charging by local authorities. Jackie Baillie asked me to tell the chamber when the working group will report. The review is a COSLA review. The last time I looked, COSLA had a Labour leadership, so perhaps Jackie Baillie can help by telling us when the working group intends to get to the point of finalising its report. I assure her that we are contributing to that process to assist the working group in taking forward that piece of work. The sooner it is completed, the sooner we can consider how we move forward on the issue.

Jackie Baillie: Will the minister take an intervention?

Michael Matheson: I will let Jackie Baillie back in later.

I say to Helen Eadie that I cannot comment on the charges that housing associations apply. I noted her point about the change of administration on Fife Council. I can tell her that in the Falkirk Council area some homecare services were completely free until Labour and the Conservative Party took over the administration and introduced a wave of charges that the previous SNP administration had never applied.

Jackie Baillie: Will the minister remind members that the working group was set up by COSLA at the behest of the Scottish Government and that the Scottish Government is represented on it? Three years later, there is still no progress on ensuring that care charging is consistent across Scotland, which is surely an ambition that we share.

Michael Matheson: It is a COSLA review group, and we are helping it by providing information—

Jackie Baillie: You are on it.

Michael Matheson: Maybe Jackie Baillie will use her political influence, if she has any, to tell the Labour leadership to get on with it and give us a report, so that we can move forward.

Members asked whether advocacy services will be provided. I think that there is a misunderstanding and that some members think that there is no provision for advocacy in the bill. Section 8 will confer on local authorities a duty to direct people to a source of impartial advice and support, to assist them as they consider the issues. I am more than happy to consider whether we can enhance the provision. It is about independent advice, rather than local authority advice, and I refer members to what the bill says in that regard.

Dennis Robertson talked well about the need to be much more focused on the outcomes that we intend to achieve through the bill. The bill has the potential fundamentally to change how social care services are delivered in this country, in a way that reflects the needs of individuals and gives people greater choice and an opportunity to lead an independent life.

I am delighted that the bill appears to have cross-party support at stage 1. I have no doubt that the people who have been calling for such legislation for many years will welcome the way in which the Parliament is uniting behind the bill. If we are successful in taking the bill through Parliament and it receives royal assent, I am determined to do everything in my power to ensure that it starts to transform lives in Scotland in a way that has never happened before in social care provision in Scotland.
Social Care (Self-directed Support) (Scotland) Bill: Financial Resolution

16:57

The Presiding Officer (Tricia Marwick): The next item of business is consideration of motion S4M-03851, in the name of John Swinney, on the Social Care (Self-directed Support) (Scotland) Bill financial resolution.

Motion moved,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Social Care (Self-directed Support) (Scotland) Bill, agrees to any expenditure of a kind referred to in paragraph 3(b) of Rule 9.12 of the Parliament’s Standing Orders arising in consequence of the Act.—[Michael Matheson.]

The Presiding Officer: The question on the motion will be put at decision time.
Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 27  Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

After section 1

Michael Matheson

1 After section 1, insert—

<Further general principles applicable to this Act

In carrying out its functions under this Act in relation to a person who is to choose (or has chosen) one of the options for self-directed support, a local authority must have regard to the following general principles—

(a) that the dignity of the person is to be respected,

(b) that the person’s desire to participate in the life of the community in which the person lives is to be respected.>

Section 3

Michael Matheson

2 In section 3, page 3, line 1, leave out <and>

Michael Matheson

3 In section 3, page 3, line 3, at end insert <and the payment by the local authority of the relevant amount in respect of the cost of that provision>

Dr Richard Simpson

21 In section 3, page 3, line 3, at end insert <, with the relevant amount in respect of the cost of that provision either being held by the local authority or transferred to a support provider to hold on the supported person’s behalf.>

Michael Matheson

4 In section 3, page 3, line 4, leave out from <and> to end of line 5 and insert <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>
Michael Matheson
5 In section 3, page 3, line 7, at end insert <and the payment by the local authority of the relevant amount in respect of the cost of the support>

Michael Matheson
6 In section 3, page 3, line 13, leave out from third <the> to end of line 14 and insert <support for the supported person>

Dr Richard Simpson
22 In section 3, page 3, line 16, at end insert—

<( ) In calculating relevant amounts, a local authority must not apply any automatic assumption that the provision of support under Option 1 or Option 2 will cost less than the provision of support under Option 3.>

Section 4

Michael Matheson
7 In section 4, page 3, line 34, at end insert—

<( ) In carrying out the duties imposed by subsections (2) and (3)(b), the authority must inform the supported person of—

(a) the amount that is the relevant amount for each of the options for self-directed support from which the authority is giving the person the opportunity to choose, and

(b) the period to which the amount relates.>

Dr Richard Simpson
7A As an amendment to amendment 7, line 7, at end insert <, and

( ) in any case where the relevant amount for one or more of the options for self-directed support from which the authority is giving the person the opportunity to choose is less than the relevant amount for one or more of the other such options, the reasons for the difference (in writing).>

Section 5

Dr Richard Simpson
23 In section 5, page 4, line 6, leave out from <, because> to <disability,> in line 7

Michael Matheson
8 In section 5, page 4, line 12, after <guardian> insert <, continuing attorney>

Dr Richard Simpson
24 In section 5, page 4, line 14, at end insert <, and
the local authority is satisfied that the supported person is not incapable (within the meaning of the Adults with Incapacity (Scotland) Act 2000 (asp 4)) of—

(i) agreeing that another person should be involved under subsection (4) in order to assist the supported person in making decisions about relevant matters, and

(ii) making a choice in pursuance of section 4(2) or (3)(b).>

Dr Richard Simpson

In section 5, page 4, line 18, after <person> insert <who the authority considers are suitable to assist the supported person in making decisions about relevant matters,>

Michael Matheson

In section 5, page 4, line 19, at beginning insert <if the supported person agrees,>

Dr Richard Simpson

In section 5, page 4, line 20, at end insert—

<( ) In identifying a suitable person to involve in assisting the supported person under subsection (4), the local authority—

(a) must be satisfied that—

(i) there is no reason to believe that the supported person will come under undue influence in—

(A) agreeing to the involvement of that person in the provision of assistance, and

(B) selecting an option for self-directed support under section 3, and

(ii) the person is sufficiently aware of the supported person’s circumstances and condition and the requirements for assistance arising from those circumstances and that condition, and

(b) must have regard to—

(i) the accessibility of the person to the supported person,

(ii) the ability of the person to assist the supported person in the decision-making process,

(iii) any likely conflict of interest between the person and the supported person, and

(iv) any likely undue concentration in the person of power over the supported person.>

Michael Matheson

In section 5, page 4, line 22, at end insert—

<“continuing attorney”—

(a) means a continuing attorney within the meaning of section 15 of the 2000 Act, and
includes a person granted, under a contract, grant or appointment governed by the law of any country, powers (however expressed), relating to the grantor’s property or financial affairs and having continuing effect despite the grantor’s incapacity.

Dr Richard Simpson

27 In section 5, page 4, leave out lines 31 and 32

Section 6

Michael Matheson

11 In section 6, page 5, line 23, at end insert—

(a) the amount that is the relevant amount for each of the options for self-directed support from which the authority is giving the person the opportunity to choose, and

(b) the period to which the amount relates.

Dr Richard Simpson

11A As an amendment to amendment 11, line 7, at end insert <, and

(b) in any case where the relevant amount for one or more of the options for self-directed support from which the authority is giving the person the opportunity to choose is less than the relevant amount for one or more of the other such options, the reasons for the difference (in writing).

Section 7

Michael Matheson

12 In section 7, page 6, line 4, at end insert—

(a) the amount that is the relevant amount for each of the options for self-directed support from which the authority is giving the person the opportunity to choose, and

(b) the period to which the amount relates.

Dr Richard Simpson

12A As an amendment to amendment 12, line 7, at end insert <, and

(b) in any case where the relevant amount for one or more of the options for self-directed support from which the authority is giving the person the opportunity to choose is less than the relevant amount for one or more of the other such options, the reasons for the difference (in writing).
Mark McDonald

28 In section 7, page 6, line 8, leave out <age and>

Mark McDonald

29 In section 7, page 6, line 13, leave out subsection (6)

Section 8

Alison McInnes

30 In section 8, page 7, line 18, at end insert <(including an explanation of how each option might apply in the person’s particular circumstances)>

Alison McInnes

31 In section 8, page 7, line 24, at end insert <, and

( ) assistance to the person in structuring and commissioning a package of support (including in relation to administration, budgeting and procurement of services).>

After section 8

Drew Smith

32 After section 8, insert—

<Advocacy>

(1) Every person who has under section 4, 6 or 7 been given by a local authority an opportunity to choose one of the options for self-directed support has a right of access to independent advocacy.

(2) Each local authority must—

(a) secure the availability of independent advocacy services to those persons mentioned in subsection (1), and

(b) take appropriate steps to ensure that those persons have the opportunity of making use of those services.

(3) In this section “advocacy services” and “independent” have the meaning given in section 259 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13).>

Section 11

Alison McInnes

33 In section 11, page 8, line 17, after <made> insert—

<( ) the person decides that the option chosen is inappropriate to the person’s circumstances and wishes to switch to a different option, or

( )>
Section 12

Michael Matheson

13 In section 12, page 8, line 27, leave out <and 7> and insert <, 7, 13(2)(b) and 21(1A)>

Section 13

Jackie Baillie

34* In section 13, page 9, line 16, at end insert—
<( ) establishing a scheme for the regulation of the quality of support provided by persons who—

(i) provide support to which a direct payment relates, and

(ii) by virtue of falling within the exception to the meaning of “support service” in paragraph 1(2)(c) of schedule 12 to the Public Services Reform (Scotland) Act 2010 (asp 8), are not otherwise subject to the registration requirement under section 59 of that Act.>

Section 15

Dr Richard Simpson

35 In section 15, page 9, line 36, leave out from <, because> to <disability,> in line 37

Michael Matheson

14 In section 15, page 10, line 3, after <guardian> insert <, continuing attorney>

Dr Richard Simpson

36 In section 15, page 10, line 7, at end insert <, and

( ) the local authority is satisfied that the supported person is not incapable (within the meaning of the 2000 Act) of agreeing that another person should be involved under subsection (3) in order to assist the supported person in relation to the carrying out of the assessment.>

Dr Richard Simpson

37 In section 15, page 10, line 9, after <person> insert <who the authority considers are suitable to assist the supported person in making decisions in relation to the carrying out of the assessment,>

Michael Matheson

15 In section 15, page 10, line 11, at beginning insert <if the supported person agrees,>

Dr Richard Simpson

38 In section 15, page 10, line 12, at end insert—
In identifying a suitable person to involve in assisting the supported person under subsection (3), the local authority—

(a) must be satisfied that—

(i) there is no reason to believe that the supported person will come under undue influence in agreeing to the involvement of that person in the provision of such assistance, and

(ii) the person is sufficiently aware of the supported person’s circumstances and condition and the requirements for assistance arising from those circumstances and that condition,

(b) must have regard to—

(i) the accessibility of the assistant to the supported person,

(ii) the ability of the assistant to assist the supported person in the assessment process,

(iii) any likely conflict of interest between the person and the supported person, and

(iv) any likely undue concentration in the person of power over the supported person.

Michael Matheson

16 In section 15, page 10, line 15, at end insert—

“continuing attorney”—

(a) means a continuing attorney within the meaning of section 15 of the 2000 Act, and

(b) includes a person granted, under a contract, grant or appointment governed by the law of any country, powers (however expressed), relating to the grantor’s property or financial affairs and having continuing effect despite the grantor’s incapacity.

Dr Richard Simpson

39 In section 15, page 10, leave out lines 24 and 25

Section 16

Jackie Baillie

40 Leave out section 16

Section 17

Nanette Milne

41 In section 17, page 11, line 3, at end insert <to, amongst others, persons upon their discharge from secondary health care services>
Nanette Milne

42 In section 17, page 11, line 3, at end insert—

<(2) A local authority must—

(a) from time to time, for the purpose of ensuring that supported persons are not
prevented from choosing Option 1 or Option 2 by a lack of availability of suitable
providers of support, consider whether there are any steps it could reasonably take
to promote and sustain the availability of a range of such providers, and

(b) if any such steps are identified, take those steps.

(3) In subsection (2), “supported person” has the meaning given by section 3(2).>
Social Care (Self-directed Support) (Scotland) Bill

Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated during Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

Groupings of amendments

Further general principles: independent living
1

Options for self-directed support: cost of options
2, 3, 21, 4, 5, 6, 22, 7, 7A, 11, 11A, 12, 12A, 20

Assistance for choice and for assessment: circumstances in which given
23, 8, 24, 9, 10, 27, 35, 14, 36, 15, 16, 39

Assistance for choice and for assessment: suitability of persons
25, 26, 37, 38

Choice of options: views of children
28, 29

Provision of information
30, 31

Independent advocacy
32

Further choice of options
33

Regulations made under the Bill
13, 17, 18, 19

Scheme for regulation of quality of support and procedure for regulations under section 13
34, 43, 17A
Charging for support to carers
40

Promotion of options to those discharged from secondary health care
41

Duty on local authorities to promote availability of suitable providers
42
HEALTH AND SPORT COMMITTEE

EXTRACT FROM THE MINUTES

29th Meeting, 2012 (Session 4)

Tuesday 30 October 2012

Present:

Bob Doris (Deputy Convener)  Mark McDonald
Aileen McLeod              Duncan McNeil (Convener)
Nanette Milne              Gil Paterson
Dr Richard Simpson         Drew Smith
David Torrance

Also present: Jackie Baillie, Alison McInnes

Social Care (Self-directed Support) (Scotland) Bill: The Committee considered the Bill at Stage 2.

The following amendments were agreed to (without division): 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 28, 29, 13, 14, 15, 16, 17, 18, 19 and 20.

The following amendments were disagreed to (by division)—

21 (For 4, Against 5, Abstentions 0)
22 (For 4, Against 5, Abstentions 0)
7A (For 4, Against 5, Abstentions 0)
23 (For 4, Against 5, Abstentions 0)
24 (For 4, Against 5, Abstentions 0)
25 (For 4, Against 5, Abstentions 0)
27 (For 4, Against 5, Abstentions 0)
30 (For 4, Against 5, Abstentions 0)
31 (For 4, Against 5, Abstentions 0)
33 (For 0, Against 8, Abstentions 1)
34 (For 4, Against 5, Abstentions 0)
41 (For 1, Against 8, Abstentions 0).

The following amendments were moved and, no member having objected, withdrawn: 32, 40, and 42.

The following amendments were not moved 26, 11A, 12A, 35, 36, 37, 38, 39, 43 and 17A.

The following provisions were agreed to without amendment: sections 1, 2, 8, 9, 10, 11, 13, 14, 16, 17, 18, 19, 23, 24, 25, 26, 27 and the long title.

The following provisions were agreed to as amended: sections 3, 4, 5, 6, 7, 12, 15, 20, 21 and 22.
The Committee completed Stage 2 consideration of the Bill.
Social Care (Self-directed Support) (Scotland) Bill: Stage 2

The Convener: Item 2 is stage 2 consideration of the Social Care (Self-directed Support) (Scotland) Bill. I welcome Michael Matheson, the Minister for Public Health, and the officials who are accompanying him: Jean Maclellan, head of adult care and support division; Craig Flunkert, bill team leader; Kirsty McGrath, from the legal directorate; and Ian Shanks from the Office of the Scottish Parliamentary Counsel.

Section 1 agreed to.

After section 1

The Convener: Amendment 1, in the name of the minister, is in a group on its own.

The Minister for Public Health (Michael Matheson): Throughout the passage of the bill, I have been keen to work with committee members to strengthen the bill where appropriate. I am therefore pleased to have followed the committee’s recommendation that consideration should be given to making the principles of independent living, which are already implicit in the bill, more explicit by way of direct reference to them on the face of the bill.

I recall that Richard Simpson first raised the issue when I gave evidence to the committee during its consideration of the bill at stage 1. The committee’s recommendation in its stage 1 report was based on the evidence received from groups that represent the interests of people who have disabilities, such as the independent living in Scotland project, Self Directed Support Scotland and the Scottish Consortium of Learning Disability.

There have been challenges in shaping independent living principles into legislative proposals and putting them into the structure of the bill. For example, the key element of independent living choice is already dealt with by the provisions in the bill that enshrine choice and by the general principles in section 1(2).

However, I am confident that amendment 1 succeeds in introducing on to the face of the bill core principles of independent living: being treated with dignity and having your desire to participate in community life respected. I am confident that the amendment will help to ensure that the existing principles contained in section 1—principles that are largely concerned with the process of self-directed support—are accompanied by ones that define the end goal of the person’s social care assessment and care and support plan. Self-
directed support processes need to be informed by that end goal.

The independent living principle will join the existing Social Work (Scotland) Act 1968 duty on local authorities to promote social welfare and in many respects it will reinforce and provide a modern interpretation of that end goal of social care.

As with the principles in section 1, the principles that are introduced by amendment 1 will help to guide practitioners when they implement the various duties and powers that are contained elsewhere in the bill and when there is interaction with social care assessments and support provision. I ask the committee to support the amendment.

I move amendment 1.

11:15

Dr Simpson: I welcome the amendment. As the minister alluded to, I indicated that the amendment is an important expansion of the general principles that would incorporate some of the evidence that we had from those who were concerned to ensure that the principles included clearer aspects of independent living.

Nanette Milne: I, too, welcome the amendment.

Amendment 1 agreed to.

Section 2 agreed to.

Section 3—Options for self-directed support

The Convener: Amendment 2, in the name of the minister, is grouped with amendments 3, 21, 4 to 6, 22, 7, 7A, 11, 11A, 12, 12A and 20.

Michael Matheson: As committee members will be aware, section 3 defines the options for self-directed support that will be available to an individual when they are eligible for social care. In the bill as introduced, the direct payment option was described in section 3(2) as

"a payment of the relevant amount by a local authority to a supported person".

Amendments 2 to 7, 11, 12 and 20 have been lodged in response to concerns raised by stakeholders through the bill steering group that a transparent budget is a vital component of not just the direct payment but all the options that an individual may choose. In response to those concerns, amendments 2 to 5 introduce the element of "relevant amount" into the description of options 2, 3 and 4 in section 3(1). When considered alongside current option 1—the direct payment—it will mean that all four options for self-directed support will include a reference to a transparent financial resource.

Amendment 6 makes the necessary consequential amendments to the definition of "relevant amount"; it removes the current reference to "direct payment" and replaces it with a more generic reference to support, which is meaningful for all four options.

Amendments 7, 11 and 12 impose a further duty on local authorities to inform the individual—the child, the parent, the adult or the carer who is being provided with support—of the amount of funding available under the options and the period to which that funding relates. That ensures that there is transparency about the funding available, regardless of whether it is a service that will be arranged by the local authority, a direct payment or an individual service fund that the person may direct.

Amendment 21, in the name of Richard Simpson, seeks to make clear that the budget allocated for a person's support under option 2 can be managed by a third party; in other words, the budget could be managed not only by a local authority but by a delegated third-party provider organisation, which could manage with the consent of the supported person. In effect, that would be the same as a third-party direct payment whereby a sum of money is paid to someone other than the local authority or the supported person.

We intend to make provision for that in the regulations, using the regulation-making powers in section 13. That will allow for a more flexible approach, as some third parties may be providers but others may not be described as such; in other words, they may include brokerage organisations or, indeed, individuals. Statutory guidance will also make clear that the budget can be delegated to a third party and that that can include a provider organisation. I am clear that it is unnecessary to amend the bill to add detail that will be better situated in the regulations.

I suspect that, by lodging amendments 22, 7A, 11A and 12A, Richard Simpson is attempting to address unfairness in the setting of rates between various options. However, it is not appropriate for the Government to restrict flexibility without a full understanding of the potential consequences of doing so. In guidance, we will give full consideration to commissioning, procurement and finance issues that will lead to discrepancies in the application of resources that need to be addressed better. Furthermore, amendments 2 to 7, 11, 12 and 20 will increase the transparency of the choices that are available to individuals, which should lead to a fairer and more open system.

Therefore, I urge Richard Simpson not to move any of the amendments in his name. However, if he is minded to move them, I urge the committee to reject them.
I move amendment 2 and ask the committee to support the other amendments in my name.

**Dr Simpson:** I welcome amendments 2 to 7, 11, 12 and 20, because they increase transparency, which is an important first step in assuring people who apply for direct support about the money that they would get under the different options. That is extremely welcome.

However, my amendments address concerns. First, amendment 21 tries to put into the bill what is stated in paragraph 23 of the policy memorandum, which says:

“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.”

The Coalition of Care and Support Providers in Scotland and other organisations that are involved in social care have recommended that that should be in the bill. That is important. It is in the Government’s policy memorandum, so having it in the bill would not in any way restrict the process. However, it would augment and enforce the fact that the third sector providers could, with the agreement of the supported person, act in that way.

I realise that that approach is not banned at the moment and that it can be implemented by regulation, but I believe that it should be in the bill, so I will press amendment 21.

Amendment 22 deals with the difference between the options, which will be transparent if we agree to the Government’s amendments, and the fact that a local authority should not automatically assume that option 1 or 2 would cost less than option 3.

The committee received some evidence that, where direct payments were made, they were already less than the payments under options 3 and 4. Amendment 22 merely says that there should be no automatic assumption that that would be the case. The importance of the word “automatic” cannot be overstressed, because there may be circumstances in which it is necessary and appropriate for the local authority to offer different options under the bill. Those options will be transparent under the Government’s amendments; under amendment 22, they will not automatically be different.

Under amendment 7A, which is linked to amendments 11A and 12A, the local authority will be required to provide in writing the reasons why there is a difference between the options.

I will illustrate a case in which that is a possibility. Let us take a day centre that is currently run by the local authority and which 15 people attend. With direct payments being offered, five people might opt out of that day centre provision. That would create considerable difficulties for the local authority’s ability to sustain that provision for the remaining 10. In other words, the unit cost might rise. However, it is important that, as part of the process, we drive efficiency in the system. That means that, if the unit cost has to rise, we should understand why it must rise and what the local authority has done to try to reduce the unit costs so that the majority of the funds can be transferred to those who are undertaking self-directed care.

My approach builds on the Government’s amendments. It ensures that the supported person and the individual who supports the person who seeks supported care, to whom we will come later, will see the difference in cost between the options clearly and, I hope, understand the local authority’s reasons for varying the cost, but there will be no automatic variation.

Amendments 21, 22 and 7A lend considerable additional clarity, and I will pursue all three.

**Bob Doris:** I welcome amendments 2 and 7, which I think are necessary to ensure that all four options for self-directed support are clearly communicated to the person seeking to exercise them. It would have been remiss for that not to have been put on the face of the bill, so I am keen to support those amendments.

My concern about amendments 7A and 22, in the name of Richard Simpson, is that they hint at the resource allocation that may be formulated following the care assessment, whereas the bill does not touch on that. I see what he is trying to achieve, but I would like to think that any inappropriate assessments would be picked up by the care inspectorate during its routine inspection of the local authority. For that reason, I will not support amendments 7A or 22.

I will vote against amendment 21 just now, but I reinforce Richard Simpson’s view that third-party providers in the voluntary sector should be seen as a key player—it should not just be the local authority. However, I will wait to see what appears in the guidance on that.

**The Convener:** Do other members want to speak to the amendments?

**Dr Simpson:** Convener, on a question of process, will I get the opportunity to respond to points raised against my amendments?

**The Convener:** No. I call on the minister to wind up.

**Michael Matheson:** I understand the objective behind Richard Simpson’s amendments, but I think that the Government amendments bring a greater transparency to the process, which will be extremely valuable in helping people to get greater clarity on the decisions made by local authorities.
I remain of the view that the wider issues on which Richard Simpson has raised concerns are better dealt with through the guidance that will accompany the legislation. I have stated very clearly that, in the accompanying guidance, we will give full consideration to the issues around commissioning, procurement and finance that can lead to discrepancies in the allocation of resources. Alongside that, we will make it very clear in the regulations and in the guidance that a third party can hold an individual budget on someone’s behalf. I believe that guidance provides us with greater flexibility in dealing with these issues, and I have given a clear commitment to the committee that we will give consideration to these matters as part of that guidance.

Amendment 2 agreed to.

Amendment 3 moved—[Michael Matheson]—and agreed to.

Amendment 21 moved—[Dr Simpson].

The Convener: The question is, that amendment 21 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Milne, Nanette (North East Scotland) (Con)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)

Against
Doris, Bob (Glasgow) (SNP)
McDonald, Mark (North East Scotland) (SNP)
McLeod, Aileen (South Scotland) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Torrance, David (Kirkcaldy) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 22 disagreed to.

Section 3, as amended, agreed to.

Section 4—Choice of options: adults

Amendment 7 moved—[Michael Matheson].

Amendment 7A moved—[Dr Simpson].

The Convener: The question is, that amendment 7A be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Milne, Nanette (North East Scotland) (Con)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)

Against
Doris, Bob (Glasgow) (SNP)
McDonald, Mark (North East Scotland) (SNP)
McLeod, Aileen (South Scotland) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Torrance, David (Kirkcaldy) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 7A disagreed to.

Amendment 7 agreed to.

Section 4, as amended, agreed to.

Section 5—Choice of options under section 4: assistance

The Convener: Amendment 23, in the name of Dr Richard Simpson, is grouped with amendments 8, 9, 10, 11, 12, 13, 14, 15, 16 and 39.

Dr Simpson: Amendment 23, and the linked amendments 27, 35 and 39, have been sent to us by the Law Society of Scotland. It believes that the reference to adults with physical and mental disabilities creates an ambiguous and incorrect notion that section 5 should be applied where the supported person does not have capacity “because of mental disorder or difficulties in communicating due to physical disability”.

The removal of those terms broadens the definition, and means that local authorities must provide assistance to anyone who requires it.
The consequence of that is seen in amendments 27, 35 and 39, which either repeat amendment 23’s requirements or remove the need for the mental health definition from the bill because, once the initial terms of mental and physical disability are removed, there is no need for such a definition.

Amendment 24 refers to the Adults with Incapacity (Scotland) Act 2000. I am sorry that it is written in the form of a double negative—it refers to the supported person being “not incapable”. It must be written that way because the act refers to adults with incapacity, not adults with capacity. There is a hangover from the legal work carried out by the Health and Community Care Committee in the first session, which I was involved in, along with the minister.

The Law Society is concerned that the wording of section 5(2) does not place any obligation on the authority to ensure that the supported person has the capability and the capacity to make a decision. The amendment will place that obligation on the authority and it will ensure a safeguard against the appointment of assistance to a supported person who lacks capacity.

The Law Society is concerned that without amendment 24, there will be a risk that the procedure under the bill may be used for people who lack capacity. Therefore, the effect of the amendment will be to add conditions that must be satisfied to determine whether assistance should be provided to the supported person.

Consequential to that, amendment 36 deals with the question of competence and simply says that if the local authority is satisfied that the supported person is not incapable, it can go ahead with the assessment. It amends a later section, which deals with assessment.

Amendments 9, 10 and 14 to 16, in the name of the minister, are helpful amendments and I welcome them.

I move amendment 23.

Michael Matheson: It feels like only yesterday that we were dealing with the Adults with Incapacity (Scotland) Bill.

I will respond to Richard Simpson’s amendments and also speak to amendments 8 to 10 and 14 to 16, which are in my name. Amendments 23 and 35 seek to remove the phrase

“because of mental disorder or difficulties in communicating due to physical disability”

from sections 5 and 15. That will widen the effect of sections 5 and 15 to allow assistance to be provided to anyone who might need it. However, that would contradict the policy intention of sections 5 and 15, which is to underpin specific types of assistance, particularly that which might be required by people who have a mental disorder or difficulty in communicating. Sections 5 and 15 are not intended to provide general assistance to all social care clients. I recommend that that focus be retained in sections 5 and 15.

Amendments 24 and 36 seek to add a detailed requisite that the local authority must be satisfied that the supported person has capacity to agree that another person should be involved in assisting them in making decisions about relevant matters and in choosing one of the options prior to identifying someone who could assist them. Although I agree with Richard Simpson’s broad aim of underpinning positive social work practice, we should bear in mind that sections 5 and 15 do not provide for a formal appointment process under which individuals might make decisions on another person’s behalf. However, I give Richard Simpson the commitment to use the powers that are provided elsewhere in the bill to provide clear and unambiguous statutory guidance to local authorities on the matter. I fully intend for that guidance to cover those important good practice principles.

Amendments 8 to 10 and 14 to 16 were lodged partly as a response to a concern that was raised by the Law Society, the Mental Welfare Commission, and the Office of the Public Guardian in their evidence to the committee. The committee’s stage 1 report asked the Government to consider their concerns, and it is in response to the committee’s request that I have lodged the amendments in the group.

Amendments 9 and 15 have exactly the same purpose and effect. Amendment 9 relates to assistance in making the choice in relation to section 3. Amendment 15 relates to assistance to complete the initial assessment of social care needs. The amendments will ensure that local authorities must have the supported person’s consent to the individual who may have been identified to assist them in making or communicating their decisions. That reinforces the position that assistance from other individuals under sections 5 and 15 will only be in relation to supported people who have capacity. The supported person must agree to any assistance in making decisions being provided by another person or persons. At the point of consent, the supported person would demonstrate that he or she has capacity. I hope that that deals with the concerns that Richard Simpson has sought to address.

The assistance provisions cannot be used where there is an appointed proxy under the Adults with Incapacity (Scotland) Act 2000. The bill currently defines such a proxy as a guardian or a
welfare attorney, and amendments 8, 10, 14 and 16 have been lodged following discussions with stakeholders who queried why the list of legal proxies was restricted to welfare attorneys and did not include continuing attorneys. I agree that it is necessary to add an explicit reference to such attorneys and amendments 8, 10, 14 and 16 seek to rectify the omission by adding the term “continuing attorney” to the list of individuals whose presence would disapply the assistance provisions.

In conclusion, I urge the committee to support amendments 8 to 10 and 14 to 16 and ask Richard Simpson to withdraw amendment 23 and not to move the other amendments in the group. If he is minded to press amendment 23 and move the other amendments, I urge the committee to reject them.

Dr Simpson: I welcome amendments 8, 10, 14 and 16 and the addition of continuing attorneys to the list of proxies, which is a logical and welcome step. Moreover, amendments 9 and 15, which seek to ensure the agreement of the supported person, are pretty important, and I welcome the fact that the Government has listened to stakeholders on this matter.

That said, although it might at first sight be clear that a supported person who does not have capacity should not be invited to decide whether they need assistance, that is in fact not clear in the bill and should be made clear. Putting it into statutory guidance would be a welcome move and, if amendment 24 is not agreed to, we will look at the suggestion to see whether it would be acceptable to those who support the amendment. At the moment, however, I will press amendment 23, because I think that we need to make this issue clear in the bill by deleting the references to “mental disorder” and “physical disability” and thereby broadening the definition. The local authority should, in initiating an assessment, reach a view as to whether the supported person requires additional assistance to make informed decisions. As that is not the same as whether they have capacity—after all, the person in question might have communication difficulties or might because of other vulnerabilities want to involve another person—I believe it entirely appropriate to broaden the term as suggested by the Law Society.

I will therefore press amendment 23 and move the other amendments.

The Convener: The question is, that amendment 23 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Milne, Nanette (North East Scotland) (Con)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)

Against
Doris, Bob (Glasgow) (SNP)
McDonald, Mark (North East Scotland) (SNP)
McLeod, Aileen (South Scotland) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Torrance, David (Kirkcaldy) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 23 disagreed to.

Amendment 8 moved—[Michael Matheson]—and agreed to.

Amendment 24 moved—[Dr Simpson].

The Convener: The question is, that amendment 24 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Milne, Nanette (North East Scotland) (Con)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)

Against
Doris, Bob (Glasgow) (SNP)
McDonald, Mark (North East Scotland) (SNP)
McLeod, Aileen (South Scotland) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Torrance, David (Kirkcaldy) (SNP)
learning disability, have incapacity, as they would be treated and protected differently. The amendment provides a protection whereby the local authority must ensure that the individual does not exert undue influence, overly restrict the person or use the funds in an inappropriate way.

Amendment 26 is a consequential amendment that sets out how a suitable person would be identified. It requires the local authority to have regard to the variety of conditions that are set out in the amendment and to be satisfied that they have been met.

Amendments 37 and 38 simply repeat the contents of amendments 25 and 26.

I move amendment 25.

**Michael Matheson**: Section 5(4) requires the authority to "take reasonable steps ... to identify persons having an interest in the care of the supported person".

Richard Simpson’s amendments 25 and 37 would change the wording to a person "who the authority considers ... suitable" and his amendments 26 and 38 provide various tests against which the person’s suitability should be measured.

Although I agree with the broad aim that Richard Simpson has in mind—namely, to underpin positive social work practice—we should bear it in mind that sections 5 and 15 do not provide a formal appointment process where individuals may make decisions on another person’s behalf. However, it would be appropriate—and again I give Richard Simpson a commitment on this—to use powers that are provided elsewhere in the bill to provide clear and unambiguous statutory guidance to local authorities on the matter. I fully intend the guidance to cover these important good practice principles.

I therefore urge Richard Simpson to withdraw amendment 25 and not to move the other amendments in the group. If he is not minded to do so, I urge the committee to reject amendments 25, 26, 37 and 38.

**Dr Simpson**: Guidance is guidance. We have had cases in Scotland in which relatives have had undue influence over vulnerable people. I believe that it is imperative that we have the provisions that I propose in the bill in order to ensure that the situation does not arise. I am fearful that we might have future scandals if that is not the case. I therefore strongly urge the committee to support the amendments in my name. I press amendment 25.

**The Convener**: The question is, that amendment 25 be agreed to. Are we agreed?

**Members**: No.

**The Convener**: There will be a division.

**For**
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Milne, Nanette (North East Scotland) (Con)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)

**Against**
Doris, Bob (Glasgow) (SNP)
McDonald, Mark (North East Scotland) (SNP)
McLeod, Aileen (South Scotland) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Torrance, David (Kirkcaldy) (SNP)

**The Convener**: The result of the division is: For 4, Against 5, Abstentions 0.

**Amendment 25 disagreed to.**

**Amendment 9 moved—[Michael Matheson]—and agreed to.**

**Amendment 26 not moved.**

**Amendment 10 moved—[Michael Matheson]—and agreed to.**

**Amendment 27 moved—[Dr Simpson].**

**The Convener**: The question is, that amendment 27 be agreed to. Are we agreed?

**Members**: No.

**The Convener**: There will be a division.

**For**
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Milne, Nanette (North East Scotland) (Con)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)

**Against**
Doris, Bob (Glasgow) (SNP)
McDonald, Mark (North East Scotland) (SNP)
McLeod, Aileen (South Scotland) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Torrance, David (Kirkcaldy) (SNP)

**The Convener**: The result of the division is: For 4, Against 5, Abstentions 0.

**Amendment 27 disagreed to.**

**Section 5, as amended, agreed to.**

**Section 6—Choice of options: adult carers**

**Amendment 11 moved—[Michael Matheson].**

**Amendment 11A not moved.**

**Amendment 11 agreed to.**

**Section 6, as amended, agreed to.**

**Section 7—Choice of options: children and family members**

**Amendment 12 moved—[Michael Matheson].**
Amendment 12A not moved.

Amendment 12 agreed to.

The Convener: Amendment 28, in the name of Mark McDonald, is grouped with amendment 29.

Mark McDonald: I will keep this pretty short and sweet. Amendments 28 and 29 follow on from a conversation that I had with Barnardo’s and relate to the United Nations Convention on the Rights of the Child, specifically article 12, which assumes that all children have the right to be heard, with no age limit applied and no definition of the age of maturity. I believe that the small textual change that amendment 28 would make would reinforce that principle within the bill. I have lodged amendment 29 as amendment 28 will have the knock-on consequence of rendering section 7(6) superfluous.

I move amendment 28.

Michael Matheson: I support Mark McDonald’s amendment 28 on a child’s involvement in decisions about self-directed support options when they directly affect a child. The Scottish ministers believe that it is right that all children should have the opportunity to express their views on how they lead their lives. The provisions should encourage professionals to give weight to the views of younger children where there is a considered need for an appropriate course of action. I believe that that is very much in keeping with the bill’s principles and that all people should be involved in decisions about their support. I therefore urge the committee to support amendments 28 and 29.

Amendment 28 agreed to.

Amendment 29 moved—[Mark McDonald]—and agreed to.

Section 7, as amended, agreed to.

Section 8—Provision of information about self-directed support

The Convener: Amendment 30, in the name of Alison McInnes, is grouped with amendment 31.

Alison McInnes (North East Scotland) (LD): Good morning, convener. I hope that amendments 30 and 31 are uncontroversial. My intention is to make it clear that the provision of information should be tailored to the individual’s needs. If there is truly to be choice, it will not be enough simply to hand out a leaflet that explains what people’s options are. The bill’s intentions are good, but I hope that the amendments will strengthen it by ensuring that local authorities take a person-centred approach to the provisions.

With regard to amendment 31, there is no doubt that, in many cases, people will benefit from having more control over their care or the care that is provided to their children. Although I hope that amendment 31 would assist everyone, I am thinking in particular of parents who are caring for a child with complex needs in a family. As we all know, those parents are involved in care 24/7, and they are often exhausted by the demands of care. Self-directed support might well provide a more responsive care package for them, but the requirements to set up recording mechanisms and budgets and to secure the services themselves would be a burden too far for some of those parents. Amendment 31 would ensure that local authorities provided the proper support to people to allow them to have a choice. I am grateful to Aberlour for working with me on drafting the amendment.

I move amendment 30.

Michael Matheson: The bill aims to ensure that people have informed choices about self-directed support and understand not only what the four options are, but which of those options will best meet their needs.

Amendment 30, in the name of Alison McInnes, would make it explicit in the text of the bill that the explanation of the options for self-directed support must relate to each person’s circumstances. Section 8(2)(a) already requires the local authority to explain the nature and the effect of each option. The nature and effect, and what each option means in practice, will vary from person to person. I consider that the point is already covered and that that level of detail is appropriate to the statutory guidance that will accompany the bill.

Access to practical information and assistance is a significant element in shaping a successful support package. Amendment 31, in the name of Alison McInnes, would place a specific example of a person who can provide a particular type of assistance in the text of the bill. Section 8(2)(c) already requires the local authority to provide a supported person with information about other organisations that can provide information and assistance, and in particular information about managing support. That is a broad provision, and I consider that such information about managing support would include advice about structuring and commissioning a support package.

In addition, section 8(2)(b) requires the local authority to give the supported person information about how to manage their support. Again, that is a broad provision that will cover all aspects of advice about managing support, including those that are specifically listed in amendment 31. Those provisions will be underpinned by statutory guidance that will provide further detail about the level of support and advice that a person should expect to receive.
Amendments 30 and 31 are therefore not necessary, and their sentiments are best covered in the statutory guidance that will accompany the bill. I do not support amendments 30 and 31, and I ask Alison McInnes not to press amendment 30 and not to move amendment 31.

_The Convener:_ I ask Alison McInnes to wind up and press or withdraw amendment 30.

_A Alison McInnes:_ I hear what the minister says, but to allow for truly informed choice I would like those assurances to be in the bill. That will ensure that local authorities have no wriggle room in interpreting how they implement the regulations. I press amendment 30.

_The Convener:_ The question is, that amendment 30 be agreed to. Are we agreed?

_Members:_ No.

_The Convener:_ There will be a division.

_For:_ McNeil, Duncan (Greenock and Inverclyde) (Lab)

_Milne, Nanette (North East Scotland) (Con)_

_Simpson, Dr Richard (Mid Scotland and Fife) (Lab)_

_Smith, Drew (Glasgow) (Lab)_

_Against:_

_Doris, Bob (Glasgow) (SNP)_

_McDonald, Mark (North East Scotland) (SNP)_

_McLeod, Aileen (South Scotland) (SNP)_

_Paterson, Gil (Clydebank and Milngavie) (SNP)_

_Torrance, David (Kirkcaldy) (SNP)_

_The Convener:_ The result of the division is: For 4, Against 5, Abstentions 0.

_Amendment 30 disagreed to._

_Amendment 31 moved—[Alison McInnes]._ 

_The Convener:_ The question is, that amendment 31 be agreed to. Are we agreed?

_Members:_ No.

_The Convener:_ There will be a division.

_For:_ McNeil, Duncan (Greenock and Inverclyde) (Lab)

_Milne, Nanette (North East Scotland) (Con)_

_Simpson, Dr Richard (Mid Scotland and Fife) (Lab)_

_Smith, Drew (Glasgow) (Lab)_

_Against:_

_Doris, Bob (Glasgow) (SNP)_

_McDonald, Mark (North East Scotland) (SNP)_

_McLeod, Aileen (South Scotland) (SNP)_

_Paterson, Gil (Clydebank and Milngavie) (SNP)_

_Torrance, David (Kirkcaldy) (SNP)_

_The Convener:_ The result of the division is: For 4, Against 5, Abstentions 0.

_Amendment 31 disagreed to._

_Section 8 agreed to._

_After section 8_

12:00

_The Convener:_ Amendment 32 is in a group on its own.

_Drew Smith:_ The purpose of amendment 32 is to include provisions for independent advocacy and, specifically, to enshrine in the bill a right of access to independent advocacy.

I should first be clear about what independent advocacy is and is not. During the stage 1 debate on the bill, the minister said that impartial information and advice are crucial. In direct response to that, the Scottish Independent Advocacy Alliance said in its briefing of 17 October:

> “While the Bill contains duties on councils to signpost people to sources of impartial advice, this would by its nature not include advocacy. Independent advocacy should never be impartial; the point of independent advocacy is that it is there to stand firmly on the side of the individual, listening to them and supporting them to make their own decisions and choices. While an advocacy organisation will support an individual to gather all relevant information advocacy will not offer advice on choices.”— [Official Report, Health and Sport Committee, 22 May 2012; c 2329.]

The reasons why that is important in the context of the bill were well explained by Pam Duncan in evidence to the committee, when she said that

> “the provisions in the bill should be as strong as those in the Mental Health (Care and Treatment) (Scotland) Act 2003 that give a right to independent advocacy. That is our view not just because the default position is choice, and, therefore, people must have support in order to make that choice, but because of the intricate situations that disabled people and other care service users experience. It is important that we make the bill strong on those aspects.”—

That is not likely to be required by everyone making use of the provisions for self-directed support outlined in the bill. I would go further and say that it would not be necessary, desirable or— to refer to the evidence that we heard— proportionate for everyone. To be clear, the purpose of amendment 32 is not to create compulsory advocacy; rather, it is simply to ensure that there is a guarantee of an opportunity if it is required by those outlined in subsection (1) of amendment 32.

I am sure that no one around the table, including the minister, disputes that advocacy has a crucial role to play in the increasing take-up of self-directed support. The question is only whether we acknowledge that a right to it is more likely to ensure that all those who need it can get it, regardless of whether advocacy services are well supported in all areas of Scotland in future. Some local authorities that have developed self-directed support have already placed a strong emphasis on advocacy, particularly when it comes to needs
assessments, but we know from evidence that others have not.

I hope that members will support amendment 32. If the Scottish Government is not minded to do so, I hope that the minister will indicate whether he would be willing to have further discussion about alternative wording that might satisfy any concerns that the Government has and address the concerns that I and, I think, many others raised at stage 1.

I move amendment 32.

Mark McDonald: I understand the intention behind amendment 32. The difficulty that I highlight is that it appears to set in train a process that may at the end be unnecessary in so far as it requires the local authority to secure the availability of independent advocacy services before determining whether advocacy services are already operating on the individual’s behalf or whether the individual wishes to make use of independent advocacy services. Subsection 2(b) of the amendment is about taking appropriate steps to ensure that the individual has the opportunity to make use of the services. It may be that they do not wish to use that opportunity or that that opportunity is not necessary, but the local authority will still have had to go through the process of securing the potential independent advocacy service. There is a little bit of cart before horse in the wording of the amendment. On that basis, I do not think that I can support it.

Bob Doris: I listened with interest to Drew Smith’s comments. I have some sympathy with what Mark McDonald said in terms of the wording of the amendment, but I also have strong sympathy with the distinction that Drew Smith draws between advocacy, and advice and information, and I think that some of his points were well made. I am not minded to support the amendment, but I am keen to hear what the minister says. I remain open minded as to how we deal with the issue.

Gil Paterson: Some good points have been made by all who have spoken. My concern touches on what Mark McDonald said in terms of the wording of the amendment, but I also have strong sympathy with the distinction that Drew Smith draws between advocacy, and advice and information, and I think that some of his points were well made. I am not minded to support the amendment, but I am keen to hear what the minister says. I remain open minded as to how we deal with the issue.

Michael Matheson: I am clear that independent advocacy services have a vital role to play in the delivery of the bill and that independent advocacy plays a vital role in helping those who need support to express their views, but I am not convinced that a general right to advocacy should be provided in the bill.

As I said at stage 1, people should have access to a range of support services, but not everyone will want or require an independent advocate in every instance. That view was shared by this committee in its stage 1 report.

It would be inappropriate for the bill to privilege one type of support when many people will choose to access support from other sources, such as carers organisations and user-led support organisations.

It is worth highlighting that a large group of people will have a right to advocacy as part of their social care assessment under the Mental Health (Care and Treatment) (Scotland) Act 2003, which provides a right to advocacy for every person—adult and child—with a mental disorder, as defined under section 238 of the act, which includes people with learning disabilities and mental ill health.

It should reassure the committee to know that the statutory and best-practice guidance that will accompany the bill will advise social work professionals to consider whether advocacy is required each time that they have a discussion with or assess an individual.

I would be happy to have further discussions with Drew Smith on the matter prior to stage 3.
However, I ask Drew Smith to withdraw amendment 32. If the amendment is pressed to a vote, I ask the committee to reject it.

The Convener: I ask Drew Smith to wind up and say whether he will press or withdraw amendment 32.

Drew Smith: I spoke at some length when moving amendment 32, so I hope that I will now be a bit quicker.

To respond to Mark McDonald’s and Gil Paterson’s points, it is quite clear that what we are doing is providing an opportunity, not a system whereby everyone would have to have an advocacy service or an advocate appointed in order for them to demonstrate that they did not need one. That would not be a sensible way to proceed and that is not what amendment 32 proposes.

I am grateful for others’ comments. We took quite significant evidence on this issue at stage 1 and there has been considerable debate about it. I think that we are all clear, minister, that not everyone requires advocacy, but advocacy is different from some of the other kinds of support that you mentioned. To my mind, the bill is all about choice. I said at stage 1 that in order for us to achieve what the bill intends, the choices that people make must be meaningful. For that to be the case, people’s voices need to be heard, which is a separate issue from that of the other support that individuals might seek.

An independent advocate has the crucial role of ensuring that people’s voices are heard. By not including in the bill a right to independent advocacy, we run the risk of creating a situation whereby a person in any local authority in Scotland who required an independent advocate in order to exercise meaningfully the choice that the Parliament seeks to give them would be unable to access that advocate because we had failed to provide the right to do so.

In light of the minister’s comments that he is willing to have some further discussion about the issue before stage 3, however, I am happy to withdraw amendment 32.

Amendment 32, by agreement, withdrawn.

Sections 9 and 10 agreed to.

Section 11—Further choice of options on material change of circumstances

The Convener: Amendment 33, in the name of Alison McInnes, is in a group on its own.

Alison McInnes: I hope that amendment 33 is self-explanatory. It is not made clear in the bill that opting for self-directed support is a reversible choice. For it to be a proper choice, people must be able to say “I’ve tried this, but it’s not working for me.” So, it should not be about only a change of circumstances, but about what is best for the person. I am concerned that, as it stands, the reference in section 11(1)(c) to “material change” could be interpreted very narrowly. Amendment 33 would provide greater clarity.

I move amendment 33.

Gil Paterson: One aspect of the need for the bill is that assessments in some parts of the system have not been good. However, it is implicit in what the Government is doing through the bill that assessments will be done regularly, and that should be picked up. The suggestion that the bill will in some way fix in place a person’s choice is patently wrong, because people will be able to make their choice within a rolling programme. I cannot therefore support amendment 33. I agree with what Alison McInnes said about the issue, but I think that it is implicit in what the bill is trying to do that choices will be readily available and that councils will engage with individuals, monitor what happens to them and make any required changes, which will be based on what the individual thinks is good for them.

Dr Simpson: Section 11(2) states:

“The authority must offer the person another opportunity to choose one of the options”.

Section 11 is about further choice and material change of circumstances. I am therefore not sure that Alison McInnes’s amendment 33 would add further appropriate layers. However, before I come to a conclusion on the matter, I want to hear what the minister has to say on it.

Michael Matheson: The bill already provides significant opportunity for a person to change options if necessary. Section 11 will require local authorities to offer individuals the opportunity to change their choice of options when they become aware of a material change in circumstances.

When a person decides that the selected option is not appropriate to their circumstances, they will have to make the local authority aware of the change. In that situation, the bill already provides for the opportunity for change. Section 11(3) provides that the authority and the person may agree that the opportunity to choose another option can be taken up, even if there has not been a material change of circumstances.

I do not believe that it would be appropriate to oblige the authority to offer another choice for reasons that were determined solely by the supported person. When there is not a material change of circumstances, the correct balance is that the authority and the supported person agree to a review.
Nevertheless, we need to be clear that when a person’s support does not meet the outcomes that were agreed in their support plan, the support must be reviewed and other options must be considered. The statutory guidance that will accompany the bill will make that clear.

Therefore, I invite Alison McInnes to withdraw amendment 33.

12:15

Alison McInnes: I appreciate Gil Paterson’s comments. He said that people’s ability to change their choice “is implicit in ... the bill”.

It is, indeed. What I am trying to do is to make it absolutely explicit.

The minister mentioned that a “material change” would be the trigger for reconsideration of a case. I am trying to have it defined that one such material change would be the individual’s saying that their chosen option just does not work for them, even though they had thought that it would. The local authority might well say that their circumstances have not really changed, so I suppose that I am proposing a belt-and-braces approach.

I will press amendment 33.

The Convener: The question is, that amendment 33 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

Against

Doris, Bob (Glasgow) (SNP)
McDonald, Mark (North East Scotland) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Torrance, David (Kirkcaldy) (SNP)

Abstentions

Milne, Nanette (North East Scotland) (Con)

The Convener: The result of the division is: For 0, Against 8, Abstentions 1.

Amendment 33 disagreed to.

Alison McInnes: Might I excuse myself and return to the Justice Committee?

The Convener: That is fine—you are spared.

Section 11 agreed to.
be modified. However, I am comfortable enough to support the Government's amendments at this point in time, but I want to take further advice before stage 3 to determine whether section 12, as it is currently written, is appropriate.

**Michael Matheson:** Our amendments reflect the Subordinate Legislation Committee's recommendation that we ensure that there will be full public consultation prior to any changes. Changes might be required in the future so that we can adapt to innovation in social work practice. During the past 15 to 20 years, social care provision has changed dramatically, so it is appropriate to have in the legislation provision, with the appropriate checks and balances, that will allow it to be modified to reflect innovation.

**Amendment 13 agreed to.**

**Section 12, as amended, agreed to.**

**Section 13—Power to make further provision about direct payments**

**The Convener:** Amendment 34, in the name of Jackie Baillie, is grouped with amendments 43 and 17A.

**Jackie Baillie (Dumbarton) (Lab):** Thank you, convener. I was going to wish you good morning, but we seem to have slipped into the afternoon.

I gather that amendment 34 has excited a degree of interest, and rightly so. Indeed, the committee spent some time considering the issue, which is about whether it is appropriate to register or regulate personal assistants. It is important to say at the outset that I accept that many disability organisations and disabled people do not want regulation. They prefer people not be viewed as being vulnerable or as needing protection. I understand all that. They would prefer that people be given the tools that will allow them to make the right choices. Again, I agree with that.

I also recognise that a disabled person might want the right to employ a personal assistant because that is the way for them to remain in control of much more flexible support. I accept that there is a view that the focus should be on training the disabled person to become a good employer and to recruit safely, rather than their having to rely on legislation.

Although I recognise and support those views, it is Parliament's job to weigh up potential risks. I have received correspondence from parents that has caused me to stop and reflect a little more on the question, as I am asking the committee and the minister to do. Those parents were worried about the safety of their child. He is a vulnerable adult who lives independent of his parents, but he has complex needs. Naturally, his parents do not want him to be taken advantage of in any way or under any circumstances—I am sure that we all agree with that—but they feel that the reassurance of registration and regulation would be important for their peace of mind and their son's wellbeing.

We need to recognise that there have been instances of abuse that have not been confined to residential homes and which have shocked us. People have absolutely abused their positions of trust, and the question for all of us is how we can guard against that. I do not believe that only the process of registering or regulating personal assistants will be a panacea, but it will require us to give much more serious thought to how we can achieve a balance between the needs of disabled people who rightly want their independence and want to decide how to employ their personal assistants, with the needs of more vulnerable people. It is incumbent on us to strike that balance.

I am struck by the fact that, when those who are responsible for regulation and registration appeared before the committee, there was a divided view on how best to proceed. That underlines the genuine quandary that the committee and the Government face. The Coalition of Care and Support Providers in Scotland argued for a basic level of accreditation and for people being the subject of protection of vulnerable groups checks. The Scottish Social Services Council argued for registration, minimum induction training and distinguishing complex care and care for particularly vulnerable service users so that that category could be regulated without unfairly limiting personal choice for everybody else.

I recognise that the minister and the committee do not want the overprofessionalisation of personal assistants. I share that view, but the committee considered that more could be done to reduce risk and thought that there is merit in the recommendations from the Scottish Social Services Council. Amendment 34 would not put that in the bill and does not suggest that that needs to be done now. To put things quite simply, it would give a power to ministers to make regulations at some point in the future. That does not mean that they have to do so, but that they could if they considered that to be necessary. On balance, that is an effective safety net for the future.

Amendment 43 is related to amendment 34. It seeks that the regulations be subject to affirmative procedure rather than to negative procedure. That reflects the importance of the issue and the need to engage in more discussion and scrutiny should such regulations come before Parliament. I recognise that the Subordinate Legislation Committee believes that use of the negative procedure in section 13, which deals with
secondary legislation, is appropriate. However, we would be adding something quite substantial, which is why I have gone for affirmative procedure.

Amendment 17A is, of course, a technical amendment that reflects the minister’s consideration of the Subordinate Legislation Committee’s recommendation.

I move amendment 34.

**Drew Smith:** I will be brief.

I associate myself with what Jackie Baillie has said about the desire of many people who will be affected by the bill for independent living, and recognise the sensitivities that the amendment raises. However, rather than our thinking that we have resolved the matter at stage 2, Jackie Baillie is probably right to highlight the fact that the effect of what is proposed would be to provide ministers with the power and the option to think about registration and regulation in the future, should that be deemed necessary. I do not think that the issue was resolved in the evidence that we heard; quite significant questions remain.

I hope that a future registration, regulation or other scheme would support people who are employed as personal assistants. In thinking through registration issues, we often open the door to training and other opportunities. We may not want to professionalise the workforce, but we have a responsibility in any labour situation to consider both sides and to ensure that people are properly supported, whether they are the procurer or provider of the service.

12:30

**Nanette Milne:** As Jackie Baillie has suggested, we tread a fine line here in seeking to regulate in respect of people who really do not want a fully qualified registered assistant. Nevertheless, Parliament needs to protect vulnerable people and, where we can and as far as possible, we want to prevent their being put in vulnerable positions and being abused. As a result, I agree with amendment 34—in particular, given that the measure will be set out in regulations and subject to affirmative procedure.

**Bob Doris:** The committee has been finely balanced on the matter, and I do not think that I have reached the point of agreeing that the power that is set out in amendment 34 should be extended. I am slightly nervous that, with this kind of power, there might be an expectation from certain groups about its use and we are not yet clear about how it might be taken forward.

Members have also talked about professionalising the at-home workforce and personal assistants. We should be careful about how we use the word “professionalisation”; after all, some of those people are deeply professional and caring individuals. However, I want to associate myself with the comments that have been made about supporting care staff. I do not think that that needs to happen through regulation, but we certainly need to look at how we might provide more support in such situations.

**Gil Paterson:** I do not think that the points that I want to make have been covered yet.

I am anxious about the issue. On one hand, we are seeking to provide more opportunities for family members. A whole lot of things are going through my mind about that; indeed, I have already mentioned the issue.

Vulnerable people come in many guises. I do not want to play to the television, but I need only highlight the Jimmy Savile case. Who would ever have imagined that such things were happening in front of our eyes to 14-year-old children on television? As heavily involved as I am in these matters, I simply do not think that you can regulate for them or put anything in place that covers all the issues.

I am also worried about the issue. Everyone might do in some way stigmatise the unregulated personal assistants who are already doing a good job. I am caught between two stools: I want to protect not only vulnerable people but ordinary family members who might already be doing the work of personal assistants very well and in a very professional way. I worry about putting in place something that might professionalise part of what we are seeking to provide. I want to hear what the minister has to say.

**Michael Matheson:** Amendment 34 seeks to introduce a regulation-making power to enable ministers to establish a scheme to regulate the quality of support that is provided by personal assistants who are employed through direct payments. One of the key strengths of the self-directed support mechanism is the flexibility that it affords individuals, and a key factor of that flexibility is the workforce’s response to it.

It is also worth keeping it in mind that it is not compulsory for anyone to choose a direct payment and that there are three other options they can choose. At stage 1, witnesses from groups representing disabled people, including the independent living in Scotland project and the Scottish Personal Assistant Employers Network, explained in personal terms the vital importance of people being able to choose their own employees and taking responsibility for their training. Indeed, the committee will recall how Pam Duncan from the independent living in Scotland project explained that what is important to her is not that her PA has been on a food hygiene course but
that they know how to blow-dry and straighten her hair.

I am not convinced of the need for a regulation-making power that would, if it was used, limit flexibility, especially given that there are already proportionate safeguards in place to protect people who employ or receive support from a personal assistant.

The protecting vulnerable groups scheme strikes a balance between proportionate protection and robust regulation. A personal employer who chooses to employ a PA who is a member of the PVG scheme is entitled to see that person's scheme membership statement to confirm that they are not barred from doing regulated work with adults or children.

Social workers have significant adult protection duties, including a responsibility to ensure that the personal employer understands the importance of PVG scheme membership, the rules on seeking and sharing information and the risks of employing an unsuitable individual.

Social workers also have a critical role in ensuring that employers of a PA fulfill their responsibilities in training their PAs in the skills that are necessary to meet the needs of the supported person. In complying with their duty of care, social workers must use their professional judgment when they sign off a direct payment package that involves a PA. If they do not think that the PA can provide the services that are necessary to meet the assessed needs of the supported person in a safe way, they must not agree to that support package.

As I mentioned in my response to the Health and Sport Committee’s stage 1 report, Scottish Government officials are working closely with their partners, including the SSSC, to improve the training and awareness of PAs through the SDS workforce action plan. The Scottish Personal Assistant Employers Network and a number of other local organisations are already supporting employers in recruitment and training.

The Scottish Government is supporting the self-directed support in Scotland initiative, in partnership with the Association of Directors of Social Work, to map the range and variation in information and support that is provided on self-directed support throughout Scotland. The information from that exercise will inform further activity to ensure that there is comprehensive national advice on PA employment, including information about SSSC codes of practice.

In striking a balance between the need for proportionate safeguards and the right of individuals to make decisions, I do not think that it is necessary or desirable to include a regulation-making power in the bill that is to establish a scheme for registration of PAs. Amendments 43 and 17A would make all regulations under section 13 subject to affirmative procedure and to a statutory duty to consult. There is perhaps some merit in applying those requirements to regulations to establish a regulation scheme. However, I have said that I do not support amendment 34. Even if that amendment is successful, amendments 43 and 17A go too far in that they apply to the whole of section 13, even where it is used to make other regulations about direct payments.

The Subordinate Legislation Committee was satisfied with the procedures and the consultation powers for the existing provisions in the bill. I therefore do not support the amendments in group 10, so I invite Jackie Baillie to withdraw amendment 34 and not to move amendments 43 and 17A.

Jackie Baillie: I intend to press amendment 34 and to move amendments 43 and 17A, and I will address the points that have been made. I say specifically to Bob Doris that legislation by the current Government and previous Governments is littered with powers that have not been used, so I do not think that the amendments would create an inappropriate expectation. The amendments are more about safeguarding those who are most vulnerable.

I say to the minister that I recognise and support the need for flexibility. We are trying not to have a scheme that covers absolutely everybody, but to have one that is proportionate. In his comments, the minister almost appeared to suggest that social workers themselves would assume a lot of those responsibilities. I do not think that that is reasonable, given their other duties, and in practical terms it is unlikely that that would be consistently applied.

In terms of subordinate legislation, I agree absolutely that section 13 is entirely appropriate for the current provisions in the bill. What I will be adding, if amendment 34 is agreed to, is a substantive new power for the minister to make regulations. I think that in those circumstances, even he would agree that affirmative procedure would be suitable.

This is all about striking a balance; I have tried at least to provide a proportionate response to some of the likely risks. Disabled people’s view that they should be able to make their own choices about personal assistants is absolutely legitimate but, equally, it is our responsibility to safeguard those who may be particularly vulnerable. I rest on the fact that the advice to the committee was from the Scottish Social Services Council—the Government’s own agency—and I urge the committee to listen very carefully to it.
The Convener: The question is, that amendment 34 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Milne, Nanette (North East Scotland) (Con)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)

Against
Doris, Bob (Glasgow) (SNP)
McDonald, Mark (North East Scotland) (SNP)
McLeod, Aileen (South Scotland) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Torrance, David (Kirkcaldy) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 34 disagreed to.

Section 13 agreed to.

Section 14 agreed to.

Section 15—Assessments under section 12A of 1968 Act: assistance

Amendment 35 not moved.

Amendment 14 moved—[Michael Matheson]—and agreed to.

Amendments 36 and 37 not moved.

Amendment 15 moved—[Michael Matheson]—and agreed to.

Amendment 38 not moved.

Amendment 16 moved—[Michael Matheson]—and agreed to.

Amendment 39 not moved.

Section 15, as amended, agreed to.

The Convener: I am conscious of the time so I am going to press on.

Dr Simpson: You are going to press on?

The Convener: I think that Bob Doris thinks that we should press on.

Bob Doris: We had previously said that 1 o’clock would be a good time to draw a line under things. The question is whether we can dispose of the next section by that time.

The Convener: I do not want to constrain the debate in any way, but committee members have been here for four hours hearing evidence from the cabinet secretary and participating in this process. We have time for this business next week, as well. Members may want to press on, but I cannot guarantee that we will finish at 1 o’clock.

Bob Doris: I think that we should hold off until next week, in that case.

Michael Matheson: I may have helpful comments for the two members who are moving the next set of amendments, which should help to move things on.

Jackie Baillie: Ooh.

The Convener: We are tempted. However, it is important for the committee to know that I cannot guarantee that we will not still be here at 1 o’clock. Some of us may have been here for five hours by that point. Shall we press on?

Bob Doris: Yes, let us press on. We are tantalised by what the minister has said.

Section 16—Power to charge for services provided under section 2

12:45

The Convener: Amendment 40, in the name of Jackie Baillie, is in a group on its own.

Jackie Baillie: Having packed up my stuff, I will rapidly unpack it in anticipation that the minister is going to say something interesting. I am very pleased to move amendment 40, and I hope that the committee—and, indeed, the minister—might be minded to accept it.

Section 16 introduces the prospect of charging carers for the services that they receive. I think that we should have regard to the unanimous view expressed to MSPs in the submission from all the carers umbrella groups in Scotland, which said:

“The proposed Bill will give local authorities the power to charge carers for the services they are assessed as needing. We strongly oppose this. As key partners in care, and the largest contributors of care, it would be wholly unjust to charge carers for the cost of support which helps them to carry out their caring role.”

It might be helpful to recall that the Community Care and Health (Scotland) Act 2002—which I am sure the minister was involved with—established the principle that carers are in fact care providers and therefore require resources, in much the same way as health and social care workers do, to enable them to fulfil their caring role. In some instances, that might mean training or respite, but usually it is an incredibly small amount of money to give the carers the tools to do the job or some light relief to sustain them in their caring. There is a distinction, therefore, between the support provided to carers and the support provided to those who are cared for.

Charging carers is very much contradictory to the principle enshrined in the 2002 legislation, but it is also contradictory to the approach taken by this Parliament. The committee’s stage 1 report recognised the vital contribution of carers. The
Scottish Government regularly cites how much carers save the state by making the contribution that they make. It is clear that we value carers, but we need to do more than simply say that. If we support carers, we help them to continue caring. That benefits us all, because it benefits the person cared for and it can help to prevent a crisis by enabling the carer to carry on doing what they are doing.

On that point, and in anticipation of the minister's comments, I move amendment 40.

Michael Matheson: I note the arguments that Jackie Baillie has put forward in moving amendment 40.

Section 16 is largely a technical provision to provide consistency in the legislative powers on charging. Some argue that carers are providers in their own right and so charges should never be applied to any support that they might receive. I can recognise that there is merit in that view. However, charging is a complex area—as I am sure Jackie Baillie is aware—so we need to be careful of any unintended consequence of the proposed amendment. We need to give detailed thought to the interaction between services being provided to the cared-for person and services provided to the carer. I would be happy to meet Jackie Baillie in the time permitted prior to stage 3 in order that we can discuss the possible consequences that I have outlined and consider whether further steps could be taken in this area.

In conclusion, I ask Jackie Baillie to withdraw amendment 40 and to meet with us prior to stage 3 so that we can discuss the issue further.

Jackie Baillie: While I do not accept that the amendment would have any unintended consequences, in the spirit of co-operation I am happy to meet the minister in the time permitted prior to stage 3 in order that we can discuss the possible consequences that I have outlined and consider whether further steps could be taken in this area.

On that point, and in anticipation of the minister's comments, I move amendment 40.

Michael Matheson: I note the arguments that Jackie Baillie has put forward in moving amendment 40.

Section 16 is largely a technical provision to provide consistency in the legislative powers on charging. Some argue that carers are providers in their own right and so charges should never be applied to any support that they might receive. I can recognise that there is merit in that view. However, charging is a complex area—as I am sure Jackie Baillie is aware—so we need to be careful of any unintended consequence of the proposed amendment. We need to give detailed thought to the interaction between services being provided to the cared-for person and services provided to the carer. I would be happy to meet Jackie Baillie in the time permitted prior to stage 3 in order that we can discuss the possible consequences that I have outlined and consider whether further steps could be taken in this area.

In conclusion, I ask Jackie Baillie to withdraw amendment 40 and to meet with us prior to stage 3 so that we can discuss the issue further.

Jackie Baillie: While I do not accept that the amendment would have any unintended consequences, in the spirit of co-operation I am happy to withdraw the amendment and I look forward to my discussions with the minister.

Amendment 40, by agreement, withdrawn.

The Convener: That was, I hope, worth waiting for.

Section 16 agreed to.

Section 17—Promotion of options for self-directed support

The Convener: We move to amendment 41.

Nanette Milne: Amendment 41 is a probing amendment that is based on representations from the many organisations that make up Health and Social Care Alliance Scotland. The alliance feels that it is important that information on accessing self-directed support is offered to people who may be entitled to it at the very earliest opportunity, so that they can make informed decisions about their future support needs. For hospital in-patients, that should be when they are discharged home from secondary healthcare services.

The alliance feels that if local authorities communicated with health services in their area at that time, to identify people who may require information about SDS after a spell in hospital, that would lay the groundwork for effective collaboration between health and social services in seeking positive health and social care outcomes for long-term conditions and for people with disabilities.

Clearly, such co-operation will be essential if the integration of health and social care is to be effective. I would be interested to hear the minister's views on amendment 41 vis-à-vis the forthcoming legislation on the integration of health and social care before deciding whether to press or withdraw the amendment.

I move amendment 41.

Dr Simpson: My one concern is that, while it is appropriate to instigate a broad discussion, most services are now moving towards having an acute rehabilitative phase before an assessment of long-term needs is made, so I am not sure that amendment 41 is phrased in quite the way that I would want it to be.

Michael Matheson: The promotion of the availability of self-directed support under section 17 is broad and aims to ensure that local authorities actively publicise information so that people who may need support and people who work in local authorities are aware of the relevance of self-directed support to eligible people.

Amendment 41 proposes that local authorities must take reasonable steps to promote the availability of self-directed support options to—among others—people who are being discharged from hospital. I agree that, where a person who is discharged from hospital is eligible for support under the 1968 act, they should have the opportunity to choose one of the self-directed support options, and the bill already provides for that. Eligible people, including those who are discharged from hospital, must be given the options that are available under the bill. As I have stated in relation to other amendments, the statutory guidance will make that clear.

If amendment 41 is pressed to a vote, I ask that the committee rejects it.
Nanette Milne: Having heard the minister’s views, I will press amendment 41.

The Convener: The question is, that amendment 41 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Milne, Nanette (North East Scotland) (Con)

Against
Doris, Bob (Glasgow) (SNP)
McDonald, Mark (North East Scotland) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Torrance, David (Kirkcaldy) (SNP)

The Convener: The result of the division is: For 1, Against 8, Abstentions 0.

Amendment 41 disagreed to.

Nanette Milne: Amendment 42 is supported by the Health and Social Care Alliance Scotland and the Coalition of Care and Support Providers in Scotland. For individuals to have a real choice of social care services, there must be a range of high-quality personalised support services available to choose from. If nothing is done positively to promote and sustain the availability of a range of providers, it is likely that, in time, there will remain only a small number of providers, which are likely to be the large organisations that have sufficient economies of scale to survive.

Effectively, that would result in no real choice for service users. Amendment 42 seeks to put a duty on local authorities to consider whether any steps could reasonably be taken to promote and sustain a diverse market for social care.

I appreciate the vital importance of ensuring that people have a range of services from which to choose. The bill is about meeting people’s expectations that they will have choice and control over social care support that they receive. That choice and control are undermined if a person can choose between only a few providers in their area.

For the bill to have a meaningful impact, people must have choice within the market of service providers. However, I do not support Nanette Milne’s amendment. I have concerns about local authorities taking steps to sustain a diverse market. We would have to give full consideration to the possible consequences of that—in particular, how it would interact with existing procurement legislation.

However, I support the principle behind the remainder of Nanette Milne’s amendment. The way that local authorities procure and commission services affects everyone who receives social care services. Local commissioning strategies should be outcome focused and long term. They should set out how current provision needs to change to meet future needs.

The statutory guidance that will follow the bill will address in detail the role of local authorities in commissioning services and will help to ensure that the need to offer choice to people within the marketplace is embedded in local commissioning strategies.

In light of that, I would be happy to work with Nanette Milne with a view to drafting a workable amendment for stage 3 that would encourage local authorities to facilitate diversity. Therefore, I invite her to withdraw amendment 42.

Nanette Milne: In view of what the minister said, I am happy to withdraw the amendment. Clearly, he accepts the principle.

Amendment 42, by agreement, withdrawn.

Section 17 agreed to.

Sections 18 and 19 agreed to.

Michael Matheson: Amendment 42 places a duty on local authorities to consider whether any steps could reasonably be taken to promote and sustain a diverse market for social care.

Amendment 43 not moved.

Amendment 17 moved—[Michael Matheson].

Amendment 17A not moved.

Amendment 17 agreed to.

Section 20, as amended, agreed to.
Section 21—Power to modify application of Act

Amendments 18 and 19 moved—[Michael Matheson]—and agreed to.

Section 21, as amended, agreed to.

Section 22—Interpretation

Amendment 20 moved—[Michael Matheson]—and agreed to.

Section 22, as amended, agreed to.

Sections 23 to 27 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill. I thank members for their participation and patience, which enabled such good progress.

Members should note that the bill will be reprinted as amended and will be available from tomorrow morning. Parliament has not yet determined when stage 3 will take place, but members can now lodge stage 3 amendments with the legislation team at any time. Members will be informed of the deadline for lodging amendments once it has been determined.

I thank the minister, his team and all the others who participated.

Meeting closed at 13:00.
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SP Bill 10A

Session 4 (2012)
Amendments to the Bill since the previous version are indicated by sideling in the right margin. Wherever possible, provisions that were in the Bill as introduced retain the original numbering.

Social Care (Self-directed Support) (Scotland) Bill

[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to enable local authorities to provide support to certain carers; to make provision about the way in which certain social care services are provided by local authorities; and for connected purposes.

General principles

1 General principles

(1) A local authority must have regard to the principles in subsections (2) to (4) in carrying out its functions under—

(a) Part 2 of the 1968 Act (other than the provisions mentioned in subsection (5)),

(b) sections 22 to 24 of the 1995 Act,

(c) this Act.

(2) A person must have as much involvement as the person wishes in relation to—

(a) the assessment of the person’s needs for support or services, and

(b) the provision of support or services for the person.

(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.

(4) A local authority must collaborate with a person in relation to—

(a) the assessment of the person’s needs for support or services, and

(b) the provision of support or services for the person.

(5) The provisions are—

(a) sections 27 to 27B (which make provision in relation to the supervision and care of persons put on probation or released from prison etc.),
(b) section 28 (local authority’s power to arrange burial or cremation in certain circumstances),
(c) section 29 (local authority’s power to make payments to parents etc. in respect of expenses for visiting certain persons and attending funerals).

(6) In this section—
(a) references to the assessment of a person’s needs are references to assessment under section 12A of the 1968 Act or, as the case may be, section 12AA of that Act or section 23(3) or 24 of the 1995 Act,
(b) references to the provision of support for a person are references to the provision of support under section 2(4),
(c) references to the provision of services for a person are references to the provision of community care services under Part 2 of the 1968 Act or, as the case may be, the provision of services under section 22 of the 1995 Act.

1A Further general principles applicable to this Act

In carrying out its functions under this Act in relation to a person who is to choose (or has chosen) one of the options for self-directed support, a local authority must have regard to the following general principles—

(a) that the dignity of the person is to be respected,
(b) that the person’s desire to participate in the life of the community in which the person lives is to be respected.

Adult carers

2 Support for adult carers

(1) This section applies where—
(a) a local authority carries out an assessment under section 12AA of the 1968 Act of an adult’s ability to provide, or continue to provide, care for another person, or
(b) a local authority carries out an assessment under section 24 of the 1995 Act of an adult’s ability to provide, or continue to provide, care for a child.

(2) The authority must—
(a) consider the assessment, and
(b) decide whether the adult has needs in relation to the care which the adult provides, or intends to provide, to the person cared for.

(3) If the authority decides that the adult has those needs, the authority must consider whether the needs could be satisfied (wholly or partly) by the provision to the adult of any support.

(4) If the authority decides in pursuance of subsection (3) that an adult has needs which could be satisfied by the provision of any support, it may provide, or secure the provision of, support to the adult.

(5) In this section—
“person cared for” means the person in relation to whom the adult’s ability to provide or continue to provide care is assessed as mentioned in subsection (1),

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“support” includes any form of services or assistance which will help the adult to provide, or continue to provide, care for the person cared for.

Options for self-directed support

(1) The options for self-directed support are—

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

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

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

Option 4 The selection by the supported person of Option 1, 2 or 3 for each type of support and the payment by the local authority of the relevant amount in respect of the cost of the support.

(2) In this section—

“direct payment” means a payment of the relevant amount by a local authority to a supported person for the purpose of enabling the person to arrange for the provision of support by any person (including the authority),

“relevant amount” means the amount that the local authority considers is a reasonable estimate of the cost of securing the provision of support for the supported person,

“supported person” and “support” are to be construed in accordance with section 4 or, as the case may be, section 6 or 7.

Choice of options: adults

(1) This section applies where a local authority decides under section 12A(1)(b) of the 1968 Act that the needs of an adult (the “supported person”) call for the provision of community care services (“support”).

(2) The authority must give the supported person the opportunity to choose one of the options for self-directed support unless the authority considers that the supported person is ineligible to receive direct payments.

(3) If the authority considers that the supported person is ineligible to receive direct payments the authority must—

(a) notify the supported person of—

(i) the reason why the authority considers that to be the case, and
(ii) the circumstances in which the authority must under section 10 review the question of whether the supported person is ineligible to receive direct payments, and

(b) give the supported person the opportunity to choose one of the options for self-directed support other than—

(i) Option 1, and

(ii) so far as relating to that option, Option 4.

(3A) In carrying out the duties imposed by subsections (2) and (3)(b), the authority must inform the supported person of—

(a) the amount that is the relevant amount for each of the options for self-directed support from which the authority is giving the person the opportunity to choose, and

(b) the period to which the amount relates.

(4) If the supported person does not make a choice in pursuance of subsection (2) or (3)(b) the supported person is deemed to have chosen Option 3.

(5) The authority must give the notification required by subsection (3)(a) in writing and, if necessary, in such other form as is appropriate to the needs of the person to whom it is given.

(6) For the purposes of this section, a person is ineligible to receive direct payments if the person is of a description specified in regulations under section 13(2)(a).

5 Choice of options under section 4: assistance

(1) This section applies where—

(a) a local authority decides under section 12A(1)(b) of the 1968 Act that the needs of an adult (the “supported person”) call for the provision of community care services,

(b) it appears to the authority that, because of mental disorder or difficulties in communicating due to physical disability, the supported person would benefit from receiving assistance from another person in relation to making decisions about relevant matters, and

(c) the conditions in subsection (2) are satisfied.

(2) The conditions are—

(a) there is no guardian, continuing attorney or welfare attorney with powers in relation to the relevant matters, and

(b) an intervention order has not been granted in relation to the relevant matters.

(3) The authority must take reasonable steps to enable the supported person to make a choice in pursuance of section 4(2) or (3)(b).

(4) The authority must take reasonable steps—

(a) to identify persons having an interest in the care of the supported person, and

(b) if the supported person agrees, to involve them in assisting the supported person in making decisions about relevant matters.

(5) In this section—
“the 2000 Act” means the Adults with Incapacity (Scotland) Act 2000 (asp 4),

“continuing attorney”—

(a) means a continuing attorney within the meaning of section 15 of the 2000 Act, and

(b) includes a person granted, under a contract, grant or appointment governed by the law of any country, powers (however expressed), relating to the granter’s property or financial affairs and having continuing effect despite the granter’s incapacity,

“guardian”—

(a) means a guardian appointed under the 2000 Act, and

(b) includes a guardian (however called) appointed under the law of any country to, or entitled under the law of any country to act for, an adult during the adult’s incapacity, if the guardianship is recognised under the law of Scotland,

“intervention order” is to be construed in accordance with section 53 of the 2000 Act,

“mental disorder” has the meaning given by section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13),

“relevant matters” means—

(a) the choice in pursuance of section 4(2) or (3)(b) of one of the options for self-directed support,

(b) anything relating to the planning of the care or support of the supported person,

(c) anything relating to support provided (or to be provided) to the supported person in pursuance of an option for self-directed support,

“welfare attorney”—

(a) means a welfare attorney within the meaning of section 16 of the 2000 Act, and

(b) includes a person granted, under a contract, grant or appointment governed by the law of any country, powers (however expressed) relating to the granter’s personal welfare and having effect during the granter’s incapacity.

6 Choice of options: adult carers

(1) This section applies where a local authority is to provide, or secure the provision of, support for an adult (the “supported person”) under section 2(4).

(2) The authority must give the supported person the opportunity to choose one of the options for self-directed support unless the authority considers that the supported person is ineligible to receive direct payments.

(3) If the authority considers that the supported person is ineligible to receive direct payments the authority must—

(a) notify the supported person of—

(i) the reason why the authority considers that to be the case, and
Social Care (Self-directed Support) (Scotland) Bill

(ii) the circumstances in which the authority must under section 10 review the question of whether the supported person is ineligible to receive direct payments, and

(b) give the supported person the opportunity to choose one of the options for self-directed support other than—

(i) Option 1, and

(ii) so far as relating to that option, Option 4.

(3A) In carrying out the duties imposed by subsections (2) and (3)(b), the authority must inform the supported person of—

(a) the amount that is the relevant amount for each of the options for self-directed support from which the authority is giving the person the opportunity to choose, and

(b) the period to which the amount relates.

(4) If the supported person does not make a choice in pursuance of subsection (2) or (3)(b) the supported person is deemed to have chosen Option 3.

(5) The authority must give the notification required by subsection (3)(a) in writing and, if necessary, in such other form as is appropriate to the needs of the person to whom it is given.

7 Choice of options: children and family members

(1) This section applies where a local authority is to provide services under section 22 of the 1995 Act (“support”) to a child or a member of a child’s family.

(2) The authority must give the supported person the opportunity to choose one of the options for self-directed support unless the authority considers that the supported person is ineligible to receive direct payments.

(3) If the authority considers that the supported person is ineligible to receive direct payments the authority must—

(a) notify the supported person of—

(i) the reason why the authority considers that to be the case, and

(ii) the circumstances in which the authority must under section 10 review the question of whether the supported person is ineligible to receive direct payments, and

(b) give the supported person the opportunity to choose one of the options for self-directed support other than—

(i) Option 1, and

(ii) so far as relating to that option, Option 4.

(3A) In carrying out the duties imposed by subsections (2) and (3)(b), the authority must inform the supported person of—

(a) the amount that is the relevant amount for each of the options for self-directed support from which the authority is giving the person the opportunity to choose, and

(b) the period to which the amount relates.
(4) Subsection (5) applies where the supported person is an appropriate person in relation to the child.

(5) Before making a choice in pursuance of subsection (2) or (3)(b), the supported person must, so far as practicable and taking account of the maturity of the child—

(a) give the child an opportunity to indicate whether the child wishes to express the child’s views,

(b) if the child wishes to do so, give the child an opportunity to express them, and

(c) have regard to any views expressed by the child.

(7) If the supported person does not make a choice in pursuance of subsection (2) or (3)(b) the supported person is deemed to have chosen Option 3.

(8) The authority must give the notification required by subsection (3)(a) in writing and, if necessary, in such other form as is appropriate to the needs of the person to whom it is given.

(9) In this section—

“the 1989 Act” means the Children Act 1989 (c.41),


“appropriate person”, in relation to a child, means—

(a) a parent or guardian having parental responsibilities or parental rights in relation to the child under Part 1 of the 1995 Act,

(b) a person in whom parental responsibilities or parental rights are vested by virtue of section 11(2)(b) of the 1995 Act,

(c) a person having parental responsibilities or parental rights by virtue of section 11(12) of the 1995 Act,

(d) a parent having parental responsibility for the child under Part 1 of the 1989 Act,

(e) a person having parental responsibility for the child by virtue of—

(i) section 12(2) of the 1989 Act,

(ii) section 14C of the 1989 Act, or

(iii) section 25(3) of the Adoption and Children Act 2002 (c.38),

(f) a parent having parental responsibility for the child under Part 2 of the 1995 Order,

(g) a person having parental responsibility for the child under Article 12(2) of the 1995 Order,

(h) a person in whom parental responsibilities or parental rights are vested by virtue of a permanence order (as defined in section 80(2) of the Adoption and Children (Scotland) Act 2007 (asp 4)),

“supported person” means—

(a) where support is to be provided (wholly or partly) to the child or a member of the child’s family who is also a child—
(i) if the child to whom support is to be provided is under 16 years of age, an appropriate person,
(ii) if the child to whom support is to be provided is 16 years of age or over, the child,
(b) where support is to be provided (wholly or partly) to a member of the child’s family who is not a child, that person.

8 Provision of information about self-directed support

(1) This section applies where under section 4, 6 or 7 a local authority gives a person an opportunity to choose one of the options for self-directed support.

(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, and
(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, and
(ii) information about how to manage support.

(3) The authority must 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 person to whom they are given.

9 Local authority functions

(1) This section applies where under section 4, 6 or 7 a local authority gives a person an opportunity to choose one of the options for self-directed support.

(2) The local authority must give effect to the option for self-directed support chosen by the person.

(3) Compliance with the requirement imposed by subsection (2) fulfils any duty imposed on the authority by Part 2 of the 1968 Act or, as the case may be, section 22 of the 1995 Act to provide to the person the support to which the option relates.

(4) Compliance with the requirement imposed by subsection (2) does not affect—

(a) any other function of the local authority in relation to the provision to the person of the support to which the option relates,
(b) the exercise by the local authority of the power in section 12(1) of the 1968 Act to make available assistance in cash to or in respect of the person in relation to the support to which the option relates.

10 Eligibility for direct payment: review

(1) Subsection (2) applies where—

(a) a person receives notice under section 4(3)(a), 6(3)(a) or 7(3)(a), and
(b) because of a material change in the person’s circumstances, the reason stated in the notice no longer applies.

(2) On the request of the person, the local authority must review the question of whether the person is ineligible to receive direct payments.

(3) If the local authority considers that the person is no longer ineligible to receive direct payments, the authority must give the person the opportunity to choose one of the options for self-directed support under section 4(2) or, as the case may be, section 6(2) or 7(2).

11 Further choice of options on material change of circumstances

(1) Subsection (2) applies where—

(a) under section 4, 6 or 7 a local authority gives a person an opportunity to choose one of the options for self-directed support,

(b) the person chooses an option, and

(c) after the choice is made the authority becomes aware of a material change in the person’s circumstances.

(2) The authority must offer the person another opportunity to choose one of the options for self-directed support under the section concerned.

(3) The authority and the person may agree that subsection (2) also applies in other circumstances.

12 Power to modify section 3

The Scottish Ministers may by regulations—

(a) modify section 3,

(b) so far as necessary in consequence of any modification made under paragraph (a), modify sections 4, 6, 7, 13(2)(b) and 21(1A).

13 Power to make further provision about direct payments

(1) The Scottish Ministers may by regulations make further provision about direct payments.

(2) Regulations under subsection (1) may in particular make provision for or in connection with—

(a) specifying descriptions of person who are ineligible to receive direct payments,

(b) specifying circumstances in which a local authority is not to be required under section 4, 6 or 7 to give a person the opportunity to choose—

(i) Option 1 of the options for self-directed support, and

(ii) so far as relating to that option, Option 4,

(c) specifying the circumstances in which a local authority may require a person to contribute to a direct payment,

(d) enabling a local authority to assess or reassess a person’s ability to contribute to the cost of securing the support to which a direct payment relates,
(e) specifying the ways in which direct payments may be paid or repaid,
(f) specifying circumstances in which a local authority may, must or may not terminate the making of a direct payment,
(g) specifying circumstances in which a local authority may pay all or part of a direct payment to a person other than the person to whom the direct payment relates,
(h) specifying descriptions of person to whom direct payments may not be made under paragraph (g),
(i) specifying descriptions of person who are prohibited from providing support to which a direct payment relates other than in such circumstances as are specified,
(j) specifying conditions which must be satisfied by persons before they may provide support to which a direct payment relates.

14 Misuse of direct payment: recovery

(1) Subsection (2) applies where—

(a) a local authority makes a direct payment to a person, and
(b) the authority considers—

(i) that the direct payment has been used (wholly or partly) for some purpose other than to secure the provision of the support to which it relates, or
(ii) that there has been a contravention of provision made by regulations under section 13 in relation to the direct payment.

(2) The authority may require the person to repay a sum equal to—

(a) the direct payment, or
(b) such part of the direct payment as the authority considers appropriate.

Local authority functions

15 Assessments under section 12A of 1968 Act: assistance

After section 12A of the 1968 Act, insert—

“12AZA Assessments under section 12A: assistance

(1) Subsection (3) applies where—

(a) a local authority is required by section 12A(1)(a) to carry out an assessment of the needs of a person (the “supported person”) for community care services,
(b) it appears to the authority that, because of mental disorder or difficulties in communicating due to physical disability, the supported person would benefit from receiving assistance from another person in relation to the carrying out of the assessment, and
(c) the conditions in subsection (2) are satisfied.

(2) The conditions are—

(a) there is no guardian, continuing attorney or welfare attorney with powers as respects the provision of assistance in relation to the carrying out of the assessment, and
(b) an intervention order has not been granted as respects the provision of assistance in relation to the carrying out of the assessment.

(3) The authority must take reasonable steps—

(a) to identify persons having an interest in the care of the supported person, and

(b) if the supported person agrees, to involve them in assisting the supported person in relation to the carrying out of the assessment.

(4) In this section—

“the 2000 Act” means the Adults with Incapacity (Scotland) Act 2000 (asp 4),

“continuing attorney”—

(a) means a continuing attorney within the meaning of section 15 of the 2000 Act, and

(b) includes a person granted, under a contract, grant or appointment governed by the law of any country, powers (however expressed), relating to the granter’s property or financial affairs and having continuing effect despite the granter’s incapacity,

“guardian”—

(a) means a guardian appointed under the 2000 Act, and

(b) includes a guardian (however called) appointed under the law of any country to, or entitled under the law of any country to act for, an adult during the adult’s incapacity, if the guardianship is recognised under the law of Scotland,

“intervention order” is to be construed in accordance with section 53 of the 2000 Act,

“mental disorder” has the meaning given by section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13),

“welfare attorney”—

(a) means a welfare attorney within the meaning of section 16 of the 2000 Act, and

(b) includes a person granted, under a contract, grant or appointment governed by the law of any country, powers (however expressed) relating to the granter’s personal welfare and having effect during the granter’s incapacity.”.

16 Power to charge for services provided under section 2

In section 87 of the 1968 Act (power of local authority to charge for services and accommodation provided under certain enactments), in each of subsections (1) and (1A)(a)—

(a) the word “or”, where it first occurs, is repealed, and

(b) after “(asp 13)” insert “or section 2(4) of the Social Care (Self-directed Support) (Scotland) Act 2012 (asp 00)”.

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17 Promotion of options for self-directed support
A local authority must take steps to promote the availability of the options for self-directed support.

18 Delegation
In section 15(4) of the Community Care and Health (Scotland) Act 2002 (asp 5) (power to delegate certain local authority and NHS functions etc.)—
(a) the word “or” immediately after paragraph (f) is repealed, and
(b) after paragraph (g) add—
“(h) prohibiting the entering into of arrangements by virtue of subsection (1) for the delegation of such functions prescribed under subsection (2)(a) as may be specified unless the arrangements are also for the delegation of such functions under the Social Care (Self-directed Support) (Scotland) Act 2012 prescribed under subsection (2)(a) as may be specified.”.

General

19 Guidance and directions
In section 5 of the 1968 Act (guidance and directions under 1968 Act and certain other enactments)—
(a) in subsection (1), for the words from “and” to “1995” substitute “, Part 2 of the Children (Scotland) Act 1995 and the Social Care (Self-directed Support) (Scotland) Act 2012 (asp 00)”, and
(b) in subsection (1B), after paragraph (q) add—
“(r) the Social Care (Self-directed Support) (Scotland) Act 2012 (asp 00).”.

20 Regulations: general
(1) Regulations under this Act may—
(a) make different provision for different cases,
(b) include such supplementary, incidental, consequential, transitory and transitional provision and savings as the Scottish Ministers consider appropriate.
(2) Regulations under sections 12 and 21 are subject to the affirmative procedure.
(3) Otherwise, regulations under this Act are subject to the negative procedure.
(4) Before laying a draft of a Scottish statutory instrument containing regulations under section 12 or 21 before the Scottish Parliament, the Scottish Ministers must consult such persons as they consider appropriate.

21 Power to modify application of Act
(1) The Scottish Ministers may by regulations make provision for or in connection with disapplying section 4(2) or 7(2) in such circumstances as the regulations may specify.
(1A) Regulations under subsection (1) which disapply section 4(2) or 7(2) must include provision deeming a person to have chosen Option 3 of the options for self-directed support.
(2) Regulations under subsection (1) may include provision for or in connection with disapplying or modifying any other section.

22 Interpretation

(1) In this Act, unless the context otherwise requires—

“the 1968 Act” means the Social Work (Scotland) Act 1968 (c.49),

“the 1995 Act” means the Children (Scotland) Act 1995 (c.36),

“adult” means a person who is 18 years of age or over,

“child” means a person who is under 18 years of age,

“community care services” has the meaning given by section 5A of the 1968 Act (except that it does not include a reference to services which a local authority provides, or secures the provision of, under any of the provisions of that Act mentioned in section 1(5)),

“direct payment” has the meaning given by section 3(2),

“options for self-directed support” is to be construed in accordance with section 3(1),

“relevant amount” has the meaning given by section 3(2),

“support” has the meaning given by section 3(2).

(2) In this Act, references to a person’s being ineligible to receive direct payments are to be construed in accordance with section 4(6).

23 Consequential repeals

Sections 12B and 12C of the 1968 Act (which make provision in relation to direct payments in respect of community care services) are repealed.

24 Ancillary provision

(1) The Scottish Ministers may by order make such supplementary, incidental or consequential provision as they consider appropriate for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.

(2) An order under subsection (1) may modify any enactment.

(3) An order under subsection (1) containing provisions which add to, replace or omit any part of the text of an Act is subject to the affirmative procedure.

(4) Otherwise, an order under subsection (1) is subject to the negative procedure.

25 Transitional provision etc.

(1) The Scottish Ministers may by order make such provision as they consider necessary or expedient for transitory, transitional or saving purposes in connection with the coming into force of any provision of this Act.

(2) An order under subsection (1) may modify any enactment.

(3) An order under subsection (1) is subject to the negative procedure.
26 Commencement

(1) This section and sections 13, 20, 22, 24, 25 and 27 come into force on the day after Royal Assent.

(2) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.

(3) An order under subsection (2) may contain transitory or transitional provision or savings.

27 Short title

The short title of this Act is the Social Care (Self-directed Support) (Scotland) Act 2012.
Social Care (Self-directed Support) (Scotland) Bill
[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to enable local authorities to provide support to certain carers; to make provision about the way in which certain social care services are provided by local authorities; and for connected purposes.

Introduced by: Nicola Sturgeon
On: 29 February 2012
Bill type: Executive Bill
SOCIAL CARE (SELF-DIRECTED SUPPORT) (SCOTLAND) BILL

REVISED EXPLANATORY NOTES

CONTENTS

1. As required under Rule 9.7.8A of the Parliament’s Standing Orders, these revised Explanatory Notes are published to accompany the Social Care (Self-directed Support) (Scotland) Bill (introduced in the Scottish Parliament on 29 February 2012) as amended at Stage 2. Text has been added or amended as necessary to reflect amendments made to the Bill at Stage 2 and these changes are indicated by sidelining in the right margin.

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

SUMMARY

4. The Bill makes legislative provisions relating to the arranging of care and support (“community care services” and “children’s services”) in order to provide a range of choices to individuals as to how they are to be provided with their support. The Bill provides general principles to guide and inform decisions made under the Bill’s framework of duties and powers. It introduces the language and terminology of self-directed support into statute. It places a duty on local authorities (“authorities”) to offer four options to individuals who they assess as requiring care and support under section 12A of the Social Work (Scotland) Act 1968 (“the 1968 Act”), section 2 of this Bill (support for adult carers) and section 24 of the Children (Scotland) Act 1995 (“the 1995 Act”). It requires authorities to provide information and assistance to individuals in order that they can make an informed choice about the options available. It provides a discretionary power to authorities in order that they can provide support to carers following a carer’s assessment under section 12AA of the 1968 Act or section 24 of the 1995 Act...
This document relates to the Social Care (Self-directed Support) (Scotland) Bill as amended at Stage 2 (SP Bill 10A)

(section 2). It repeals and reframes provisions relating to direct payments as currently contained within sections 12B and 12C of the 1968 Act.

COMMENTARY ON SECTIONS

Section 1 – General principles

5. Section 1 places a duty on an authority to have regard to certain general principles in carrying out its functions under the Bill, Part 2 of the 1968 Act (with the exception of the provisions mentioned in subsection (5)) and sections 22 to 24 of the Children (Scotland) Act 1995. This means the principles will apply to authorities’ social welfare responsibilities (the provision of care and support) to both adults and children.

6. The principles provided under subsections (2), (3) and (4) are, in short-hand terms, related to “involvement”, “informed choice” and “collaboration”. Under the principle provided in subsection (2) (“involvement”) a person must have as much involvement in the assessment of their social care needs and the provision of support or services as the person wishes. Under the principle provided in subsection (3) (“informed choice”) a person must be provided with reasonable assistance in order that they can express their own views about the choices available to them and make an informed decision about their preferred choice. Under the principle provided in subsection (4) (“collaboration”) authorities are required to collaborate with a person in both the assessment of the person’s needs and the provision of support or services following the assessment.

7. When local authorities are carrying out their functions in relation to the provisions set out in subsection (5), they do not have to have regard to the principles in this Bill (nor offer the options for self-directed support).

8. Subsection (6) clarifies various references which appear in the principles. References to “assessment of a person’s need” mean references to assessments under sections 12A, 12AA of the 1968 Act or, as the case may be, sections 23(3) or 24A of the 1995 Act. References to the “provision of support for a person” are references to the provision of section 2(4) in the Bill. References to the “provision of services for a person” are references to the provision of community care services under section 12 of the 1968 Act or, as the case may be, the provision of services under section 22 of the 1995 Act.

Section 1A – Further general principles applicable to this Act

9. Section 1A places an additional duty on a local authority to have regard to further principles when carrying out its functions under the Bill. These principles – for persons to have their dignity and their desire to participate in community life respected – reflect core principles of independent living. A further element of independent living – control – is reflected in the provisions of the Bill enshrining choice and in the general principle in section 1(2).
Section 2 – Support for adult carers

10. Section 2 provides a power to authorities to provide support to a carer following an assessment completed under section 12AA (carers assessments relating to carers of those aged 18 or over) of the 1968 Act or section 24 (carers assessments relating to carers of those under the age of 18) of the 1995 Act. Under both provisions a carer who provides care by virtue of a contract of employment or as a volunteer for a voluntary organisation is ineligible for a carers assessment. As a result, such a carer will not be eligible for support under this provision.

11. Subsection (2) requires the authority to consider the outcome from the relevant assessment and to decide if the carer has needs in their own right as regards their ability to care. Subsection (3) requires the authority, where it has decided that the adult has needs, to consider whether those needs could be satisfied fully or in part by support. The definition of “support” in subsection (5) means that this is support that would help the adult to care or to continue in their role as an unpaid carer. If an authority decides that those needs could be met by support, subsection (4) provides a discretionary power to the local authority to provide support to the carer.

12. Subsection (5) provides definitions of “person cared for” and of the support which could be provided to a carer under subsection (4). That support is any form of services or assistance which will help the adult to provide, or continue to provide, care. This is distinct from any need which the carer has for community care services (i.e. needs they have as an individual and not in their role as a carer), which would be assessed separately under section 12A of the 1968 Act.

13. Where the local authority has decided to provide such support section 6 would apply, meaning that the carer would be given the choice of the four options for self-directed support set out in section 3.

Sections 3 to 12 – Options for self-directed support

Section 3 – Options for self-directed support

14. Section 3(1) provides the four options for self-directed support, which will be available to individuals when they are assessed as needing care and support or support as an adult carer. The options are:

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

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

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

15. Section 3(2) defines a “direct payment” as a payment of a relevant amount to the supported person for the purpose of enabling the person to arrange for the provision of support by any person (including the authority). It explains the meaning of the term “relevant amount” (which is used in the definitions of all four of the self-directed support options) as the amount that the local authority considers a reasonable estimate of the cost of securing the provision of support for the supported person. It also provides that references to “supported person” and “support” must be read in accordance with sections 4, 6 and 7.

Sections 4 to 7 – Choice of options

16. Sections 4, 6 and 7 apply to the three groups of supported people: adults assessed as requiring support under section 12A of the 1968 Act; adult carers; and children (and/or their families) receiving support under section 22 of the 1995 Act (which includes children who are carers). All three sections require the authority to give the supported person the opportunity to choose one of the options for self-directed support. All three sections clarify the authority’s duties where the person is deemed to be ineligible to receive direct payments.

Section 4 – Choice of options: adults

17. Section 4 applies to adults provided with support by an authority following an assessment under section 12A of the 1968 Act (commonly known as a “community care assessment”) (subsection (1)).

18. Subsection (2) places a duty on the local authority to offer the four options to adults who have been assessed under section 12A of the 1968 Act as needing a service, unless that adult is ineligible for direct payments. The grounds for ineligibility for direct payments will be provided for in regulations made under section 13.

19. Subsections (3) and (5) make provision for what the local authority must do if they consider the supported person ineligible to receive direct payments. If the local authority deem the supported person ineligible for direct payments, the local authority is required to inform the supported person in writing and, if necessary, such other form as is appropriate of the reason why they are deemed ineligible and inform them that they may seek a review of that decision if there is a material change in their circumstances relevant to that decision (see section 10).

20. Subsection (3)(b) requires the authority to give the person a choice of the remaining eligible options for self-directed support (Options 2, 3 and, in so far as the person is eligible, Option 4).
21. Subsection (3A) places a duty on the local authority to inform the supported person of the amount of funding available under the options and the period to which the funding relates.

22. Subsection (4) provides that if the supported person makes no choice then they are deemed to have chosen Option 3, whereby the local authority selects the support and makes arrangements on the person’s behalf in order to meet their assessed needs. Subsection (6) provides that an individual is ineligible to receive direct payments if they are a person described in regulations under section 13.

Section 5 – Choice of options under section 4: assistance

23. Section 5 places a duty on authorities to take reasonable steps to identify and involve people to assist the individual to make a choice with regards to their options for self-directed support under section 4. This applies only where it appears that because of mental disorder or difficulties in communicating due to physical disability, the person would benefit from receiving such assistance. This duty would apply, for example, where an individual, because of a particular mental illness encounters difficulty in understanding or selecting their choice of self-directed support on their own.

24. Subsection (3) places a duty on the authority to take reasonable steps to enable the adult to choose from the four options for self-directed support set out in section 3 or, where they are deemed ineligible for direct payments, a choice of the options other than direct payments. This means that a local authority is obliged to allow someone to make a choice even if they have difficulties in doing so.

25. Subsection (4) places the further duty on the local authority to take reasonable steps to identify people with an interest in the care of the supported person and, if the supported person agrees to the relevant persons providing such assistance, to involve the relevant person or persons in assisting the supported person in making decisions relating to the supported person’s options for self-directed support. The person or persons providing assistance may be relatives and friends of the individual but it may also include other persons who can assist via what is commonly known as a “circle of support”. The requirement to have the agreement of the supported person makes it explicit on the face of the Bill that section 5 applies only in relation to supported persons who have capacity, but due to mental disorder or difficulties in communicating, may require additional assistance in order to understand, arrive at or communicate their decisions about the options for self-directed support.

26. Subsection (2) sets out conditions which must be satisfied before subsections (3) and (4) can be applied. The duty should not be applied when there is a guardian, continuing attorney or welfare attorney with relevant powers present, or when an intervention order has been granted which relates to the provision of assistance with the assessment. Such an attorney or guardian (or individual empowered by an intervention order) would have the power to make self-directed support decisions on the adult’s behalf (in accordance with the principles of the Adults with Incapacity (Scotland) Act 2000).

27. Subsection (5) provides definitions for the various terms used in subsections (1) to (4).
Section 6 – Choice of options: adult carers

28. Section 6 makes provisions with the same effect for adult carers as section 4 makes for adults as regards the choice of options for self-directed support (the procedure for which is set out in paragraphs 16 to 22 above). Section 6 applies where a local authority decides to provide support under section 2(4).

Section 7 – Choice of options: children and family members

29. Section 7 provides that the four options must be available to children, and/or their family, where a local authority decides to provide services under section 22 of the Children (Scotland) Act 1995. Provision of services under section 22 can involve a range of types of support and various categories of supported children including children who are carers, disabled children and any other child deemed to be “in need” within the definition of section 93(4) of the 1995 Act. Services under section 22 can also be provided to a member of the child’s family.

30. Section 7(2) requires the authority to offer the four options to the “supported person” unless they consider the supported person ineligible to receive direct payments (as may be defined in regulations under section 13). If the authority consider that the supported person is ineligible to receive direct payments subsection (3)(a) requires the authority to inform the supported person of the reason for that decision and to inform them that they can request a review of the decision. As with services for adults, where this is the case the authority is required to give the person a choice of the other options for self-directed support (subsection (3)(b)).

31. Subsection (3A) places a duty on the local authority to inform the supported person of the amount of funding available under the options and the period to which the funding relates.

32. Subsection (9) provides definitions of “appropriate person” and “supported person” which are important to the wider operation of this section. In general terms an “appropriate person” is a person with parental rights and responsibilities, or their equivalent under the laws of England, Wales and Northern Ireland. The definition under subsection (9) sets out the relevant enactments which provide for those rights.

33. It is the “supported person” who has the ability to make the choice under subsection (2). The supported person is first of all identified on the basis of whether they receive any support under section 22 of the 1995 Act (which may be whole or partial). If the supported person is a child (i.e. under 18) who is either 16 or 17 they will make the choice. If the supported person is a child who is under 16 it is an “appropriate person” who makes the choice. Under subsection (5) the appropriate person must, so far as practicable and taking account of the maturity of the child, give the child an opportunity to indicate if they wish to express any views about the choices available, and if they child so wishes, provide that opportunity and have regard to their views. If the supported person is an adult, then that person makes the choice.

34. As with the provisions on adults, subsection (7) provides that when the supported person does not make a choice they are deemed to have chosen option 3 whereby the local authority selects and makes arrangement for the provision of services.
Section 8 – Provision of information about self-directed support

35. Section 8 imposes certain duties on the local authority to provide information and advice about the options (available under section 3) and the provision of support under any of those options. These duties are imposed where under section 4, 6 or 7 a person is given the opportunity to choose an option for self-directed support.

36. Section 8(2)(a) places a duty on the local authority to explain what each option means in practice to the person. An example may be the opportunities and responsibilities that go with the option. Subsection (2)(b) requires the local authority to provide the person with information about how they might manage their support after they have chosen their preferred option. Subsection (2)(c) requires the authority to provide the person with information about persons who can provide help or further advice to them to help them to choose an option. This includes sources of advice or information other than the authority itself. In practice this will include organisations known as direct payment or self-directed “support organisations”. Subsection (3) requires the authority in all three instances to provide the relevant information both in writing and, where appropriate, in alternative formats appropriate to the person’s communication needs.

Section 9 – Local authority functions

37. Section 9 sets out a local authority’s functions when a choice is made under section 4, 6 or 7.

38. Subsection (2) requires the authority to give effect to the option selected by the person under section 3 and accompanying section 4, 6 or 7.

39. Subsection (3) provides that a local authority has fulfilled its duty to provide support under either the 1968 Act or the Children’s (Scotland) Act 1995 when it has offered the options as set out in section 3 and when it has given effect to the chosen option.

40. Subsection (4) provides that compliance with subsection (2) does not extinguish any other function of a local authority. It is similar to provision made by section 12C of the 1968 Act (to be repealed by section 23 of the Bill). If for example, a person’s needs were not being met by the support they were being provided a local authority’s duty has not been extinguished by virtue of their already having provided support. In particular subsection (4)(b) states that the exercise of an authority’s power to make available assistance in cash to or in respect of the person in an emergency persists.

Section 10 – Eligibility for a direct payment: review

41. Section 10 places a duty on the local authority to review their decision (on the request of the supported person) to deem a person ineligible for a direct payment where there is a material change in the circumstances which led to the person being deemed to be ineligible.

Section 11 – Further choice of options on material change of circumstances

42. Section 11 places a duty on the local authority to offer the supported person the opportunity to change their choice of the options set out in section 3. This duty applies after an individual has made a choice and where the local authority becomes aware of a material change
in the person’s circumstances after the choice has been made. This could, for example, cover the situation where someone has received a direct payment, has managed the direct payment payment with assistance from a family carer, but where the carer is no longer able to provide this assistance. In such circumstances the individual must then be offered a choice once again (subsection (2)). Subsection (3) provides that the authority and the person may agree additional circumstances under which the opportunity to review might apply (for example, by agreeing to an annual review).

Section 12 – Power to modify section 3

43. Section 12 provides for a regulation-making power for Scottish Ministers to modify the four options and, in so far as necessary, to modify the accompanying section 4, 6, 7, 13(2)(b) or 21(1A) in consequence of any changes made to section 3.

Sections 13 to 14 – Direct payments

Section 13 – Power to make further provision about direct payments

44. Section 13(1) provides for Scottish Ministers to make regulations about direct payments and the provision of support to which they relate.

45. Subsections (2)(a) to (j) set out specific powers included within the power in subsection (1).

46. Subsection (2)(a) provides the power to specify descriptions of persons who will be ineligible for direct payments. This will inform the definition of ineligibility for direct payments throughout the Bill. Section 4(6) states for the purposes of section 4 that a person is ineligible for direct payments if they are of a description prescribed in regulations (under this power) and that definition is applied to the whole Bill by section 22.

47. Subsection (2)(b) provides the power to specify circumstances where the local authority will not be required to offer the supported person option 1 (a direct payment) or option 4 so far as it relates to option 1. This would include, for example, excluding a direct payment from being used to secure a particular service.

48. Subsections (2)(c) to (e) provide power to prescribe how direct payments are paid, circumstances in which a contribution to the cost of support may be required and how individuals are assessed to ascertain the individual’s ability to contribute. They also provide power to describe how the repayment of a direct payment may be made following the assessment or reassessment of an individual’s ability to contribute. For example, enabling deduction from direct payments, separate repayment or payment by instalments.

49. Subsection (2)(f) provides circumstances that may be specified where a local authority may, must or may not terminate a direct payment.

50. Subsection (2)(g) gives power to set out the circumstances when the local authority would be able to make a direct payment to a person other than the supported person. Subsection (2)(h) gives power to specify persons to whom such direct payments may not be paid.
51. Subsection (2)(i) and (j) provide that regulations may set out descriptions of persons who are prohibited from providing support to which a direct payment relates, other than where specified circumstances apply and where specified conditions have been met.

Section 14 – Misuse of direct payment: recovery

52. Section 14 provides for the local authority to require repayment of all or part of the direct payment from the supported person if they have used all or part of the direct payment on things other than the assessed services or support required or where the person has contravened any regulations made under section 13.

Sections 15 to 18 – Local authority functions

Section 15 – Assessments under section 12A of the 1968 Act: assistance

53. Section 15 inserts section 12AZA after section 12A of the 1968 Act. It applies where the authority is assessing a person’s needs under section 12A of the 1968 Act. It is similar to, although at an earlier stage than, the duty under section 5 requiring assistance to an adult making a choice of an option for self-directed support.

54. Section 12AZA places a duty on authorities to take reasonable steps to identify and involve people to assist the individual where it appears that because of mental disorder or difficulties in communicating due to physical disability, the person would benefit from receiving such assistance. This duty would apply, for example, where an individual, because of a particular mental illness encounters difficulty in understanding or selecting their choice of self-directed support on their own.

55. Subsection (3) places a duty on the local authority to take reasonable steps to identify people with an interest in the care of the supported person and, if the supported person agrees to the relevant persons providing such assistance, to involve the relevant person or persons in assisting the supported person in making decisions relating to the supported person’s options for self-directed support. The person or persons providing assistance may be relatives and friends of the individual but it may include other persons who can assist via what is commonly known as a “circle of support”. The requirement to have the agreement of the supported person makes it explicit on the face of the Bill that section 15 applies only in relation to supported persons who have capacity, but due to mental disorder or difficulties in communicating, may require additional assistance in order to understand, arrive at or communicate their decisions about the options for self-directed support.

56. Subsection (2) sets out conditions which must be satisfied before subsection (3) can be applied. The duty should not be applied when there is a guardian, continuing attorney or welfare attorney with relevant powers present, or when an intervention order has been granted which relates to the provision of assistance with the assessment. Such an attorney or guardian (or individual empowered by an intervention order) would have the power to make self-directed support decisions on the adult’s behalf (in accordance with the principles of the Adults with Incapacity (Scotland) Act 2000).

57. Subsection (4) provides definitions for the various terms used in subsections (1) to (3).
Section 16 – Power to charge for services provided under section 2

58. Section 16 amends Section 87 of the 1968 Act (authorities’ power to charge for services or support). This has the effect that authorities may charge for support provided to carers under section 2 of the Bill.

Section 17 – Promotion of options for self-directed support

59. Section 17 places a duty on a local authority to take steps to promote the options available to individuals.

Section 18 – Delegation

60. Section 18 amends section 15 of the Community Care and Health (Scotland) Act 2002. The effect is that Ministers can lay regulations which prohibit delegation of functions which would otherwise be permitted to be delegated by a local authority entering into an arrangement in accordance with section 15 of the 2002 Act. A prohibition under the new power in section 18 would state that certain functions may only be delegated where the arrangement entered into also delegates the appropriate self-directed support duties in the Bill.

Sections 19 to 27 – General

Section 19 – Guidance and directions

61. Section 19(a) amends section 5(1) of the 1968 Act in order to require authorities to perform their functions under this Bill under the general guidance of Scottish Ministers. Paragraph (b) amends section 1B of the 1968 Act to enable Scottish Ministers to issue directions to authorities, either individually or collectively, as to how they are to exercise their functions under this Bill.

Section 20 – Regulations: general

62. Section 20 provides for general ancillary powers to the other regulation making powers under the Bill. In particular it allows the regulations to make different provision for different cases and to make such ancillary provision (i.e. supplementary, incidental, consequential, transitory and transitional provision and savings) as the Scottish Ministers consider appropriate. Subsections (2) and (3) set out the Parliamentary procedure to which regulations will be subject. Subsection (4) places a duty on Scottish Ministers to consult before laying regulations made under section 12 or 21.

Section 21 – Power to modify application of Act

63. Section 21 (1) provides a power to Scottish Ministers to make regulations which specify circumstances when the duties on the local authority to give the supported person a choice of the four options will not apply. Subsection (1A) provides that in the event that the power to disaply the option is used by Scottish Ministers they must include a provision deeming a person to have chosen Option 3. This places an important restriction on the regulation-making powers of Ministers, preventing them from removing all 4 of the options of self-directed support by means of regulations. Subsection (2) provides that such regulations may include provision for or in connection disapplying or modifying any other section in consequence of this.
Section 22 – Interpretation

64. This section defines terms that are used frequently in the Bill. In particular “community care services” has the meaning given by section 5A of the 1968 Act except that it does not include a reference to services under any of the provisions mentioned in section 1(5) of the Bill: sections 27 to 27B, 28 and 29 of the 1968 Act.

Section 23 – Consequential repeals

65. This section repeals sections 12B and 12C of the 1968 Act which are replaced in substance by the power to make regulations under section 13, and the provisions of section 14, of this Bill.

Sections 24 and 25 – Ancillary provision and Transitional provision etc.

66. These sections give the Scottish Ministers the power to make consequential, supplemental, incidental, transitional, transitory or saving provisions by order for the purpose of giving full effect to the Act. Under section 24 any order which makes textual amendments to primary legislation will be subject to the affirmative procedure, otherwise an order will be subject to the negative procedure. Orders under section 25 will be subject to the negative procedure.

Section 26 – Commencement

67. Section 26(1) provides for certain provisions of the Bill to come into force on the day after Royal Assent. Subsection (2) gives power to Ministers to appoint a day for the coming into force of the other provisions of the Bill. Subsection (3) provides that a commencement order may include transitory, transitional or saving provision.

Section 27 – Short title

68. Section 27 gives the short title of the Bill.
PURPOSE

1. This Memorandum has been prepared by the Scottish Government to assist the Subordinate Legislation Committee in its consideration of the Social Care (Self-directed Support) (Scotland) Bill. It describes provisions in the Bill conferring power to make subordinate legislation which were amended at Stage 2. The Memorandum supplements the Delegated Powers Memorandum on the Bill as introduced.

2. The contents of this Memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

PROVISIONS CONFERRING POWER TO MAKE SUBORDINATE LEGISLATION AMENDED AT STAGE 2

Section 12 – Power to modify section 3

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Affirmative procedure

Provision

3. Section 12 provides that Scottish Ministers may, by regulations, amend section 3 (which contains the options for self-directed support) and, under paragraph (b) as introduced, to make any consequential changes necessary to sections 4, 6 and 7.

Reason for taking this power

4. A core aim of the Bill is to encourage flexibility in the way that support is provided to individuals. The Bill’s section 3 contains 4 different options for self-directed support. However, Ministers are keen not to unnecessarily limit any future practice which may not have been foreseen at the time of the Bill. As a result section 12 of the Bill provides flexibility for Ministers to adapt the options (by amendment or by addition/removal) so as to reflect future practice. Section 12(b) means that if the options are changed by regulation, or new options are added, then there is a power to ensure that the various other parts of the Bill (or rather the final Act) which refer to the options section can have their internal references
updated in order to refer to the full and current list of SDS options. In introducing the Bill Ministers recognised that as this power allows for the amendment of one of the core provisions of the Bill, this provision should, accordingly, be subject to the affirmative procedure. There are no current plans to use the powers.

Stage 2 amendments

5. At Stage 1 the Subordinate Legislation Committee was concerned that there was no statutory requirement placed on Scottish Ministers to consult before bringing forward regulations in relation to Section 12. The Bill has been amended at Stage 2, by the addition of a new section 20(4), to add a further requirement that regulations under section 12 will be subject to statutory consultation.

6. In addition, section 12 has been amended at Stage 2 to add section 13(2)(b) and section 21(1A) to the list of provisions which may be amended consequentially by virtue of regulations made under section 12. This ensures that all of the relevant internal references to SDS options can be updated in response to any revision to the options provided within section 3.

Section 21 – Power to modify application of Act

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Affirmative procedure

Provision

7. This section allows Ministers, by regulations, to disapply sections 4(2) and 7(2) in specified circumstances. This is distinct from the related provisions, dealt with in section 13, relating to ineligibility, or the unavailability, of direct payments only. The practical effect of section 21 is that it would allow Ministers to bring forward regulations in order to remove the options from either people or services for which self-directed support is not considered appropriate. The Bill at introduction included specific provision to allow (but not to require) regulations made under section 21 to deem a person to have chosen “option 3” for self-directed support (services arranged on the person’s behalf). Finally, it allowed any other section of the Bill to be disapplied or modified depending on those circumstances.

Reasons for taking power

8. The power in section 21 allows Ministers flexibility to disapply the self-directed support framework for particular persons or for particular services when it is considered necessary. There may be persons or services which do not currently, or may not in future, lend themselves to the self-directed support approach and this power will allow Ministers to make appropriate provision. This power only applies to services for adults and children, and does not apply to services for carers.

Stage 2 amendments

9. In light of the potential breadth of the power to disapply the options the Subordinate Legislation Committee invited the Scottish Government to consider that the section 21 power
ought to be subject to a statutory requirement to consult with interested bodies on any draft regulations.

10. In response to the concerns raised by the Subordinate Legislation Committee the Bill has been amended at Stage 2 to add a requirement that regulations under section 21 will be subject to statutory consultation.

11. In addition, the provision permitting Ministers to use regulations to deem a person to have chosen option 3 has been replaced with a provision requiring any such regulations to include provision deeming a person to have chosen Option 3. This would mean that Ministers could not use regulations to disapply option 3, which would remain the default when no other options are available. In practical terms this will prevent Scottish Ministers from using subordinate legislation in order to “switch off” the provision of social care and support to any particular user group or any particular circumstance. This represents a further limitation on the discretion of Ministers in relation to this power.
Subordinate Legislation Committee

53rd Report, 2012 (Session 4)

Social Care (Self-directed Support) (Scotland) Bill as amended at Stage 2

Published by the Scottish Parliament on 21 November 2012
Subordinate Legislation Committee

Remit and membership

Remit:

The remit of the Subordinate Legislation Committee is to consider and report on—

(a) any—

(i) subordinate legislation laid before the Parliament;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1;

and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act; and

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject.

(Standing Orders of the Scottish Parliament, Rule 6.11)

Membership:

Nigel Don (Convener)
Jim Eadie
Mike MacKenzie
Hanzala Malik
John Pentland
John Scott
Stewart Stevenson (Deputy Convener)

Committee Clerking Team:

Clerk to the Committee
Euan Donald

Assistant Clerk
Elizabeth White

Support Manager
Daren Pratt
The Committee reports to the Parliament as follows:

1. At its meeting on 20 November 2012, the Subordinate Legislation Committee considered the delegated powers provisions in the Social Care (Self-directed Support) (Scotland) Bill, as amended at Stage 2. The Committee submits this report to the Parliament under Rule 9.7.9 of Standing Orders.

2. The Scottish Government provided the Parliament with a supplementary delegated powers memorandum on the new provisions in the Bill.

Delegated Powers Provisions

Section 12 – Power to modify section 3

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Affirmative procedure

3. Section 12 enables the Scottish Ministers to make regulations which modify section 3 of the Bill. So far as it is necessary in consequence of any modification to section 3, they may also modify sections 4, 6 and 7.

4. Section 3 lists the options for self-directed support made available under the Bill. The supported individual is to be offered a choice of these options, and sections 4, 6 and 7 make provision about making that choice of support for adults, adult carers and children respectively.

5. At Stage 1 the Committee considered that the section 12 power ought to be subject to a statutory requirement to consult interested bodies on any draft

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1 Social Care (Self-Directed Support) (Scotland) Bill. Supplementary Delegated Powers Memorandum. Available at: [http://www.scottish.parliament.uk/S4_Bills/2012.11.14_Supplementary_DPM.pdf](http://www.scottish.parliament.uk/S4_Bills/2012.11.14_Supplementary_DPM.pdf)
regulations. Were it subject to such a requirement, the Committee indicated that it would be content for the regulations to be subject to the affirmative procedure.

6. The Bill has been amended at Stage 2, by the addition of a new section 20(4), to add a further requirement that regulations under section 12 will be subject to statutory consultation.

7. In addition, section 12 has been amended at Stage 2 to add section 13(2)(b) and section 21(1A) to the list of provisions which may be amended consequentially by virtue of regulations made under section 12. This ensures that all of the relevant internal references to SDS options can be updated in response to any revision to the options provided within section 3.

Section 21 – Power to modify application of Act

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>The Scottish Ministers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power exercisable by:</td>
<td>Regulations</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>Affirmative procedure</td>
</tr>
</tbody>
</table>

8. Section 21 confers power upon the Scottish Ministers to make provision for or in connection with disapplying sections 4(2) or 7(2) of the Bill. Sections 4(2) and 7(2) are key to the Bill, as it is those provisions which require local authorities to give supported persons the opportunity to choose one of the section 3 options for delivery of support.

9. Where regulations disapply section 4(2) or 7(2), section 21(2)(a) provides that the person may also be deemed to have chosen Option 3, and section 21(2)(b) provides that the regulations may disapply or modify any other section of the Bill.

10. At Stage 1 the Committee considered that the section 21 power ought to be subject to a statutory requirement to consult interested bodies on any draft regulations. Were it subject to such a requirement, the Committee indicated that it would be content for the regulations to be subject to the affirmative procedure.

11. In response to these concerns the Bill has been amended at Stage 2 to add a requirement that regulations under section 21 will be subject to statutory consultation.

12. In addition, the provision permitting Ministers to use regulations to deem a person to have chosen option 3 has been replaced with a provision requiring any such regulations to include provision deeming a person to have chosen Option 3. This would mean that Ministers could not use regulations to disapply option 3, which would remain the default when no other options are available. In practical terms this will prevent Scottish Ministers from using subordinate legislation in order to “switch off” the provision of social care and support to any particular user group or any particular circumstance. This represents a further limitation on the discretion of Ministers in relation to this power.
Social Care (Self-directed Support) (Scotland) Bill

Marshalled List of Amendments selected for Stage 3

The Bill will be considered in the following order—

Sections 1 to 27          Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 1

Neil Bibby

30 In section 1, page 1, line 21, at end insert—

<( ) In carrying out its functions under sections 22 to 24 of the 1995 Act in relation to a particular child, a local authority must take a child centred approach which specifically reflects the child’s needs and wishes.>

Jim Hume

31 In section 1, page 1, line 21, at end insert—

<( ) A local authority must recognise carers as key partners in the assessment of the needs of persons being cared for and the provision of services for such persons.>

Jim Hume

32 In section 1, page 1, line 21, at end insert—

<(4A) Subject to the wishes of the person being cared for—

(a) a carer must have as much involvement as the carer wishes in relation to the matters mentioned in subsection (4B), and

(b) a local authority must collaborate with a carer in relation to those matters.

(4B) The matters are—

(a) the assessment of the needs for services of the person cared for, and

(b) the provision of services for the person cared for.>

Jim Hume

33 In section 1, page 2, line 13, at end insert <,

( ) “carer” means any person who provides, or intends to provide, care on a regular basis for another person (but does not include a person who provides, or will provide, the care in question by virtue of a contract of employment or other contract or as a volunteer for a voluntary organisation).>
Section 1A

Michael Matheson

14 In section 1A, page 2, line 16, leave out <have regard to> and insert <take reasonable steps to facilitate>

Michael Matheson

15 In section 1A, page 2, line 18, after first <the> insert <right to>

Michael Matheson

16 In section 1A, page 2, line 19, leave out <desire> and insert <right>

Section 2

Jim Hume

34 In section 2, page 2, line 36, leave out <may> and insert <must>

Section 3

Michael Matheson

17 In section 3, page 3, line 10, after <and> insert <, where it is provided by someone other than the authority,>

Michael Matheson

18 In section 3, page 3, line 18, after <and> insert <, where it is provided by someone other than the authority,>

Dr Richard Simpson

6 In section 3, page 3, line 28, at end insert—

<( ) In calculating relevant amounts, a local authority must not apply any automatic assumption that the provision of support under Option 1 or Option 2 will cost less than the provision of support under Option 3.>

Section 4

Dr Richard Simpson

7 In section 4, page 4, line 13, at end insert <, and

( ) in any case where the relevant amount for one or more of the options for self-directed support from which the authority is giving the person the opportunity to choose is less than the relevant amount for one or more of the other such options, the reasons for the difference (in writing).>
Section 5

Bob Doris
19 In section 5, page 4, line 26, leave out from <, because> to <matters> in line 29 and insert <the supported person falls within subsection (1A)>

Bob Doris
20 In section 5, page 4, line 30, at end insert—

<(1A) A supported person falls within this subsection if—

(a) because of mental disorder, the supported person would benefit from receiving assistance from another person in relation to making decisions about relevant matters,

(b) because of difficulties in communicating due to physical disability, the supported person would benefit from receiving assistance from another person in relation to communicating decisions about relevant matters.>

Bob Doris
21 In section 5, page 4, line 38, leave out <having an interest in the care of> and insert <who are able to assist>

Dr Richard Simpson
8 In section 5, page 4, line 38, after <person> insert <who the authority considers are suitable to assist the supported person in making decisions about relevant matters,>

Bob Doris
22 In section 5, page 4, line 40, at end insert <or, as the case may be, communicating decisions about relevant matters>

Dr Richard Simpson
9 In section 5, page 4, line 40, at end insert—

<( ) In identifying a suitable person to involve in assisting the supported person under subsection (4), the local authority—

(a) must be satisfied that—

(i) there is no reason to believe that the supported person will come under undue influence in—

(A) agreeing to the involvement of that person in the provision of assistance, and

(B) selecting an option for self-directed support under section 3, and

(ii) the person is sufficiently aware of the supported person’s circumstances and condition and the requirements for assistance arising from those circumstances and that condition, and

(b) must have regard to—>
(i) the accessibility of the person to the supported person,
(ii) the ability of the person to assist the supported person in the decision-making process,
(iii) any likely conflict of interest between the person and the supported person, and
(iv) any likely undue concentration in the person of power over the supported person.

Section 6

Dr Richard Simpson

10 In section 6, page 6, line 13, at end insert <, and

( ) in any case where the relevant amount for one or more of the options for self-directed support from which the authority is giving the person the opportunity to choose is less than the relevant amount for one or more of the other such options, the reasons for the difference (in writing).

Section 7

Dr Richard Simpson

11 In section 7, page 6, line 41, at end insert <, and

( ) in any case where the relevant amount for one or more of the options for self-directed support from which the authority is giving the person the opportunity to choose is less than the relevant amount for one or more of the other such options, the reasons for the difference (in writing).

Section 8

Michael Matheson

23 In section 8, page 8, line 18, at end insert—

<( ) 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)).>

After section 8

Michael Matheson

24 After section 8, insert—

<Provision of information: children under 16

(1) This section applies where under section 7 a local authority gives an appropriate person an opportunity to choose one of the options for self-directed support.
(2) The authority must, in so far as practicable and taking account of the maturity of the child, give the child to whom the support is to be provided an explanation of, and information relating to, the nature and effect of each of the options for self-directed support.

(3) The authority must give the explanation and information in such manner and form as is appropriate to the needs of the child to whom they are given.

(4) In this section “appropriate person” has the same meaning as in section 7(9).

Drew Smith

1 After section 8, insert—

<Advocacy

(1) Every person who has under section 4, 6 or 7 been given by a local authority an opportunity to choose one of the options for self-directed support has a right of access to independent advocacy.

(2) Each local authority must—

(a) secure the availability of independent advocacy services to those persons mentioned in subsection (1), and

(b) take appropriate steps to ensure that those persons have the opportunity of making use of those services.

(3) In this section “advocacy services” and “independent” have the meaning given in section 259 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13).

Jackie Baillie

2 In section 13, page 10, line 11, at end insert—

<(k) establishing a scheme for the regulation of the quality of support provided by persons who—

(i) provide support to which a direct payment relates, and

(ii) by virtue of falling within the exception to the meaning of “support service” in paragraph 1(2)(c) of schedule 12 to the Public Services Reform (Scotland) Act 2010 (asp 8), are not otherwise subject to the registration requirement under section 59 of that Act.>

Section 15

Bob Doris

25 In section 15, page 10, line 31, leave out from <, because> to <assessment> in line 34 and insert <the supported person falls within subsection (1A)>

Bob Doris

26 In section 15, page 10, line 35, at end insert—

<(1A) A supported person falls within this subsection if—}
(a) because of mental disorder, the supported person would benefit from receiving assistance from another person in relation to the carrying out of the assessment,

(b) because of difficulties in communicating due to physical disability, the supported person would benefit from receiving assistance from another person to communicate in relation to the carrying out of the assessment.

Bob Doris
27 In section 15, page 11, line 4, leave out <having an interest in the care of> and insert <who are able to assist>

Dr Richard Simpson
12 In section 15, page 11, line 4, after <person> insert <who the authority considers are suitable to assist the supported person in making decisions in relation to the carrying out of the assessment,>

Bob Doris
28 In section 15, page 11, line 7, at end insert <or, as the case may be, communicating in relation to the carrying out of the assessment>

Dr Richard Simpson
13 In section 15, page 11, line 7, at end insert—

<( ) In identifying a suitable person to involve in assisting the supported person under subsection (3), the local authority—

(a) must be satisfied that—

(i) there is no reason to believe that the supported person will come under undue influence in agreeing to the involvement of that person in the provision of such assistance, and

(ii) the person is sufficiently aware of the supported person’s circumstances and condition and the requirements for assistance arising from those circumstances and that condition,

(b) must have regard to—

(i) the accessibility of the assistant to the supported person,

(ii) the ability of the assistant to assist the supported person in the assessment process,

(iii) any likely conflict of interest between the person and the supported person, and

(iv) any likely undue concentration in the person of power over the supported person.>

Section 16

Jackie Baillie
3 Leave out section 16
Section 17

Nanette Milne

29 In section 17, page 12, line 3, at end insert—

<(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.

(3) In subsection (2), “supported person” has the meaning given by section 3(2).>

Section 20

Jackie Baillie

4 In section 20, page 12, line 28, after <12> insert <, 13(2)(k)>

Jackie Baillie

5 In section 20, page 12, line 31, after <12> insert <, 13(2)(k)>
Groupings of Amendments for Stage 3

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the day of Stage 3 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

**Groupings of amendments**

**Note:** The time limits indicated are those set out in the timetabling motion to be considered by the Parliament before the Stage 3 proceedings begin. If that motion is agreed to, debate on the groups above each line must be concluded by the time indicated, although the amendments in those groups may still be moved formally and disposed of later in the proceedings.

**Group 1: General principles**
30, 31, 32, 33, 14, 15, 16

**Group 2: Support for adult carers**
34, 3

Debate to end no later than 30 minutes after proceedings begin

**Group 3: Options for self-directed support**
17, 18, 6, 7, 10, 11

**Group 4: Assistance with choice and assessment**
19, 20, 21, 8, 22, 9, 25, 26, 27, 12, 28, 13

**Group 5: Independent advocacy**
23, 1

Debate to end no later than 1 hour after proceedings begin

**Group 6: Provision of information to children**
24

**Group 7: Scheme for regulation of quality of support**
2, 4, 5
Group 8: Duty on local authorities to promote variety of providers and support

Debate to end no later than 1 hour 20 minutes after proceedings begin
Note: (DT) signifies a decision taken at Decision Time.

Business Motion: Joe FitzPatrick, on behalf of the Parliamentary Bureau, moved S4M-5011—that the Parliament agrees that, during stage 3 of the Social Care (Self-directed Support) (Scotland) Bill, debate on groups of amendments shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limit indicated, that time limit being calculated from when the stage begins and excluding any periods when other business is under consideration or when a meeting of the Parliament is suspended (other than a suspension following the first division in the stage being called) or otherwise not in progress:

- Groups 1 and 2: 30 minutes
- Groups 3 to 5: 1 hour
- Groups 6 to 8: 1 hour 20 minutes.

The motion was agreed to.

Social Care (Self-directed Support) (Scotland) Bill - Stage 3: The Bill was considered at Stage 3.

The following amendments were agreed to (without division): 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 and 29.

The following amendments were disagreed to (by division)—

- 34 (For 5, Against 76, Abstentions 35)
- 6 (For 52, Against 61, Abstentions 0)
- 7 (For 53, Against 63, Abstentions 0)
- 8 (For 54, Against 63, Abstentions 0)
- 1 (For 54, Against 63, Abstentions 0)
- 2 (For 48, Against 68, Abstentions 0)
- 3 (For 42, Against 75, Abstentions 0).

Amendment 30 was moved and, with the agreement of the Parliament, withdrawn.

The following amendments were not moved: 31, 32, 33, 9, 10, 11, 12, 13, 4 and 5.

The Deputy Presiding Officer extended the time-limits under Rule 9.8.4A(c).

Social Care (Self-directed Support) (Scotland) Bill: The Minister for Public Health (Michael Matheson) moved S4M-4995—that the Parliament agrees that the Social Care (Self-directed Support) (Scotland) Bill be passed.

After debate, the motion was agreed to (DT).
The next item of business is stage 3 proceedings of the Social Care (Self-directed Support) (Scotland) Bill. In dealing with amendments, members should have the bill as amended at stage 2, the marshalled list and the groupings.

The division bell will sound and proceedings will be suspended for five minutes for the first division of the afternoon. The period of voting for the first division will be 30 seconds. Thereafter, I will allow a voting period of one minute for the first division after a debate.

Members who wish to speak in the debate on any group of amendments should press their request-to-speak buttons as soon as possible after I call the group. I advise members that time is very tight. Members should now refer to the marshalled list of amendments.

Section 1—General principles

The Deputy Presiding Officer: Group 1 is on general principles. Amendment 30, in the name of Neil Bibby, is grouped with amendments 31 to 33 and 14 to 16.

Neil Bibby (West Scotland) (Lab): Amendment 30 follows my discussions with Barnardo's and the National Society for the Prevention of Cruelty to Children and reflects the concerns that those organisations raised with me. A number of other children's charities also support the amendment because of concerns that the bill and the Government’s self-directed support strategy are too adult focused and do not sufficiently reflect the needs of children.

Greater evaluation of the evidence on self-directed support for children and young people is required. In the SDS pilots, only a small minority of the case studies received in the programme evaluation related to children. Very little research has been done on those aged 16 who manage their own care and the transition from children's services to adult services.

More must also be done to inform families of how the bill will affect them. Many users of Barnardo’s services feel unsure about the new options, how they will work for them and what they will mean for their children. They do not believe that local authorities have the answers at present.

The bill will have a significant impact on children, young people and their families, particularly regarding the type of services available
to them. That should be specifically reflected in the bill and the regulations that are made under it. I ask the minister to make a clear statement that, following the passing of the bill, the Scottish Government will ensure that children and families are at the centre of implementation plans and that statutory guidance will include reference to the specific needs of children and how a child-centred approach can be delivered by local authorities.

I also hope that the minister will make a commitment that the proposals in the bill will be aligned with the proposals in the forthcoming children and young people bill for strategic planning of children’s services by all public bodies that deliver those services, the single child’s plan and the new duty on all parts of the Government to advance children’s rights. Such commitments and the addressing of other concerns outlined by Barnardo’s Scotland and other children’s charities would strengthen the bill and clarify the type and level of support that is available to children and their families.

I move amendment 30.

Jim Hume (South Scotland) (LD): Amendments 31 to 33 aim to recognise fully the role of carers in the bill’s general principles. There are estimated to be more than 650,000 unpaid carers in Scotland, which is one in eight of the Scottish population. They provide care that is worth around £10 billion per year.

Scotland’s carers strategy, “Caring Together”, states:

“Health and social care staff should have a proper appreciation of the role of carers and young carers and commit to engage with carers as equal and expert partners in the design and delivery of health and social care services.”

Amendment 31 seeks to insert into section 1 a duty for local authorities to recognise carers as key partners in the assessment of the needs of the persons who are being cared for and in the provision of care services. Amendment 32 aims to ensure that, subject to the wishes of the person who is being cared for, a carer has a right to involvement in the assessment of the needs of and the provision of services or support to the cared-for person. I believe that the definition in amendment 33 is required to clarify the meaning of “carer” for the purposes of section 1.

15:15

Those changes, which have been proposed by carers organisations, would enable both the individual and their carer to discuss what care the carer is willing and able to provide and what support, if any, the individual wants from their carer. They also represent an opportunity to ensure that carers are identified early and offered appropriate support.

I recognise that the Scottish ministers, health staff and social care staff already appreciate the role of carers and young carers. However, the bill presents an opportunity to formally recognise the role of carers and ensure that their voices are heard.

We will also support the other amendments in the group.

The Minister for Public Health (Michael Matheson): I will respond to the amendments proposed by Neil Bibby and Jim Hume and speak to my own.

Neil Bibby’s amendment 30 would introduce a new general principle that, in carrying out its functions under the bill in relation to a child, a local authority should take a child-centred approach that reflects the needs and wishes of the child as far as is possible. I am not convinced that the amendment is necessary, as all the general principles in the bill apply to anyone—both adults and children—who receives support under its provisions.

In carrying out its functions under the bill in respect of a child, a local authority must pay due regard to the principles of involvement, informed choice and collaboration. It must also respect the dignity of the child and their desire to participate in the wider life of the community. Therefore, I do not think that amendment 30 adds to the principles that already apply to every child who receives services under the bill.

I appreciate that Neil Bibby and the organisations that have informed the amendment want to make a difference to the way in which services are delivered to children. In seeking to underpin the child-centred approach, I encourage them to engage fully in the development of the proposed children and young people bill. I also encourage them to continue to engage with our officials on the Social Care (Self-directed Support) (Scotland) Bill as we move towards its implementation, particularly through the dialogue that we can have on improving the statutory guidance in this area. However, I do not support Neil Bibby’s amendment.

Jim Hume’s amendments 31 to 33 seek to ensure that carers are recognised as key partners in care and that, when the person who is being cared for so wishes, the carer must be involved in the assessment for and provision of services. It is clear to the Scottish Government that carers are key partners. That principle is already enshrined in statutory and other guidance. At the request of the national carers organisations and carers, we built on that approach in the carers strategy to make it
clear that carers should be seen as equal partners.

I understand the intentions behind amendments 31 and 32. We know, from practice, that there is merit in involving carers in issues that local authorities take forward in relation to cared-for people when both the carer and the cared-for person want that. However, I am not convinced that we need to extend that provision at this stage, and we should certainly not do so without adequate consultation.

Amendment 32 proposes a greater role for carers in the assessment of the cared-for person and proposes that the local authority should collaborate with the carer, subject to the wishes of the person who is being cared for. Moreover, for the purposes of the amendment, the definition of “carer” would be broadened out to mean a regular carer rather than a carer who provides a substantial amount of care on a regular basis, as set out in statute for the purposes of eligibility for a carers assessment. That means that carers whose caring role is regular but not intensive or substantial—perhaps they do a weekly shop or monthly gardening, or they pick up prescriptions for a friend or neighbour—could be involved in decisions about the assessment and the provision of services for the person.

Amendment 32 is incomplete in that it makes no provision for persons without capacity to express their wishes. Although I am sympathetic to some of the intention behind Jim Hume’s amendments, the omission in amendment 32 is important. As a Parliament, we would need to have a wider consultation before introducing such a provision.

I propose an alternative course of action. We have awarded a contract to Carers Scotland and the Minority Ethnic Carers of People Project to provide a carers rights charter. We will ask those two organisations to explore the principles behind the amendments through the work that they will carry out on the charter. Depending on the results of that work, we will decide whether to pursue the matter further at a more suitable time.

Given what I have said about the consequences of the amendments and about the carers rights charter, I invite Jim Hume to not move his amendments 31 to 33.

My amendments 14 to 16 make further adjustments to the general principles on independent living. As members of the committee will no doubt recall, I brought forward the independent living principles in response to a recommendation from the committee, which itself was a response to the views of the independent living community in Scotland.

As members will know, the inspiration for and ultimately the source of our understanding of independent living stem from the wider fundamental rights that are contained in the United Nations Convention on the Rights of Persons with Disabilities and the European convention on human rights.

My amendments 15 and 16 convey the importance of independent living by better reflecting the rights that are conferred on individuals by those conventions. My amendment 14 adjusts the general principles in order to strengthen them. It requires local authorities to “take reasonable steps to facilitate” the principles. In other words, it places an obligation on local authorities to do all that they reasonably can do to ensure that people’s rights are facilitated.

I urge the Parliament to support the amendments in my name.

The Deputy Presiding Officer (John Scott): I call on Neil Bibby to wind up and press or withdraw amendment 30.

Neil Bibby: As I said earlier, I believe that legislation that affects children should ensure that a child-centred approach is in place. Given the minister’s reassurances and comments, I seek to withdraw amendment 30.

The Deputy Presiding Officer: The member is seeking to withdraw his amendment. Does any member object?

Members: No.

Amendment 30, by agreement, withdrawn.

The Deputy Presiding Officer: Amendment 31, in the name of Jim Hume, has already been debated with amendment 30. I ask Mr Hume to move or not move his amendment.

Jim Hume: Am I permitted to discuss amendments 31, 32 and 33 as one?

The Deputy Presiding Officer: They have already been debated.

Jim Hume: Okay. In the light of what the minister said about amendments 31 to 33, I will not move them, but I will look for assurances in the future that the minister is standing by what he said.

Amendments 31 to 33 not moved.

Section 1A—Further general principles applicable to this Act

Amendments 14 to 16 moved—[Michael Matheson]—and agreed to.
Section 2—Support for adult carers

The Deputy Presiding Officer: Amendment 34, in the name of Jim Hume, is grouped with amendment 3.

Jim Hume: Amendment 34 seeks to strengthen the support that the bill offers to unpaid carers. As it stands, the bill provides local authorities with a discretionary power to provide services to carers to support them in their caring responsibilities following an assessment. Under the amendment, when a local authority decided to provide some form of support to a carer, they would be under a duty to offer the carer the four options of self-directed support.

I welcome the extension of self-directed support to Scotland’s carers. It is right that they receive more control and choice over the support that they receive, and the bill is an important step forward in that regard. However, many carers are worried that the bill as it stands will not deliver the necessary improvements that they need in their everyday lives.

Without the valuable contribution of Scotland’s carers, which is worth around £10 billion, the health and social care system would be unsustainable—and that staggering contribution will become even more apparent as Scotland’s population continues to age and as the balance of health and care delivery continues to shift into our communities. It is in everyone’s interest to ensure that resources are used to maximum effect.

Carers Scotland argues:

“Providing small interventions at an early stage and/or at the right time can prevent a crisis and a consequent breakdown of care, necessitating the provision of significantly more costly services. Providing support at the right time can also prevent carers from having to give up paid employment and activities that sustain their life”.

I do not think that carers should have to battle to receive the support that they need to continue their caring role, and amendment 34 will give carers the right to access the support that they have been assessed as needing.

I move amendment 34.

Jackie Baillie (Dumbarton) (Lab): My amendment 3 seeks to remove section 16, which gives local authorities the power to charge carers for services received when seeking self-directed support. Like other elements of the bill that relate to carers, it repeats provisions in the Social Work (Scotland) Act 1968.

At the heart of the amendment is a debate about the principle of charging carers for services in the first place. In effect, section 16 highlights local authorities’ ability to charge carers for services. Members should make no mistake: although the power is discretionary, local government is shouldering 83 per cent of the Scottish Government cuts and might have no choice but to use it.

Probably without exception, we have all paid tribute to carers and acknowledged their value to society. In economic terms, they provide £10.8 billion of worth simply by caring and save the public purse a substantial amount of money; in social terms, they sustain older people in their families, homes and communities.

The question today is whether our rhetoric will be matched by action. The Community Care and Health (Scotland) Act 2002 established the principle that carers should be given the same status as care providers and acknowledged that carers required resources and support to enable them to fulfil their caring role. As Simon Hodgson, director of Carers Scotland, has said, “the idea that health board staff have to pay to attend a course on how to lift someone safely, or local authority staff would be invoiced for taking time off in lieu because they had earnings or savings above a certain level, would be rightly considered absurd, yet that is precisely what might happen if the legislation is not amended.”

Either carers are to be treated as care providers or they are not. Let us be clear: the amounts that we are talking about for training, respite and so on for carers are tiny in comparison with the £10.8 billion that they give back. The evidence backs that up.

Charging is also considered to undermine the principles of self-directed support, as it could deter carers from accessing support in the first place. Concerns have also been raised about adding to the postcode lottery of care that already exists with regard to charging, with 32 local authorities doing things in 32 different ways. Where, as a result of the 1968 act, charging exists, guidance on legislation has been interpreted in different ways.

The key point is that section 16 is not required. As the provision already exists and as charges are already made under it, the section is effectively redundant. As the power in the 1968 act has existed for some time, I am genuinely disappointed that the minister has waited until now to announce that he will introduce regulations—although I am delighted that he intends to do so. Surely those regulations should have accompanied the bill to make the intentions with regard to charging absolutely clear. At the moment, we are facing both ways, and delay simply invites local authorities to charge.
Carers are very much an integral part of Scotland’s health and social care system. They are an essential but finite resource, and they need our support to continue to care.

15:30

Nanette Milne (North East Scotland) (Con): I will speak to amendment 34.

I agree absolutely with the Health and Sport Committee that it is extremely important that carers’ health and wellbeing be supported to ensure that they can continue to undertake their caring role. However, I also note the comment that the minister made in his response to the committee’s stage 1 report that “Introducing a duty to support carers would inevitably be linked to strict eligibility criteria where only those carers experiencing substantial need would be supported.”

and that such restrictions could go against the Government’s “stated ambition to provide early, preventative support to carers.”

That being the case, I am concerned that carers could be worse off under Jim Hume’s amendment 34 than they are at present, and my inclination would be to resist it.

Michael Matheson: I will speak to the amendments from Jim Hume and Jackie Baillie.

Jim Hume’s amendment 34 would remove the power in the bill to support carers and replace it with a duty to support them instead. As I made clear in previous correspondence to the lead committee, that is not, in fact, straightforward.

Introducing a duty to support carers may lead to formal national eligibility criteria and a much less flexible approach. In some cases, carer support may be narrowed to the most critical level of carer need only. I want to adopt as flexible an approach as possible. That is why the bill includes a strong power that will be supported by clear and empowering guidelines to local authorities.

I turn to the arguments that Jackie Baillie put forward for amendment 3. As she is no doubt aware, charging is a complex matter. It would be wrong to assume that, simply by removing section 16, we would strengthen the position of carers with respect to charging. In fact, the opposite is true: the position of carers with respect to charging would actually be weakened.

I will also put to rest some of the misplaced speculation that the Government intends to use the bill to widen councils’ discretion to charge carers.

I plan to use the powers that are provided in section 16 to issue regulations that make it clear that all charges for support to carers should be waived in whole. To be abundantly clear, carers will not be charged for support that they receive directly under section 2 of the bill.

Jackie Baillie: I welcome the minister’s intentions—I have never doubted them—but the issue for me is that section 16 is not required. The power that he will exercise is in the 1968 act.

Michael Matheson: I will come to that point. Unfortunately, Ms Baillie is wrong on that.

Our approach, for the first time, recognises carers as providers of a service to those for whom they care. I appreciate that some members may question, as Jackie Baillie does, why we wish to retain a power to charge carers when our policy is to restrict charges on them. The answer is straightforward.

If we chose to do as Jackie Baillie suggests—to dispense with section 16—we would have no legislative basis on which to make the regulations and would be left in the position that we are in right now, in which carers do not know what they might be charged for and in which carers can be charged for different services in different parts of the country.

I make it clear that section 16 creates the provision for ministers to limit the discretion of councils to charge. In other words, it allows us to narrow councils’ discretion to charge as little or as much as the Parliament wishes.

Jackie Baillie: It is not that we spend our time delving into the intricacies of legislation, but I refer the minister to section 87(5) of the Social Work (Scotland) Act 1968, which says that he “may … make regulations for modifying or adjusting the rates at which payments under this section are made, where such a course appears to him to be justified, and any such regulations may provide for the waiving of any such payment in whole or in part in such circumstances as may be specified in the regulations.”

He already has the power without section 16.

Michael Matheson: Again, that is actually incorrect. Local authorities are using some of their financial discretion powers in order to levy charges against carers, and the way in which we can regulate that is through the use of section 16. I am afraid that Jackie Baillie is wrong on the matter.

Additionally, regulation will provide Parliament with the flexibility to respond to any effort to circumvent our restrictions. Some local authorities are using those general powers to charge carers; my approach will limit that discretion in a much more specific way. I also point out that the Scottish Government will consult carefully and fully on the draft regulations before they are brought to Parliament and that any regulations will take effect at the same time as we commence the act.
Let me now make some wider comments following on from our discussion on the amendments in this group and on those in the previous group on the general principles.

I understand the desire of carers organisations to see improvements to policy and practice with regards to carer support. That is why the regulations that I intend to bring forward are only part of a package of support that I intend for carers. I am pleased to inform Parliament today that, in addition to my commitment on charging, I will also issue directions to local authorities about the way in which they should approach the “substantial and regular” test on access to carers assessments.

Ministers do not issue directions lightly, so I hope that members will appreciate the importance of this step and the advantages that directions provide. As members will be aware, access to a carers assessment is the first step on the road to getting some support. Together with our work to support the national roll-out of carers assessments, the directions will result in the provision of greater consistency in the approach that is taken across the country on the provision of carers assessments.

Furthermore, as many in the chamber will know, some carers do not meet the threshold for a carers assessment. Carers in that situation should be supported on a preventative basis to maintain their health and wellbeing. I therefore intend to issue statutory guidance to local authorities about the benefits of intervening early to support carers and to encourage local authorities to provide such support. The support could include information, advice, signposting or directing the carer towards another organisation.

It is important that carers get the support that is right and necessary for them. I am confident that these further measures will help to address the issues that have been raised by the national carers organisations.

In conclusion, I do not support either of the amendments. I urge Jackie Baillie not to move amendment 3, which would make the situation worse, and I ask Jim Hume to withdraw amendment 34.

Jim Hume: I appreciate what the minister has said about guidance. I believe that integrating health and social care services so that public resources can be put to best possible use to prevent problems from occurring could also save money further down the line. Supporting carers needs to form an important part of that move to an integrated preventative approach.

I will press amendment 34.

The Deputy Presiding Officer: The question is, that amendment 34 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division. I suspend the proceedings for five minutes.

15:38

Meeting suspended.

15:43

On resuming—

The Deputy Presiding Officer: We move to the division on amendment 34.

For

Hume, Jim (South Scotland) (LD)
McArthur, Liam (Orkney Islands) (LD)
McInnes, Alison (North East Scotland) (LD)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scott, Tavish (Shetland Islands) (LD)

Against

Adam, Brian (Aberdeen Donside) (SNP)
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Alenie (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eddie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Harvie, Patrick (Glasgow) (Green)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (North East Scotland) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Mline, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Yousaf, Humza (Glasgow) (SNP)

Abstentions
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (SNP)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
 Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)

Smith, Drew (Glasgow) (Lab)
Stewart, David (Highlands and Islands) (Lab)

The Deputy Presiding Officer: The result of the division is: For 5, Against 76, Abstentions 35.

Amendment 34 disagreed to.

Section 3—Options for self-directed support

I will now deal with the amendments in Dr Simpson’s name. Dr Simpson lodged similar amendments at stage 2. I said in committee that the Scottish Government could not support amendments that would “restrict flexibility without a full understanding of the potential consequences of doing so.”—[Official Report, Health and Sport Committee, 30 October 2012: c 2914.]

That is still my position.

I accept that, by proposing his amendments, Richard Simpson is attempting to address unfairness in the setting of rates between the various options, but the changes that we made at stage 2 to the provisions already ensure greater transparency in how local authorities allocate payment under the available options.

The bill as amended at stage 2 already provides for a transparent budget for all four self-directed support options. Statutory guidance, training and further implementation of the national strategy will encourage greater fairness without interfering with the bill. The guidance will fully consider issues around commissioning, procurement and finance that can lead to discrepancies in the allocation of resources.

I ask members to support amendments 17 and 18, and to reject Richard Simpson’s amendments.
I move amendment 17.

Dr Richard Simpson (Mid Scotland and Fife) (Lab): The situation as it stands is that local authorities allocate direct payments that are frequently lower than amounts paid for support under options 2 and 3, based on the assumption that a person who is taking a direct payment will employ a personal assistant. However, individuals use direct payments to buy services from organisations—the most notable example of that arose during the Edinburgh care and support retendering exercise, when service users took direct payments in order to remain with their existing service providers, rather than move to the organisations that won the retender.

Paragraph 63 of the Scottish Government’s 2007 guidance on self-directed support says:

“It is best practice for local authorities to offer an individual budget of an equivalent monetary value of a council-arranged service to allow individuals to select their chosen option.”

My amendments 6 and 10 simply state that that payment should not automatically be lower. In other words, a local authority would have a duty to look at the type of care that the individual wanted under the bill—and to do so before making up its mind about whether to offer a lower rate. I absolutely reject the Government’s position in rejecting my amendments, which was laid out at stage 2, that that would reduce the local authority’s flexibility.

The purpose of my amendments is to ensure complete transparency about the process and that a lower amount is not offered automatically for options 2 and 3. That is a reasonable approach if we are to have an open and transparent system.

Amendments 7 and 11 ensure that reasons will be given in writing. That approach is required because, as a Parliament, we need to be absolutely clear that we audit what is going on.

Both my sets of amendments need to be agreed to, so that exactly what is happening out there is clear. The amendments do not prevent in any way the local authority from giving a lower direct payment, but it must justify and demonstrate why it is doing so. My amendments are reasonable, and I intend to press them.

Michael Matheson: As I have set out, we amended the bill at stage 2 to ensure greater transparency. The bill will therefore deliver that. Through statutory guidance, we will also implement further measures to ensure greater consistency in how local authorities operate in this area.

To a large extent, rather than creating any fundamental difference in relation to how the system is delivered, Richard Simpson’s amendments would create nothing more than a paper exercise. That is why it would be better and more effective to try to address some of the issues through statutory guidance.

Amendment 17 agreed to.

Amendment 18 moved—[Michael Matheson]—and agreed to.

Amendment 6 moved—[Dr Richard Simpson].

The Deputy Presiding Officer: The question is, that amendment 6 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Easwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfries and Galloway) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
The result of the division is: For 52, Against 61, Abstentions 0.

Amendment 6 disagreed to.

Section 4—Choice of options: adults

Amendment 7 moved—[Dr Richard Simpson].

The Deputy Presiding Officer: The question is, that amendment 7 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Ferguson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Etritich, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfrieshire) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

Against

Adam, Brian (Aberdeen Donside) (SNP)
Adam, George (Paisley) (SNP)
Section 5—Choice of options under section 4: assistance

The Deputy Presiding Officer: Amendment 19, in the name of Bob Doris, is grouped with amendments 20, 21, 8, 22, 9, 25 to 27, 12, 28 and 13.

Bob Doris (Glasgow) (SNP): The bill is founded on the principle that every person in receipt of social care has the right to make their own choice about how they receive that care and support. Sections 5 and 15 of the bill build on that.

Section 5 requires the local authority to “take reasonable steps to enable the supported person” to choose their self-directed support option. It also requires the local authority to take “reasonable steps” to identify people who are able to assist a supported person who has a mental disorder or who has communication difficulties due to a physical disability.

Section 15 imposes a similar duty on the local authority to identify people who are able to assist at an earlier stage, when a person’s needs are being assessed under section 12A of the Social Work (Scotland) Act 1968.

My amendments are concerned with the assistance provided by the people identified by the local authorities. Amendments 21 and 27 remove the qualification that the persons assisting need to have a prior interest in the care of a supported person. That is an unnecessary limitation on the people who may be able to help.

My other amendments deal with the type of assistance that may be provided by such persons. As members will appreciate, there is a subtle but important distinction between making a decision and communicating a decision. Some people may have a mental disorder that makes it particularly difficult for them to understand and make decisions, whereas others may have a physical disability that makes it particularly difficult for them to communicate decisions.

Capability Scotland has approached me with a view to making that distinction clearer in sections 5 and 15, and that is what my amendments seek to do. Their effect would be to make sections 5 and 15 clearly reflect the two distinct types of assistance that a person may give: assistance to someone with a mental disorder in relation to assessments and making decisions about self-directed support; and communication assistance in relation to those matters for someone with a physical disability that affects their communication abilities.

I am grateful to Capability Scotland for informing me that those amendments would be beneficial.
commend them and my other amendments to the Parliament and invite members to support them.

I move amendment 19.

Dr Simpson: I will deal first with the amendments in the group that are not in my name. We welcome and support Bob Doris’s amendments 19 to 22 and 25 to 28, which arose from earlier discussions.

My amendments in this group relate to issues that the Law Society of Scotland has raised with us. It is concerned that the bill does not provide the necessary safeguards, or place any obligation on an authority, to protect against undue influence being exerted over the assisted person.

My first pair of amendments—amendments 8 and 12—would require reasonable steps to be taken to ensure that any person who was appointed to assist would be suitable in accordance with proposed new section 5(5).

Amendments 9 and 13 seek to provide a definition of how the assisted person should be looked at. The intention is to ensure that we have a situation in which those who do not qualify under the Adults with Incapacity (Scotland) Act 2000 or the vulnerable adults legislation, but who might be vulnerable and whose position in having a disability is not completely robust, are protected from undue influence from individuals who might be unsuitable. We know that such unsatisfactory cases have been reported in the press. My amendments would provide protection that the Law Society thinks that it would be appropriate to include in the bill.

Michael Matheson: I will respond to Bob Doris’s and Richard Simpson’s amendments.

As Bob Doris said, his amendments address a point of clarity that was raised by Capability Scotland. I consider that sections 5 and 15 would benefit from the small adjustments proposed, so I recommend that the Parliament supports Bob Doris’s amendments.

Richard Simpson lodged similar amendments at stage 2. I recommended then that the committee should reject them, and that remains my view. His amendments would require any person who provided assistance to an individual in undertaking their assessment or making their choices to be “suitable” in the view of the local authority. They would place a duty on the local authority to be satisfied that the supported person would not come under undue influence from the person who provided them with assistance in agreeing to that assistance and in selecting an option for SDS.

In addition, Richard Simpson’s amendments would require the local authority to have regard to the accessibility of the person to the supported person, the ability of the person to assist the supported person in the decision-making process, any likely conflict of interest between the person and the supported person, and any likely undue concentration in the person of power over the supported person.

Richard Simpson’s amendments are well intentioned. He stated at stage 2 that some relatives can act in a manner that is overly restrictive of individuals who have capacity. As I understand his position, he is seeking to place on the face of the bill formal tests that would have to be gone through before an individual would be allowed to provide assistance.

However, we must return to the purpose of the provisions, which is to enable and encourage local authorities to maximise individuals’ capability to understand, make decisions and communicate decisions, and to identify persons who, with the agreement of the supported person, can assist. The challenge in that respect is to define and articulate in statutory guidance appropriate and inappropriate forms of assistance. I intend to elaborate on that in the statutory guidance that will accompany the bill.

I recommend that Parliament supports Bob Doris’s amendments and rejects Richard Simpson’s amendments.

16:00

Bob Doris: I thank the minister for accepting the amendments in my name.

Amendment 19 agreed to.

Amendments 20 and 21 moved—[Bob Doris]—and agreed to.

Amendment 8 moved—[Dr Richard Simpson].

The Deputy Presiding Officer: The question is, that amendment 8 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)

Against

Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Michael Matheson: During the stage 1 debate I told Parliament that I would give full consideration to how we could enhance section 8 with regard to advocacy. Amendment 23 makes explicit the Scottish Government's position that local authorities should provide information on how to access advocacy services to anyone who would benefit from that type of support.

The Deputy Presiding Officer: The result of the division is: For 54, Against 63, Abstentions 0.

Amendment 8 disagreed to.

Amendment 22 moved—[Bob Doris]—and agreed to.

Amendment 9 not moved.

Section 6—Choice of options: adult carers

Amendment 10 not moved.

Section 7—Choice of options: children and family members

Amendment 11 not moved.

Section 8—Provision of information about self-directed support

The Deputy Presiding Officer: Group 5 is on independent advocacy. Amendment 23, in the name of Michael Matheson, is grouped with amendment 1.

Michael Matheson: During the stage 1 debate I told Parliament that I would give full consideration to how we could enhance section 8 with regard to advocacy. Amendment 23 makes explicit the Scottish Government's position that local authorities should provide information on how to access advocacy services to anyone who would benefit from that type of support.

The Deputy Presiding Officer: The result of the division is: For 54, Against 63, Abstentions 0.

Amendment 8 disagreed to.

Amendment 22 moved—[Bob Doris]—and agreed to.

Amendment 9 not moved.
The amendment builds on existing legislation in the form of the Mental Health (Care and Treatment) (Scotland) Act 2003, which already provides a right to advocacy for everyone—adults and children—with a mental disorder, as defined in the act, including people with learning disabilities and mental ill health.

On Drew Smith’s amendment 1, we must ensure that advocacy support is targeted at those who will benefit from it. Not everyone will want or require an independent advocate in every instance and I am not convinced that providing a right to advocacy to everyone who receives social care, as Drew Smith proposes, would be a proportionate measure.

I am aware that many people will want to access support from a range of sources, such as carers organisations and user-led support organisations. Indeed, people will want to access a variety of support at different points on their SDS journey. We need a solution that promotes the sustainable development of advocacy services and recognises their important place within a wider framework of support services.

I hope that Drew Smith will support my amendment 23. Accompanied by statutory guidance, it will support social work professionals in using their professional judgment to consider whether advocacy is required each time that they have a discussion with or assess an individual.

I ask Drew Smith not to move his amendment 1. If it is pressed to a vote, I ask members to reject it.

I move amendment 23.

Drew Smith (Glasgow) (Lab): I welcome the minister’s amendment 23, which puts the term “independent advocacy” in the bill. I withdrew a previous amendment following the debate at stage 2, in which the minister indicated that he would be willing to think again about the matter. I thank him for his and his officials’ time in meeting me to discuss the amendments last week.

The issue of independent advocacy goes to the heart of the values that underpin the bill. As I said at stages 1 and 2, our intention is that those who use the services have choice and control, but that choice and control must be exercised meaningfully. The service users’ needs, frustrations and aspirations must be heard loud and clear during the needs assessment process, which underpins the move to greater self-direction. Amendment 23 will considerably improve the bill as drafted, and the minister has moved some way.

I turn to my amendment 1. I will briefly set out the difference between the minister’s approach and the approach that I have taken.

The purpose of my amendment 1 is to ensure not only that independent advocacy is enshrined in the bill in name, but that a right of access to it is established for everyone who might need it. Currently, health boards and local authorities throughout Scotland have a duty to ensure that independent advocacy is available in their area. Infrastructure is already in place, but only half the local authorities have advocacy services that are available to service users with a physical but not a mental disability. If the right and the corresponding duty that my amendment proposes do not exist, it is likely that, in half the local authorities, people who think that their voice is not being heard will not be able to find an independent advocate to help them articulate their views in the process.

I recognise that not everyone who gave evidence to the committee thought that there was an absolute need for a right to advocacy if there was a clear commitment to the services being in place. At stage 2, some members expressed concern that a right was going too far and that it would place a greater burden on authorities to provide services that would not be necessary for the majority. To be clear again, that would not be the effect of amendment 1. There would be no need for people to see an advocate in order to determine that one was not needed.

I said that I valued the minister’s time and I welcomed the progress that we have made. I have carefully considered whether to not move amendment 1 in favour of supporting amendment 23, but my view remains that a principle is being debated. Amendment 23 puts a duty on local authorities to provide information about independent advocacy wherever the council considers it appropriate to do so. I have spoken about the issue to other members who have been contacted by their constituents, and I continue to believe that information about advocacy should be readily available to all and that a right of access to advocacy should exist for all who consider that they need it.

The Deputy Presiding Officer: We are tight for time and three other members wish to speak to this group of amendments. I can allow them one minute each.

Mark McDonald (North East Scotland) (SNP): I rise to speak to Drew Smith’s amendment 1.

In the committee, I made it clear that I thought that the amendment that Drew Smith lodged at stage 2 involved an element of putting the cart before the horse, and I still think that that is the case with amendment 1. Paragraphs 2(a) and 2(b) of the new section that the amendment would insert clearly state that the securing of the availability of advocacy services comes ahead of any determination of whether the individual requires or wishes the advocacy service to be provided. The minister’s amendment 23 will strengthen the bill, but I ask Drew Smith not to
move his amendment, as he has not provided the clarity that I asked for in the committee.

**Nanette Milne:** The Scottish Independent Advocacy Alliance has pointed out that, as it stands, the bill would lead to discrimination against some individuals because the provision of independent advocacy for anyone who does not have a mental disorder is not universally available. Half of Scotland’s local authorities have no provision available beyond the statutory duties provided for in the Mental Health (Care and Treatment) (Scotland) Act 2003, and the SIAA reckons that 56 per cent of SDS claimants in those areas will have no right of access to independent advocacy. Although not everyone will want or need independent advocacy support, without a right of access, those who want or need such support will not always be able to access it. Therefore, I am happy to support Drew Smith’s amendment 1. I also support the minister’s amendment 23.

**Malcolm Chisholm (Edinburgh Northern and Leith) (Lab):** I support Drew Smith’s amendment 1. Including in the bill a right of access to independent advocacy would not mean that everyone applying for self-directed support would be required to use independent advocacy services, but I believe that the decision to access such a service should be made by service users and not by professionals, as the minister suggested. That principle would genuinely build on the Mental Health (Care and Treatment) (Scotland) Act 2003.

The minister claims to be building on the 2003 act, but the problem is availability, as Nanette Milne and Drew Smith have indicated. We know that in 50 per cent of local authorities, only those who have a statutory right under the 2003 act can access advocacy. What will that 50 per cent of local authorities say? They have an obligation to give information, but what information will they give? Will they say that, because their advocacy service is for mental health users, others cannot access that service? That does not seem to me to take us much further forward.

The Deputy Presiding Officer: Under rule 9.8.4A, I will allow the debate on this group to continue beyond the time limit in order to avoid unnecessarily constraining debate.

**Michael Matheson:** I have listened carefully to members’ comments, but I go back to the committee’s stage 1 report, which highlighted that not everyone would require access to independent advocacy and that people may wish to make use of other services. I believe that my amendment 23 strikes the right balance, and I ask the Parliament to support it.

Amendment 23 agreed to.
The Deputy Presiding Officer: The result of the division is: For 54, Against 63, Abstentions 0.

Amendment 1 disagreed to.

Section 13—Power to make further provision about direct payments

The Deputy Presiding Officer: Group 7 is on a scheme for regulation of quality of support. Amendment 2, in the name of Jackie Baillie, is grouped with amendments 4 and 5.

16:15

Jackie Baillie: Amendment 2 is about regulation of personal assistants. The issue has, rightly, been the subject of much interest and debate in the committee and beyond. The intention behind amendment 2 is that we achieve a balance between the disabled people who will be empowered and able to choose their own personal assistants and the people who might have complex conditions and who would be considered to be more vulnerable.

I celebrate the fact that the bill is about empowering people who are cared for to have more choice, more flexibility and more control over their lives. The fact that a person is in a wheelchair...
does not mean that he or she cannot exercise control and decide whom to employ as a personal assistant, just as any employer would do. I do not think that any member has a problem with that.

I accept that disability organisations and disabled people themselves do not want regulation. Rather than rely on legislation, they want training and support to become good employers and to recruit safely. Indeed, some disabled people do not need any of that support.

My concern is about people who have very complex needs, who might be deemed to be very vulnerable. Such people want the flexibility that self-directed support gives them and they want to exercise choice about how and when their care is provided. That is absolutely right. However, there might be a need for additional safeguards, which afford a degree of protection when it comes to employing staff.

There is no doubt that the relationship with personal assistants is critical and is based on trust. It is unfortunate that history is littered with examples of that trust being breached. I am thankful that such cases are in the minority, but they happen. The question is, therefore, whether sufficient safeguards are in place to enable us to feel confident that a balance has been struck between preserving the empowerment that the bill will give to the majority, and protecting the small group of people who might be considered to be vulnerable.

It is for Parliament to weigh up potential risks. We have received correspondence from concerned parents who are worried about the safeguards that are in place and who want the reassurance of registration to give them peace of mind about their son’s or daughter’s wellbeing. We need to acknowledge that there have been incidences of abuse that have shocked us all. Such cases have not been confined to residential care homes.

I am struck that the Government agency that is responsible for regulation and registration, the Scottish Social Services Council, thinks that we need a system of regulation. In its submission to the Health and Sport Committee, the SSSC argued for registration and “minimum induction training”, and for distinguishing

“complex care and care for particularly vulnerable service users”,

to enable that area to be regulated without limiting personal choice for everyone else. In effect, there would be regulation for a small proportion of personal assistants.

The minister does not want to overprofessionalise personal assistants—I agree with that view. However, the Health and Sport Committee and I think that more could be done to reduce risk. Amendment 2 would not set out a scheme of regulation in the bill. That would be entirely inappropriate, because there are complex considerations, which are best left to professionals and disabled people to work through. Rather, amendment 2 attempts to offer a proportionate approach, by giving the minister the power to make regulations, should they be required.

Amendments 4 and 5 relate to amendment 2 and are technical; they would ensure that regulations would be subject to affirmative procedure, in order to ensure greater scrutiny. I hope that the Government and Parliament will accept the need for a balanced approach and support the amendments.

I move amendment 2.

Nanette Milne: I agree with Jackie Baillie; amendment 2 would provide a safeguard for the most vulnerable groups, as has been highlighted by Barnardo’s and parents of severely disabled people who have complex needs. I know that some disability groups are quite against regulation of personal assistants and I agree that many people do not need the protection that is envisaged. However, the safeguard is needed for the most vulnerable people.

Michael Matheson: The Scottish Government does not support the amendments. Amendment 2 would introduce a regulation-making power to enable ministers to establish a scheme that would regulate the quality of support that is provided by personal assistants who are employed through a direct payment. I did not support similar amendments at stage 2 and I do not support these amendments at stage 3.

A number of disabled people’s organisations have made it clear that a scheme to require registration of personal assistants would remove from individuals decision-making power over whom they employ to meet their support needs. The bill and current direct payment practice do not function on their own, but are part of a wider legal framework.

A framework of protection already exists to provide proportionate safeguards to protect people who employ or receive support from a personal assistant without restricting their choice. A personal employer who chooses to employ a PA who is a member of the protecting vulnerable groups scheme is entitled to see that person’s scheme membership statement to confirm that they are not barred from doing regulated work with adults or children. Social workers have clear adult and child protection duties, including a responsibility to ensure that a personal employer—whether they are the supported adult, the parent of a supported child or the guardian of
an adult who lacks capacity—understands the importance of PVG scheme membership.

It is true that taking on the role of a personal employer brings with it significant responsibility. Social workers need to be confident that the person who chooses that route understands the safeguards that the PVG scheme brings, which include rules on seeking and sharing information, and understands the risks of employing an unsuitable person. The update to our guidance on self-directed support last year addressed those matters. The framework that I have outlined strikes an appropriate balance that keeps people safe while respecting their right to make decisions about their care.

In any case, if a future Government changed the policy, it would already have the mechanism to do what Jackie Baillie wants via its regulation-making powers under the Regulation of Care (Scotland) Act 2001, which contains powers to provide for registration and regulation of different types of social service workers. I stress again that we have no plans to use such a power—for the clear policy reasons that I have outlined—but, if it was necessary in the future, that other power could be used to enable the Scottish Social Services Council to regulate personal assistants.

It would be unnecessary—and, more important, it would be undesirable—to include in the bill a regulation-making power that was intended to be used to regulate PAs, for the good policy reasons that I have outlined. As I do not support Jackie Baillie’s first amendment in the group, which is clearly not required, I do not support her other amendments in the group, either.

Jackie Baillie: I listened carefully to the minister’s comments. Social workers might have a responsibility to advise people about the protecting vulnerable groups scheme, but the duty does not extend to ensuring that disabled people employ only personal assistants who are part of that scheme. If we are being frank, social workers already have huge case loads. Given all their other responsibilities, it is not realistic or reasonable to lay such a burden on them.

The bill is—rightly—about ensuring choice and flexibility for the majority, but we in Parliament have a responsibility to balance the undoubted opportunity that the bill presents with the risk. We need to strike a balance and recognise disabled people’s legitimate view that they should be able to make their own choices about personal assistants. However, we have an equal responsibility to safeguard people who might be vulnerable.

I draw members’ attention again to the clear view of the Scottish Social Services Council—the Government’s agency for regulation. It has not said that we already have sufficient powers; it has said that regulation is needed in limited circumstances.

We do not have a monopoly on wisdom. We should listen carefully to what the regulators tell us. I intend to press amendment 2.

The Deputy Presiding Officer: The question is, that amendment 2 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

Against

Adam, Brian (Aberdeen Donside) (SNP)
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dorman, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Andrew (Perth and Minto) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Cairnshaws, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Joanne (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McDonald, Mark (North East Scotland) (SNP)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Rennie, Mike (Mid Scotland and Fife) (LD)
Robertson, Dennis (Aberdeenshire West) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Scott, Tavish (Shetland Islands) (LD)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Walker, Bill (Dunfermline) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 48, Against 68, Abstentions 0.

Amendment 2 disagreed to.
Amendment 29 would place a duty on local authorities in relation to the provision of social care in their areas. Members of the lead committee will recall that I lodged a similar amendment at stage 2, which sought to place a duty on local authorities in relation to providing a suitable variety of providers. I withdrew my amendment on the basis that I would have further discussions with the minister prior to today’s stage 3 debate; amendment 29 follows on from those discussions.

As it stands, section 17 will impose a duty on authorities to promote diversity in the range of support that is provided by authorities and other relevant organisations.

Amendment 29 would add a further and specific duty in that respect, to promote diversity in the range of choices in line with the desires of social care users. In short, local authorities must base their approach to commissioning on the diverse needs of individuals.

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diversity in the choices that are available to people. Nanette Milne lodged an amendment on the topic at stage 2. However, as members of the Health and Sport Committee will recall, although I agreed with aspects of that amendment I had difficulty with others. I was glad to meet her to discuss a way forward, which has found us with the amendment that is before us today. I am happy to support amendment 29 and urge Parliament to do likewise.

Nanette Milne: I think that the amendment will give genuine choice to people, which is a main function of the bill.

Amendment 29 agreed to.

Section 20—Regulations: general

Amendments 4 and 5 not moved.

The Deputy Presiding Officer: That ends consideration of amendments—with five seconds to spare.
control to that citizen—in short, they should respond to people’s desire to shape their own lives.

We should also acknowledge the roots of the bill, which go back to the activism of disabled people who claimed their support to be their own and not a service to which they must adapt.

Independent living is at the heart of the bill. That is why disabled people’s organisations approached the committee to include a general principle on independent living, and it is why I was happy to make further adjustments to that principle at stage 3. However, collaboration involves more than one party, and this is about professionals as well as citizens. The Scottish Association of Social Workers has stated that its profession “promotes social change, problem solving in human relationships and the empowerment and liberation of people to enhance well-being.”

Self-directed support helps to deliver the core values and principles of the profession—to work alongside individuals and to develop creative solutions to the problems that people face. Indeed, in some respects, the bill helps us to return to the original principles of the Social Work (Scotland) Act 1968—the principles of promoting social welfare and taking a broad and flexible interpretation of what it means.

I move on to the bill’s content. The general principles within it set out the aspirations for care and support and the basis for the collaborative approach between the professional and the citizen. The bill contains a variety of options for individuals to choose, it places a clear duty on councils to give effect to people’s choice, and it imposes further duties on councils to facilitate that choice through information, advice and support. In some respects, that might sound fairly straightforward, but too often that approach has been sidelined as being too difficult and having too many challenges. However, a number of social work professionals, adults, children and carers have proved that it can be done, and the bill enshrines such an approach for all.

We should take a few minutes to reflect on some of the challenges that lie ahead for the sector as it is called upon to implement the legislation. Our regulations and statutory guidance will help in that respect. The guidance framework will help to clarify the limits of choice, and where it is simply not appropriate for choice to be offered. It will seek to provide reassurance to professionals in balancing their duties on protection with their duties to enable and to support. It will also encourage; it will provide practical examples that demonstrate instances in which self-directed support works, which will help professionals to overcome barriers, be they real or imagined.

Of course, the legislation on its own will only go so far. That is why we will develop and issue further regulations and statutory guidance. In addition, the Scottish Government intends to provide a robust and comprehensive framework for monitoring and evaluating the legislation—an aspect that will become more important as we move towards implementation.

We must also remember that self-directed support, important though it is, is only one part of the solution to the challenges that we face in health and social care. In the not-too-distant future, Parliament will consider proposals for greater integration of health and social care. We are implementing a number of strategies across a diverse range of user groups, including strategies relating to people with mental health problems, people with dementia, carers and young carers, people with learning disabilities and people with autism. The legislation forms one part of a much wider strategy to deal with the challenges of an ageing population, increased expectations and pressure on resources.

In choosing to pass the bill, Parliament will play its part in delivering choice and control for people and ensure that there is greater flexibility and creativity across the sector. In short, the bill marks a significant step towards meeting the expectations of those who receive social care now and into the future. I look forward to the debate.

It gives me great pleasure to move,

That the Parliament agrees that the Social Care (Self-directed Support) (Scotland) Bill be passed.

16:40

Jackie Baillie (Dumbarton) (Lab): I associate myself with the minister’s remarks and thank the Health and Sport Committee, which is so ably led by Duncan McNeil, the committee clerks, the bill team and, indeed, the minister himself. Having been on that side of the fence myself, I know the effort that will have gone into the bill. Last but by no means least, I thank the organisations and individuals who helped to shape the bill. We are grateful to organisations for disabled people, carers, children and many more besides for taking a direct and considerable interest in the bill, because it has strengthened the end product.

The bill itself has been a long time coming but, in fairness, the minister has created a degree of momentum in the past year. At its heart, the bill is about choice, flexibility and empowerment and rightly enshrines principles of independent living for adults and children who receive social care services.

As we know, those who exercise choice and control over the services that they receive and how they are delivered get better outcomes—
nowhere more so than in terms of provision of social care. At stage 1, I cited the example of a tuck-in service that was provided to an older constituent, who was to be tucked up in bed by care workers between 7 pm and 8 pm. With the exception of Jackson Carlaw, who at stage 1 told us that he went to bed that early, I know of no other adult who goes to bed at that time. That was perhaps more an illustration of the needs of the service being the determining factor, rather than the needs of the individual and how they want to live their lives. Self-directed support turns that experience on its head—and rightly so.

Of course, as the minister made clear, the local authority will offer four choices: receiving direct payments, where people will be given the money from which they can meet their needs directly; directing how the local authority arranges services on a person’s behalf; continuing with current local authority support; and a mixture of all three. Although direct payments have been available for a while, take-up remains low. In 2001, only 207 people accessed them; by 2011, the figure was 4,392. There is clearly scope for many more direct payments to be made.

I also want to look wider than social care. After all, self-directed support sits in the wider context of the personalisation of services—a concept that was first advanced by the previous United Kingdom Labour Government very much in consultation and partnership with disabled people. Essentially, personalisation recognises that different things shape people’s lives. We are not simply defined by our condition or by the care that we receive; education, housing, employment and transport all contribute to how we live our lives. The Scottish Government itself recognised as much when it set up the direct payment pilots in the national health service for that small group of people with health and social care needs. Although I understand that the Government is reluctant to go down that road at this stage, the issue will undoubtedly return with the advent of the integration of health and social care.

If we honestly believe that outcomes benefit as a result of direct support in social care services, we must surely believe that similar benefits can be gained in the limited circumstances in which people’s health and social care needs merge. I hope that the minister will discuss the issue further with all of us in the chamber to ensure that we can truly create transformational change for people.

A number of amendments were moved this afternoon with varying degrees of success. Some were supported by the Government; others were not. Nevertheless, I recognise that the Government has moved the bill on since its introduction, and I am grateful to the minister for that.

Touching briefly on certain amendments, I think that, with regard to the debate about whether to charge carers for services, Parliament needs to decide whether we believe that carers should be treated in the same way as care providers. Of course, the second test is whether there is evidence to suggest that spending our money in such a way has a clear benefit. All of us, including the Government, regularly state that carers save the state £10.8 billion each year simply by caring. By comparison, the amount that we would spend on them for respite and training would be absolutely tiny. We should invest in order to save, and to enable carers to do the job of caring that they do so well.

I welcome the minister’s commitment to introduce regulations that will waive charges for carers. He has come to the process slightly late, if I may say so, but I am delighted that he has. Although I believe that the power to charge and the power to introduce regulations lies in the 1968 act, and that there is no need for section 16, the bottom line is that the minister will create those regulations and create change.

However, I urge the minister to be quick. As matters stand, local authorities currently charge; section 16 tells them that they can charge if they want to and, as local government is genuinely shouldering a burden of cuts, authorities may be forced into the position of having to apply charges. Speed is therefore essential.

I ask the minister to bring some clarity to the issue in his closing speech. Is he simply limiting the waiving of charges to those who are in receipt of self-directed support for carers, or will it apply more widely? I welcome the wider debate about the role of carers and charging, and I am clear that the power that the 1968 act gives the minister allows him to direct local authorities in all charging that is associated with social care—not just direct payments. Can he therefore advise members on the scope of his intentions with regard to future regulations? He will be aware that there are still concerns about the postcode lottery in care charging, which must be addressed.

I will touch briefly on advocacy. Although the bill extends choice and control so that there is greater direction over how support is provided, there remains a need for independent advocacy. I recognise that that will not be required for all, but it is nevertheless essential for some if we want the bill’s provisions to be realised.

On regulation of personal assistants, it is incumbent on Parliament to recognise the needs of all and to balance the opportunities that the bill presents with the risks. Those risks may be small, but if the Government’s own agency believes that in limited circumstances personal assistants require to be regulated, we must consider that.
There is much to welcome in the bill, and overall it is a good piece of legislation. If it has the transformational effect that we believe it can have, we will have positively changed the landscape of social care in Scotland. For that reason, I am happy to support the bill.

Nanette Milne (North East Scotland) (Con): I place on record my thanks to the Health and Sport Committee clerks, the bill team and the Scottish Parliament information centre for their advice and support to committee members throughout the bill’s progress. I acknowledge the valuable input from the city council carers and users of social care services in Glasgow, whom we met during our informal visit to the city in the early stages of our information gathering, and I thank all the many witnesses who gave written and/or oral evidence to the committee.

I pay tribute to the various organisations and individuals who suggested at stages 2 and 3 amendments that they believed would strengthen and improve the bill, some of which will be included in the final version of the bill that we will vote on at 5.30.

The bill is popular and its general principles have been widely accepted throughout Scotland. It will introduce legislation that, if it is properly implemented, will embody the principles of independent living for everyone, giving all citizens the same freedom, choice, dignity and control in their lives at home, at work or in the community, and empowering those who use self-directed support to participate in society and live a full and ordinary life.

The bill’s essence is the intention that people should achieve true independent living, and the focus must be on what the system enables the individual to achieve, not on the system of support. There are high expectations that the bill will allow individuals who require social care to maintain a good quality of life and to fulfil their potential.

Today we have set out the framework, which will have to be fleshed out by guidance and regulation. The key to success will be how the bill’s provisions are implemented across local authority areas by councils and by independent and voluntary sector providers.

We heard as a committee that the changes that are required to ensure the policy’s success will be seismic. Some local authorities will be well prepared in areas such as creating individual budgets around packages, decommissioning group services and embedding the concept of self-directed support in their procedures. However, a culture change will be required, which some councils will find more difficult than others.

It will therefore be important to oversee the implementation of the policy and to impose sanctions on any councils that are deemed to be failing. There will be tensions, as a public sector that is used to providing services for users must accept that council-run facilities may not be what the user wants, and that, as an alternative marketing service develops, it must give more choice to service users. The commonly cited example is that facilities such as council-run day centres might wither on the vine if they are not what service users want and they therefore become financially unviable.

Undoubtedly, there are still concerns about the funding of social care packages. For example, where direct payments are made, they may attract less money, while those who opt for local authority provision of social care receive more. At a conference on taking the next steps in delivering self-directed support, which I attended last week, the local authority representatives were in no doubt that that happens in a number of council areas. They felt that the bill does not go far enough to put a stop to that, and I know that they will be disappointed that Richard Simpson’s amendments on that were not accepted by the Parliament today.

There are also concerns about the failure to include in the bill a right to independent advocacy, and I am not sure that the Government has that one right. Children’s welfare organisations, such as Barnardo’s and Children 1st, are concerned that the bill focuses much more on adults than on children, even though it will have a significant impact on the type and kind of services available to many children and their families. The children’s welfare organisations were particularly keen to ensure child protection and safeguarding by seeking a system of registration and regulation of those who might be working either directly with children or with adults who live with children under 16 in the home. That was one reason why I supported Jackie Baillie’s amendment on personal assistants, even though the amendment was not popular with a number of the disability groups.

I do not think that the bill is perfect—legislation never is—but I think that, overall, it will be of significant benefit to those who are assessed as requiring social care. Provided that self-directed support is perceived by councils not as a cost-cutting opportunity but as a chance to provide greater independence and a better quality of life to service users, I think that the bill will be warmly welcomed across Scotland. However, its implementation will need to be carefully monitored. With that, I can say that the Conservative group will vote for the bill at decision time.

The Deputy Presiding Officer (Elaine Smith): We now turn to the open debate. Time is very
tight, so members have four minutes maximum. If members can speak for a shorter time, I might get everyone in.

16:51

Bob Doris (Glasgow) (SNP): I echo the thanks to the minister, his team, my fellow committee members and all those who gave evidence to the committee, who have helped to shape and improve the bill.

I will reiterate what was said during the stage 1 debate about empowering those in need of care. A few of us mentioned then the evidence that Margaret Cassidy gave to the Health and Sport Committee. In the limited time available to me, I want to ensure that I put her views on the record again, because what she said is so powerful. When asked what life was like before personalisation and before she could direct her own budget, she said:

"It was so-so. I will tell you a wee thing. One time I wanted milk and the woman who was helping me said that that was not her job. I was only asking for a pint of milk, but she said, 'By the way, that's not my job.' I said to her, 'What is your job?' We had a falling out and I told her, 'There's the door. Don't come back.'"—[Official Report, Health and Sport Committee, 29 May 2012; c 2358.]

Margaret Cassidy now has a personal assistant and is doing wonderfully because she is directing the resource for her care that best meets her needs. That is what self-directed support is all about.

Following today's stage 3 consideration, during which we had constructive engagement—and some disagreements—on the best way to improve the bill, it is important to remind ourselves that we are all travelling in the same direction. The bill has been improved—not always in the direction that some would have wanted—but I think that we can agree that it has been improved. Putting to one side my amendments, which were agreed to, I listened with interest to what Jackie Baillie said about charging. I think, however, that we all welcome the proposed regulations. If the minister is correct—and I believe that he is—we will be in a far superior position on charging when the bill is passed than we were beforehand. That is what legislating in this place is all about.

We have reinforced the principle of independent living and we now have greater transparency on the cost of the various options for self-directed support and the cash that follows that cost. That may not be in the way in which Richard Simpson proposed, but the Government has moved to improve the process. At every step of the way, the Parliament has come together to improve matters.

However, we will need to ensure that the changes that we are proposing sweep through every local authority in the country and that we back the culture change that will be needed in local authorities to make the bill work. For example, in my local authority—I do not always agree with what Glasgow City Council is doing, but in making this point I am talking about not self-directed support, but the local debate on the best way in which services should be delivered—the personalisation budget for those who would receive a resource allocation under self-directed support has been cut by 20 per cent. I have consistently disagreed with that, but it was a local political choice; it is not connected to the principles of self-directed support.

If members do not like what is happening in their local authority areas, they should challenge that and fight to improve the situation to make self-directed support work. However, no action that a local authority takes will undermine the principle of empowering people through self-directed support.

The other night, I promised a constituent who came to my surgery that I would mention the reform of day centres for adults with learning difficulties that is taking place in Glasgow. The reform will reduce the number of day centres from seven to four. That is a move away from the traditional service, but my understanding is that there was no consultation at any point with the clients who use the day centres and that the centres are to be closed, possibly as early as January. If self-directed support is to mean anything in service redesign, there must be consultation with service users to find out what type of service they want.

To return to the bill—

The Deputy Presiding Officer: I am afraid that you must close.

Bob Doris: In my last six seconds, I will just say that the bill will be a step change in empowering people across Scotland.

16:55

Claudia Beamish (South Scotland) (Lab): As convener of the Scottish Parliament cross-party group on carers, I am glad to have the opportunity to speak about this important bill. I hope that I will shed some light on the carers' perspective and put down some markers for the future.

I have listened carefully to the views of kinship carers, carers and young carers through, for example, the Midlothian kinship carers group. This Friday is carers rights day 2012, the theme for which is getting help in tough times. The Princess Royal Trust Lanarkshire Carers Centre is holding a drop-in day in my regional office, and I know that other members will support the theme that carers should know what their rights are. That is only part
of the story; the other part is ensuring that carers have rights and respect across Scotland.

As highlighted in “Caring Together: The Carers Strategy for Scotland 2010-2015”, carers should be seen as “equal and expert partners” in the provision of care. The cross-party group on carers has talked through and fought on many issues. Many members have supported carers’ concerns, not least Bill Kidd and Johann Lamont, who are previous conveners of the cross-party group.

The bill will provide local authorities with the power to provide such support, rather than a statutory duty to do so. At present, a discretionary power is the only workable option, because of the uncertainty over costs and many other issues. However, it is disappointing that the Scottish Government has had years to cost the implications of a duty. I ask the minister to consider bringing the issue back in future and to address the possibility of that in his closing remarks. As convener of the cross-party group on carers, I challenge all local authorities to provide the high-quality services that are needed without a specific duty to do so in the bill.

There is already good practice in some local authorities. One key recommendation of the 2010 Carers Scotland report, “Sick, tired and caring: The impact of unpaid caring on health and long term conditions”, was for free or concessionary access to leisure services, as many carers found the cost prohibitive. Not all local authorities specify the carers allowance in the range of eligible benefits. Glasgow does so, whereas North Lanarkshire does not. That simple and not very costly support for carers should surely be available Scotland-wide.

I turn to the issue of carers employment and associated training. In many situations, people want only small amounts of care, such as two hours a week to drive a person for whom they care to an activity and home again. As it can be difficult to employ someone for such a small number of hours, particularly in isolated, rural or island communities, I am sure that members will agree that in many circumstances close relatives are ideally placed to do that type of work. With high-level disabilities such as autism, the advantages of having close relatives as carers can be valuable. People with autism require their carers to show consistency and understanding of their routines, and family members can be well placed to provide that. I hope that members will join me in welcoming the provision on that in the bill.

Training for unpaid carers should be supported by local authorities. I look forward to hearing from the minister what the clear guidance will be on the issue. Can the minister also confirm that any provision of self-directed support to an individual carer will be kept separate from the provision to the person whom they care for, as that is crucial for the wellbeing of carers?

My colleague Jackie Baillie’s amendment to leave out section 16 did not receive the required support but I, along with many carers organisations, will look carefully at what seems to be a rather last-minute agreement by the minister to introduce regulations on the issue. I hope that the consultation on that will be produced in the near future.

17:00

Gil Paterson (Clydebank and Milngavie) (SNP): It has been just over two months since we debated the bill at stage 1. I am pleased that, over that period, the Scottish Government has taken on board a number of the issues that were raised during that debate and the subsequent stage 2 proceedings.

The bill’s main aim is to give more of those who need to be cared for the independence that able-bodied persons take for granted. By ensuring that that principle is adhered to, it is hoped that those with disabilities can be better included in society and that they can have greater responsibility for securing the care that they require to function. Giving them control over the financial side of the equation allows them such responsibility.

There are currently two options for receiving support that are available to people with disabilities. Direct payment involves the local authority paying the supported person directly, who then spends the money on the support that they require. We also have the more traditional method, in which local authorities are given the responsibility for selecting the required support and make payment without the direct involvement of the supported person.

The bill aims to strengthen both those methods while offering further options. In some cases, people would generally feel more confident if they could choose the support that they receive, without being burdened with having to deal with the financial side of the equation. The bill offers that possibility to people while recognising that individuals have different support needs, which is why I am pleased that the fourth option is a mixture of the three options that have already been set out.

My main concern during stage 1 was that a situation could arise in which those in receipt of support could face the prospect of having undue pressure put on them to employ a family member. That could, of course, result in the removal of a better qualified individual who already offers support in place of an unqualified family member. A further concern was the emotional stress that someone may come under were they to feel that
they needed to replace a family member with someone who is qualified, which is something that could cause a great deal of stress to the individual.

I particularly thank the Government for taking those concerns into consideration and for producing legislation that has the right balance. The bill offers support to unpaid carers across Scotland. Those unsung heroes in our country must be praised for the work that they put in. The Government is approaching the matter in the right way.

There has been some concern about the charges for carers that local authorities would be able to levy under section 16 of the bill. The Government’s proposals will be clear about restricting charges that can be levied on carers. I am pleased that the Government will issue regulations that will make it clear that all charges for support to carers should be waived in full. Crucially, that recognises carers as providers of services to those they care for. If the Government did not retain section 16, there would be no legal basis on which to make such regulations, and carers would be left in the same position as they are in right now.

I beg members to support the bill.

17:04

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): I thank the Health and Sport Committee for its useful report and the interesting discussions at stage 2. Most of all, I pay tribute to the many organisations that gave written or oral evidence and that also sent us very helpful briefings.

As the minister said, independent living is at the heart of the bill, and the principles of freedom, choice, dignity and control underlie that. I therefore particularly welcome the minister’s additional amendment to section 1A to facilitate the principle of the person’s right to participate in the life of the community. Many organisations already aim to do that. I pay particular tribute to the Lothian Centre for Inclusive Living, which I visited recently and which has supported people to take control of their lives and live independently. I saw LCIL’s living and work choices course in action, and took part in it. LCIL illustrates in practical terms the principle that underlies the bill. I am pleased that local authorities are being obliged to facilitate that principle.

Although the bill is absolutely right at the highest level, there are still concerns. In particular, there are concerns that the policy could be used as a cost-cutting exercise. That was the reason for some of Richard Simpson’s amendments this afternoon.

There were, of course, disappointments around some of the amendments that failed this afternoon. I spoke in the advocacy debate, so I will not repeat the points that I made then, except to say that I believe that the minister’s amendment is particularly weak, given that 50 per cent of local authorities provide a service only to those statutorily entitled to it under the Mental Health (Care and Treatment) (Scotland) Act 2003. I hope that some action will be taken to ensure that local authorities expand that provision.

I will not rerun the debate on charging carers, although I was struck by the way in which the minister gave detailed explanations that were not produced at stage 2. I have some concerns about that, because it is difficult for members, at the very last stage of a bill, to judge what a minister is saying in such technical detail. I urge the minister and his colleagues to ensure that that level of technical information is presented at stage 2 in future, so that members can consult the details of the 1968 act—or whatever else it is—and see whether what the minister is saying is convincing. In the stage 2 debate the minister said:

“Section 16 is largely a technical provision”.—[Official Report, Health and Sport Committee, 30 October 2012; c 2943.]

That is certainly not what he said today, so I was quite unprepared for the information that he provided, and in that sense was forced to vote blind, although obviously I was guided by my able front-bench colleagues, who were very persuasive in their contributions.

The issue of regulation was quite contentious. What struck me was the common ground between proposals from the Scottish Social Services Council—which I was attracted to for most of the time that I was looking at the bill—and what organisations representing disabled people in particular are saying, such as, “Let’s have training of personal assistants,” and, “Let’s support personal assistant employers to recruit safely.” There is a lot of common ground on the issue of training. I hope that a great deal of emphasis will be put on that because it is quite important, and is central to making the legislation work well.

I welcome the legislation and will follow closely how it works out in practice.

The Deputy Presiding Officer: I apologise. I can give the next two members only two minutes each.

17:08

Jim Hume (South Scotland) (LD): The bill presents an important step forward in providing adults and children, including carers and young carers, with more choice and control over how their social care needs are met. Informed choice
and collaboration are two of the key principles behind the bill, which will allow individuals to decide exactly how much control they want and will remove the current default in which local authority-arranged services are assumed to be the norm.

The bill will also enable care packages to be tailored more closely to individual needs and will, I hope, address the low and varied take-up of direct payments that we have seen over the past few years. The Christie commission was right to highlight that further action is needed to increase uptake of self-directed support. The bill is important, but Christie also emphasised the need to build awareness to encourage participation.

I welcome the new right for carers to receive self-directed support, which will allow carers to exercise the same control and choice as other service users in directing their own support in whatever way they wish. However, as I argued earlier when I moved my amendments, that right will apply only if a local authority decides to provide carers with the support that they have been assessed as needing. I hope that the Government’s decision to oppose my amendment 34 will not result in inequality of service provision across the country—perhaps a postcode lottery.

At stage 2, my colleague Alison McInnes raised concerns about the provision in the bill to allow the supported person to change their choice of self-directed support. Since stage 2, that issue has been looked at closely and will now be addressed through statutory guidance.

Although I believe that my amendments would have strengthened the bill and supported carers even more, the Liberal Democrats will support the bill at decision time.

17:10

**Mark McDonald (North East Scotland) (SNP):**

I thank all the organisations that took the time to meet me or to contact me through email, Twitter or Facebook to give me their thoughts and concerns on the bill. It is clear that there is major interest in self-directed support, and I was pleased to be able to make a small but not insignificant change to the bill at stage 2. I thank Barnardo’s very much for its help in drafting the amendment that was successful.

As my time is limited—for fully understandable reasons—I will focus on the issue of carers. I, too, am a member of the cross-party group on carers and believe that carers have a vital role to play. The bill puts the individual very much at the centre of the process and allows for a much greater degree of personal independence, but we should not forget the important role that carers play, often in situations in which the individuals whom they help may not be able to exercise their choices. It is clear from everything that the Government has said in its strategies that carers are a fundamental part of the process.

I have seen at first hand the experience of carers prior to and following this Government coming to power, and I think that the shift in the prioritisation of carers has been quite dramatic. I look forward to the minister bringing forward the regulations, and I welcome the assurances that he has provided on charging in relation to carers. The regulations will be of critical importance, and I and my colleagues—and, indeed, carer organisations and individual carers—look forward to scrutinising them and discussing them in more detail.

The Deputy Presiding Officer: We come to closing speeches.

17:12

**Nanette Milne:** This has been a well-informed debate on a bill that has commanded widespread support across the country. It is generally accepted that genuine independent living for every citizen is a goal that we should be aiming for in a fair 21st century Scotland, and that the Social Care (Self-directed Support) (Scotland) Bill provides the legislative framework for that to happen.

No voices were raised against the principles of the bill, and the amendments that were lodged in the later stages of its parliamentary progress were aimed at strengthening some of its provisions to ensure its robustness as a piece of legislation. Not all those amendments were accepted, but they were given a fair hearing, and the Scottish Government appears confident that their aims can be satisfied within guidance and regulation.

There are high expectations that the bill will bring greater freedom, choice, dignity and control to individuals who require social care to maintain a good quality of life and to fulfil their potential. The system of direct payments that has been in force in recent years has not had in Scotland the success that was hoped for when it was introduced, with some local authorities preferring to continue with their traditional role of provision, rather than to free up users to purchase the care services that they feel would be best suited to their needs.

I remember when I was a councillor in Aberdeen that there was a degree of reluctance in the social work department to encourage the use of direct payments, and a slightly paternalistic attitude that the professionals knew best what was in the best interests of their clients. However, time moves on, and there is now a recognition that recipients of care know best what suits their lifestyle needs and that, with appropriate assistance, they can live a
pretty normal life, earn a living, contribute to their local community and have a social life like other people. Whether that assistance is blow-drying their hair, which Pam Duncan of the independent living in Scotland project finds very useful, filling in job application forms or helping with bus travel, which Omar Haq's personal assistant does for him, or even being an escort and companion at a football match, which was a commonly cited example, the freedom to purchase care that suits personal needs is supremely liberating for many people with assessed social care needs.

Achieving the goals of the bill will undoubtedly require a change in culture in our local authorities, and that will be difficult and will take some time. It will take more time for some councils than it will for those that have already set out on the road to freeing up their clients, but in the interests of the many people who would benefit from the provisions of the bill, it is important that those local authorities that are lagging behind catch up, and that the implementation of the legislation is carefully monitored.

As we have heard, there is an enthusiasm to make the bill achieve its goals—within councils and within the voluntary, private and third sectors—to try to secure genuine choice of provision for those who are assessed as requiring social care, as well as their carers and families.

Like other members of the Health and Sport Committee, I have enjoyed engaging with the many people who have shown an interest in the bill and I am full of admiration for how they have communicated freely and openly with committee members—particularly the service users and carers I mentioned previously who took the time to speak to us in Glasgow.

I am sure that there will be issues along the way as the legislation beds in but the will is there to make it work and I hope that we have strengthened the bill, to some extent at least, as it has gone through Parliament. I have felt from the outset that it will not reach its full potential until we have integration of health and social care in Scotland and I look forward to seeing the details of the proposed legislation on that.

I look forward to the bill being approved this evening, to its implementation in the months and years to come, and to the freedom of choice that it should make possible for all those who require social care.

17:15

Dr Richard Simpson (Mid Scotland and Fife) (Lab): I thank colleagues, the minister, the bill team and, crucially, the many organisations involved across Scotland, for the critical but collaborative approach that has been taken to the bill.

Self-directed support is not new, but the bill moves us further down a pathway of respect and dignity for those who require support, giving them control in so far as they may wish to take it. Supporting independent living should reflect the principle that a partnership of collaboration between the user and the professional is central to how we wish to take things forward.

Self-directed support has been in place for a number of years—since about 1996. However, as Jackie Baillie said, the number of people who have availed themselves of that option in Scotland has been quite small; uptake has been about half of that in England. There has been a perception that some Scottish local authorities and some social workers have been quite reluctant to encourage SDS.

The bill will not in itself change the culture; many subtle and some not-so-subtle pressures to retain direct local authority services could remain. The not-so-subtle pressures should be transparent—as my amendment tried to make clear—to ensure that any discrepancy between payments under the various options is justifiable and, more important, can be monitored. I hope that the Government will require local authorities to record the variations and that the inspectorate will be rigorous in examining why there are differences.

The bill has been amended with regard to children and young people and the minister's amendments in that respect have been welcome.

We have not been able to reach agreement on independent advocacy. We all believe that it is important. The minister clearly believes that the provision of information is sufficient, but as many members have pointed out—Nanette Milne, Malcolm Chisholm and others—availability of independent advocacy services is patchy. It will fall to the minister to ensure that the wishes that he has clearly expressed are followed through in every local authority.

Carers remain critical to all aspects of support for those with disability and, as Claudia Beamish said, they should be equal partners. The fact that carers are still not assessed in large numbers is worrying, but the minister's announcement that he will take forward a number of aspects of that is welcome—particularly his comments about promoting preventative work because the threshold for support is often far too high. However, there is a continuing need to ensure that where carers play a significant role, detailed emergency plans are in place so that care continues without additional stress in the event of a carer being incapacitated.
The issues around charging have been debated and we await with interest what the minister brings forward. I would be grateful if he would give us some indication of a timetable for what he proposes with regard to charges because the unfairness that already exists in community charging, with huge variations across councils, is—for us, at least—a worry. The charging of carers for some aspects of their work would be important. There clearly needs to be a balance between localism and national aspirations, which will not be easy. I look forward to further enlightenment on that from the minister in his closing speech.

One of the problems with individuals is that they do not always fall into neat categories. Those who have a defined incapacity within the Adults with Incapacity (Scotland) Act 2000 or the Adult Support and Protection (Scotland) Act 2007 should be protected. However, those who are not vulnerable should be given the freedom to act to maintain their independence within the requirement of prudent expenditure of public money. That prudence should not be prescriptive and many members have given examples of what can help.

A holiday may sufficiently improve a person’s mental health and wellbeing to make a big difference. Unorthodox measures can improve self-confidence and be a highly effective use of public money. Riding for the disabled in my constituency is just one example, and gym membership is another. Other members have given other examples. We need to support the individual’s wishes about how they want to use their money. That is important.

The Law Society of Scotland’s concerns about the risk assessment of those who are involved in providing assistance remain. The amendment on that was rejected today by the Government party, but we need to look at that, perhaps in terms of regulation. The minister also declined to take the powers to regulate on personal assistants. It should be remembered that we did not say that he should do so immediately; we said that he should take the powers to do so in the future. The minister suggested that they are already available, but I am not sure that they are. It will be interesting to see how the organisations respond in the debate on that. I hope that he is correct.

As Malcolm Chisholm said, many organisations that represent disabled persons think that things such as the training of personal assistants are desirable. That part of regulation is important. After all, protecting vulnerable groups schemes are not compulsory, and people may be persuaded not to proceed down that line by someone who is overinfluencing.

To conclude, the bill will help to ensure that the legitimate aspirations for flexible support of those with a disability are achieved. The independent living movement has been very supportive in helping us to get a useful bill, which is a further step in a continuing journey that began with the Social Work (Scotland) Act 1968 and the Disability Discrimination Act 1995, and which will progress the changes in society’s attitudes to disability. Those changes were given glorious expression in the support for the Paralympics.

We commend the bill and look forward to the post-legislative scrutiny, which may be particularly important to ensure that all our hopes are fully realised.

17:22

Michael Matheson: I thank all members for their contributions in the debate, which has been considered and thoughtful. There is a clear sense of cross-party support for this important piece of legislation. From stage 1, when the bill’s scrutiny process started in the Health and Sport Committee, right through stages 2 and 3, there has been a real and genuine desire across the parties to make further improvements to it, and the bill that we have at the end of the process is better than that which was introduced in Parliament in February this year.

I started out in my career in a health and social care setting around 20 years ago. I know that many people will be looking at me and thinking that I could not have started my career then. [Interruption.] I hear noises of approval from Jackie Baillie, which I am particularly surprised about. There was a culture that we should give people much greater choice about how their care should be provided, but the choice was very constrained. It was defined by the local authority and the professionals.

Direct payments were introduced, but uptake of them has been very slow over 20 years. I think that there has been resistance at times, which professionals and local authorities can often create, to encouraging people to take up direct payments; that resistance is unhelpful, given the way in which direct payments give individuals much greater choice. The bill is crucial to changing that environment and giving people much greater choice and opportunities to make decisions for themselves and to take more control over their lives. We should not underestimate the direction of travel over the past 20 years to get to this point with the bill, where that level of personal control will be provided in a way that simply has not been provided universally before.

The bill is relatively short, but I see it as one that will create considerable change in the way in
which care will be delivered to people in the future. It is much more about doing things with people rather than to them, and it is much more based on the co-production model of working with people to find the best solutions for them in managing their care. It is often said that the experts in knowing what their care needs are are the cared-for people themselves, who know more than anyone else in that regard.

Jackie Baillie raised a point about the use of self-directed support for health. We have had health pilots in Lothian, which have thrown up a number of issues around the way in which self-directed support can be used in that field. We now have a group working on statutory guidance for that area and on how we can take that forward with the integration of health and social care, and how the joint budgets can be used much more effectively. Some of the findings from the Lothian pilots are informing that discussion on how we can shape matters.

Michael Matheson: A number of members raised the issue of carers charges. I recognise the importance of that issue. The technical provision in section 16 is to provide us with the route to regulate in that area. As it stands, it relates to specific pieces of legislation—Jackie Baillie referred to the provisions of the Social Work (Scotland) Act 1968—that allow us to regulate on areas of charging. Section 2 creates a new area that allows us to regulate in the area of charging in a way that is not available at present. That is why removing section 16 would have left us with the status quo, which is that local authorities could charge if they chose to do so. However, by creating a system, we can regulate the process. It is for that reason that the provision in section 16 was largely technical.

Malcolm Chisholm: The minister was looking at me throughout that contribution. My point was that that should have been explained at stage 2, because it was all new to us today and we could not judge whether the minister was talking sense or not. [Laughter.]

Michael Matheson: I do not think that Mr Chisholm was at the committee meeting at which, because of time constraints, we had an abbreviated discussion on the issue. However, in the discussion that I had with Jackie Baillie I intimated that there would be regulations in that area. When it is recognised that someone is wrong, they should just admit that they are wrong. I know that that is hard for Jackie Baillie, but in this instance she is simply wrong. That is why we are taking forward the regulations in this area.

Jackie Baillie: Will the minister take an intervention?

Michael Matheson: I give way to Jackie Baillie because she has been wrong today and I am sure that she wants to correct the record on that matter.

Jackie Baillie: The minister invites me to be bad, but I shall resist. Does the minister not agree that bringing forward his proposal at this late stage indicates that previously he was not thinking in those terms at all and that the issue was not raised? I welcome the outcome today, but does he recognise that he was encouraged to get there?

Michael Matheson: No, that is simply not the case. We were always going to regulate in this area. We had to create the provision that would allow us to do so. Today, carers are in a much better position as a result of the actions that we have taken rather than following Jackie Baillie into a situation that would have created greater uncertainty and the possibility of carers being subject to charges.

It is important to recognise that carers have often been dealt with piecemeal, in that issues have been dealt with here and there. As a society, we must look at how we can deal with carers issues much more comprehensively and effectively. I intend to discuss that with the national carers organisations to explore the best way in which to address some of the fundamental issues more effectively in the future.

A point that has not been touched on during the debate is that we intend to make greater provision for individuals to be able to employ a member of their family as a personal assistant. There has been a real barrier to people taking direct payments because of the thresholds that are set around employing a family member only in exceptional circumstances. We intend to produce statutory guidance to allow us to increase the numbers of people who can employ a relative. On the regulation of personal assistants, we already have the powers that allow us to do that, hence there was no reason to agree to the amendment that Jackie Baillie proposed in that regard.

There is strong support for the bill’s general principles and for its aims and objectives. I believe that the bill will command support across the chamber today, because it will make a real change in people’s lives by giving them the power to make decisions and to arrange care in a way that best suits them. I call on members to support the bill at decision time.
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Social Care (Self-directed Support) (Scotland) Bill

[AS PASSED]

An Act of the Scottish Parliament to enable local authorities to provide support to certain carers; to make provision about the way in which certain social care services are provided by local authorities; and for connected purposes.

General principles

1 General principles

(1) A local authority must have regard to the principles in subsections (2) to (4) in carrying out its functions under—

(a) Part 2 of the 1968 Act (other than the provisions mentioned in subsection (5)),
(b) sections 22 to 24 of the 1995 Act,
(c) this Act.

(2) A person must have as much involvement as the person wishes in relation to—

(a) the assessment of the person’s needs for support or services, and
(b) the provision of support or services for the person.

(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.

(4) A local authority must collaborate with a person in relation to—

(a) the assessment of the person’s needs for support or services, and
(b) the provision of support or services for the person.

(5) The provisions are—

(a) sections 27 to 27B (which make provision in relation to the supervision and care of persons put on probation or released from prison etc.),
(b) section 28 (local authority’s power to arrange burial or cremation in certain circumstances),
(c) section 29 (local authority’s power to make payments to parents etc. in respect of expenses for visiting certain persons and attending funerals).

(6) In this section—
(a) references to the assessment of a person’s needs are references to assessment under section 12A of the 1968 Act or, as the case may be, section 12AA of that Act or section 23(3) or 24 of the 1995 Act,
(b) references to the provision of support for a person are references to the provision of support under section 2(4),
(c) references to the provision of services for a person are references to the provision of community care services under Part 2 of the 1968 Act or, as the case may be, the provision of services under section 22 of the 1995 Act.

1A Further general principles applicable to this Act

In carrying out its functions under this Act in relation to a person who is to choose (or has chosen) one of the options for self-directed support, a local authority must take reasonable steps to facilitate the following general principles—
(a) that the right to dignity of the person is to be respected,
(b) that the person’s right to participate in the life of the community in which the person lives is to be respected.

Adult carers

2 Support for adult carers

(1) This section applies where—
(a) a local authority carries out an assessment under section 12AA of the 1968 Act of an adult’s ability to provide, or continue to provide, care for another person, or
(b) a local authority carries out an assessment under section 24 of the 1995 Act of an adult’s ability to provide, or continue to provide, care for a child.

(2) The authority must—
(a) consider the assessment, and
(b) decide whether the adult has needs in relation to the care which the adult provides, or intends to provide, to the person cared for.

(3) If the authority decides that the adult has those needs, the authority must consider whether the needs could be satisfied (wholly or partly) by the provision to the adult of any support.

(4) If the authority decides in pursuance of subsection (3) that an adult has needs which could be satisfied by the provision of any support, it may provide, or secure the provision of, support to the adult.

(5) In this section—
“person cared for” means the person in relation to whom the adult’s ability to provide or continue to provide care is assessed as mentioned in subsection (1),
“support” includes any form of services or assistance which will help the adult to provide, or continue to provide, care for the person cared for.

Options for self-directed support

3 Options for self-directed support

(1) The options for self-directed support are—

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

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

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

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

(2) In this section—

“direct payment” means a payment of the relevant amount by a local authority to a supported person for the purpose of enabling the person to arrange for the provision of support by any person (including the authority),

“relevant amount” means the amount that the local authority considers is a reasonable estimate of the cost of securing the provision of support for the supported person,

“supported person” and “support” are to be construed in accordance with section 4 or, as the case may be, section 6 or 7.

4 Choice of options: adults

(1) This section applies where a local authority decides under section 12A(1)(b) of the 1968 Act that the needs of an adult (the “supported person”) call for the provision of community care services (“support”).

(2) The authority must give the supported person the opportunity to choose one of the options for self-directed support unless the authority considers that the supported person is ineligible to receive direct payments.

(3) If the authority considers that the supported person is ineligible to receive direct payments the authority must—

(a) notify the supported person of—

(i) the reason why the authority considers that to be the case, and
(ii) the circumstances in which the authority must under section 10 review the question of whether the supported person is ineligible to receive direct payments, and

(b) give the supported person the opportunity to choose one of the options for self-directed support other than—

(i) Option 1, and

(ii) so far as relating to that option, Option 4.

(3A) In carrying out the duties imposed by subsections (2) and (3)(b), the authority must inform the supported person of—

(a) the amount that is the relevant amount for each of the options for self-directed support from which the authority is giving the person the opportunity to choose, and

(b) the period to which the amount relates.

(4) If the supported person does not make a choice in pursuance of subsection (2) or (3)(b) the supported person is deemed to have chosen Option 3.

(5) The authority must give the notification required by subsection (3)(a) in writing and, if necessary, in such other form as is appropriate to the needs of the person to whom it is given.

(6) For the purposes of this section, a person is ineligible to receive direct payments if the person is of a description specified in regulations under section 13(2)(a).

5 Choice of options under section 4: assistance

(1) This section applies where—

(a) a local authority decides under section 12A(1)(b) of the 1968 Act that the needs of an adult (the “supported person”) call for the provision of community care services,

(b) it appears to the authority that the supported person falls within subsection (1A), and

(c) the conditions in subsection (2) are satisfied.

(1A) A supported person falls within this subsection if—

(a) because of mental disorder, the supported person would benefit from receiving assistance from another person in relation to making decisions about relevant matters,

(b) because of difficulties in communicating due to physical disability, the supported person would benefit from receiving assistance from another person in relation to communicating decisions about relevant matters.

(2) The conditions are—

(a) there is no guardian, continuing attorney or welfare attorney with powers in relation to the relevant matters, and

(b) an intervention order has not been granted in relation to the relevant matters.

(3) The authority must take reasonable steps to enable the supported person to make a choice in pursuance of section 4(2) or (3)(b).
(4) The authority must take reasonable steps—

(a) to identify persons who are able to assist the supported person, and

(b) if the supported person agrees, to involve them in assisting the supported person in making decisions about relevant matters or, as the case may be, communicating decisions about relevant matters.

(5) In this section—

“the 2000 Act” means the Adults with Incapacity (Scotland) Act 2000 (asp 4),

“continuing attorney”—

(a) means a continuing attorney within the meaning of section 15 of the 2000 Act, and

(b) includes a person granted, under a contract, grant or appointment governed by the law of any country, powers (however expressed), relating to the grantee’s property or financial affairs and having continuing effect despite the grantee’s incapacity,

“guardian”—

(a) means a guardian appointed under the 2000 Act, and

(b) includes a guardian (however called) appointed under the law of any country to, or entitled under the law of any country to act for, an adult during the adult’s incapacity, if the guardianship is recognised under the law of Scotland,

“intervention order” is to be construed in accordance with section 53 of the 2000 Act,

“mental disorder” has the meaning given by section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13),

“relevant matters” means—

(a) the choice in pursuance of section 4(2) or (3)(b) of one of the options for self-directed support,

(b) anything relating to the planning of the care or support of the supported person,

(c) anything relating to support provided (or to be provided) to the supported person in pursuance of an option for self-directed support,

“welfare attorney”—

(a) means a welfare attorney within the meaning of section 16 of the 2000 Act, and

(b) includes a person granted, under a contract, grant or appointment governed by the law of any country, powers (however expressed) relating to the grantee’s personal welfare and having effect during the grantee’s incapacity.

6 Choice of options: adult carers

(1) This section applies where a local authority is to provide, or secure the provision of, support for an adult (the “supported person”) under section 2(4).
(2) The authority must give the supported person the opportunity to choose one of the options for self-directed support unless the authority considers that the supported person is ineligible to receive direct payments.

(3) If the authority considers that the supported person is ineligible to receive direct payments the authority must—

(a) notify the supported person of—

(i) the reason why the authority considers that to be the case, and

(ii) the circumstances in which the authority must under section 10 review the question of whether the supported person is ineligible to receive direct payments, and

(b) give the supported person the opportunity to choose one of the options for self-directed support other than—

(i) Option 1, and

(ii) so far as relating to that option, Option 4.

(3A) In carrying out the duties imposed by subsections (2) and (3)(b), the authority must inform the supported person of—

(a) the amount that is the relevant amount for each of the options for self-directed support from which the authority is giving the person the opportunity to choose, and

(b) the period to which the amount relates.

(4) If the supported person does not make a choice in pursuance of subsection (2) or (3)(b) the supported person is deemed to have chosen Option 3.

(5) The authority must give the notification required by subsection (3)(a) in writing and, if necessary, in such other form as is appropriate to the needs of the person to whom it is given.

7 Choice of options: children and family members

(1) This section applies where a local authority is to provide services under section 22 of the 1995 Act (“support”) to a child or a member of a child’s family.

(2) The authority must give the supported person the opportunity to choose one of the options for self-directed support unless the authority considers that the supported person is ineligible to receive direct payments.

(3) If the authority considers that the supported person is ineligible to receive direct payments the authority must—

(a) notify the supported person of—

(i) the reason why the authority considers that to be the case, and

(ii) the circumstances in which the authority must under section 10 review the question of whether the supported person is ineligible to receive direct payments, and

(b) give the supported person the opportunity to choose one of the options for self-directed support other than—

(i) Option 1, and
(3A) In carrying out the duties imposed by subsections (2) and (3)(b), the authority must inform the supported person of—

(a) the amount that is the relevant amount for each of the options for self-directed support from which the authority is giving the person the opportunity to choose, and

(b) the period to which the amount relates.

(4) Subsection (5) applies where the supported person is an appropriate person in relation to the child.

(5) Before making a choice in pursuance of subsection (2) or (3)(b), the supported person must, so far as practicable and taking account of the maturity of the child—

(a) give the child an opportunity to indicate whether the child wishes to express the child’s views,

(b) if the child wishes to do so, give the child an opportunity to express them, and

(c) have regard to any views expressed by the child.

(7) If the supported person does not make a choice in pursuance of subsection (2) or (3)(b) the supported person is deemed to have chosen Option 3.

(8) The authority must give the notification required by subsection (3)(a) in writing and, if necessary, in such other form as is appropriate to the needs of the person to whom it is given.

(9) In this section—

“the 1989 Act” means the Children Act 1989 (c.41),


“appropriate person”, in relation to a child, means—

(a) a parent or guardian having parental responsibilities or parental rights in relation to the child under Part 1 of the 1995 Act,

(b) a person in whom parental responsibilities or parental rights are vested by virtue of section 11(2)(b) of the 1995 Act,

(c) a person having parental responsibilities or parental rights by virtue of section 11(12) of the 1995 Act,

(d) a parent having parental responsibility for the child under Part 1 of the 1989 Act,

(e) a person having parental responsibility for the child by virtue of—

(i) section 12(2) of the 1989 Act,

(ii) section 14C of the 1989 Act, or

(iii) section 25(3) of the Adoption and Children Act 2002 (c.38),

(f) a parent having parental responsibility for the child under Part 2 of the 1995 Order,

(g) a person having parental responsibility for the child under Article 12(2) of the 1995 Order,
(h) a person in whom parental responsibilities or parental rights are vested by virtue of a permanence order (as defined in section 80(2) of the Adoption and Children (Scotland) Act 2007 (asp 4)),

“supported person” means—

(a) where support is to be provided (wholly or partly) to the child or a member of the child’s family who is also a child—

(i) if the child to whom support is to be provided is under 16 years of age, an appropriate person,

(ii) if the child to whom support is to be provided is 16 years of age or over, the child,

(b) where support is to be provided (wholly or partly) to a member of the child’s family who is not a child, that person.

8 Provision of information about self-directed support

(1) This section applies where under section 4, 6 or 7 a local authority gives a person an opportunity to choose one of the options for self-directed support.

(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)).

(3) The authority must 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 person to whom they are given.

8A Provision of information: children under 16

(1) This section applies where under section 7 a local authority gives an appropriate person an opportunity to choose one of the options for self-directed support.

(2) The authority must, in so far as practicable and taking account of the maturity of the child, give the child to whom the support is to be provided an explanation of, and information relating to, the nature and effect of each of the options for self-directed support.

(3) The authority must give the explanation and information in such manner and form as is appropriate to the needs of the child to whom they are given.

(4) In this section “appropriate person” has the same meaning as in section 7(9).
Local authority functions

(1) This section applies where under section 4, 6 or 7 a local authority gives a person an opportunity to choose one of the options for self-directed support.

(2) The local authority must give effect to the option for self-directed support chosen by the person.

(3) Compliance with the requirement imposed by subsection (2) fulfils any duty imposed on the authority by Part 2 of the 1968 Act or, as the case may be, section 22 of the 1995 Act to provide to the person the support to which the option relates.

(4) Compliance with the requirement imposed by subsection (2) does not affect—

(a) any other function of the local authority in relation to the provision to the person of the support to which the option relates,

(b) the exercise by the local authority of the power in section 12(1) of the 1968 Act to make available assistance in cash to or in respect of the person in relation to the support to which the option relates.

Eligibility for direct payment: review

(1) Subsection (2) applies where—

(a) a person receives notice under section 4(3)(a), 6(3)(a) or 7(3)(a), and

(b) because of a material change in the person’s circumstances, the reason stated in the notice no longer applies.

(2) On the request of the person, the local authority must review the question of whether the person is ineligible to receive direct payments.

(3) If the local authority considers that the person is no longer ineligible to receive direct payments, the authority must give the person the opportunity to choose one of the options for self-directed support under section 4(2) or, as the case may be, section 6(2) or 7(2).

Further choice of options on material change of circumstances

(1) Subsection (2) applies where—

(a) under section 4, 6 or 7 a local authority gives a person an opportunity to choose one of the options for self-directed support,

(b) the person chooses an option, and

(c) after the choice is made the authority becomes aware of a material change in the person’s circumstances.

(2) The authority must offer the person another opportunity to choose one of the options for self-directed support under the section concerned.

(3) The authority and the person may agree that subsection (2) also applies in other circumstances.

Power to modify section 3

The Scottish Ministers may by regulations—
(a) modify section 3,
(b) so far as necessary in consequence of any modification made under paragraph (a), modify sections 4, 6, 7, 13(2)(b) and 21(1A).

**Direct payments**

13 **Power to make further provision about direct payments**

(1) The Scottish Ministers may by regulations make further provision about direct payments.

(2) Regulations under subsection (1) may in particular make provision for or in connection with—

(a) specifying descriptions of person who are ineligible to receive direct payments,
(b) specifying circumstances in which a local authority is not to be required under section 4, 6 or 7 to give a person the opportunity to choose—
   (i) Option 1 of the options for self-directed support, and
   (ii) so far as relating to that option, Option 4,
(c) specifying the circumstances in which a local authority may require a person to contribute to a direct payment,
(d) enabling a local authority to assess or reassess a person’s ability to contribute to the cost of securing the support to which a direct payment relates,
(e) specifying the ways in which direct payments may be paid or repaid,
(f) specifying circumstances in which a local authority may, must or may not terminate the making of a direct payment,
(g) specifying circumstances in which a local authority may pay all or part of a direct payment to a person other than the person to whom the direct payment relates,
(h) specifying descriptions of person to whom direct payments may not be made under paragraph (g),
(i) specifying descriptions of person who are prohibited from providing support to which a direct payment relates other than in such circumstances as are specified,
(j) specifying conditions which must be satisfied by persons before they may provide support to which a direct payment relates.

14 **Misuse of direct payment: recovery**

(1) Subsection (2) applies where—

(a) a local authority makes a direct payment to a person, and
(b) the authority considers—
   (i) that the direct payment has been used (wholly or partly) for some purpose other than to secure the provision of the support to which it relates, or
   (ii) that there has been a contravention of provision made by regulations under section 13 in relation to the direct payment.

(2) The authority may require the person to repay a sum equal to—

(a) the direct payment, or
(b) such part of the direct payment as the authority considers appropriate.

Local authority functions

15 Assessments under section 12A of 1968 Act: assistance

After section 12A of the 1968 Act, insert—

“12AZA Assessments under section 12A: assistance

(1) Subsection (3) applies where—

(a) a local authority is required by section 12A(1)(a) to carry out an assessment of the needs of a person (the “supported person”) for community care services,

(b) it appears to the authority that the supported person falls within subsection (1A), and

(c) the conditions in subsection (2) are satisfied.

(1A) A supported person falls within this subsection if—

(a) because of mental disorder, the supported person would benefit from receiving assistance from another person in relation to the carrying out of the assessment,

(b) because of difficulties in communicating due to physical disability, the supported person would benefit from receiving assistance from another person to communicate in relation to the carrying out of the assessment.

(2) The conditions are—

(a) there is no guardian, continuing attorney or welfare attorney with powers as respects the provision of assistance in relation to the carrying out of the assessment, and

(b) an intervention order has not been granted as respects the provision of assistance in relation to the carrying out of the assessment.

(3) The authority must take reasonable steps—

(a) to identify persons who are able to assist the supported person, and

(b) if the supported person agrees, to involve them in assisting the supported person in relation to the carrying out of the assessment or, as the case may be, communicating in relation to the carrying out of the assessment.

(4) In this section—

“the 2000 Act” means the Adults with Incapacity (Scotland) Act 2000 (asp 4),

“continuing attorney”—

(a) means a continuing attorney within the meaning of section 15 of the 2000 Act, and

(b) includes a person granted, under a contract, grant or appointment governed by the law of any country, powers (however expressed), relating to the grantee’s property or financial affairs and having continuing effect despite the grantee’s incapacity,

“guardian”—
(a) means a guardian appointed under the 2000 Act, and

(b) includes a guardian (however called) appointed under the law of any country to, or entitled under the law of any country to act for, an adult during the adult’s incapacity, if the guardianship is recognised under the law of Scotland,

“intervention order” is to be construed in accordance with section 53 of the 2000 Act,

“mental disorder” has the meaning given by section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13),

“welfare attorney”—

(a) means a welfare attorney within the meaning of section 16 of the 2000 Act, and

(b) includes a person granted, under a contract, grant or appointment governed by the law of any country, powers (however expressed) relating to the granter’s personal welfare and having effect during the granter’s incapacity.”.

16 Power to charge for services provided under section 2
In section 87 of the 1968 Act (power of local authority to charge for services and accommodation provided under certain enactments), in each of subsections (1) and (1A)(a)—

(a) the word “or”, where it first occurs, is repealed, and

(b) after “(asp 13)” insert “or section 2(4) of the Social Care (Self-directed Support) (Scotland) Act 2012 (asp 00)”.

17 Promotion of options for self-directed support
(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.

(3) In subsection (2), “supported person” has the meaning given by section 3(2).

18 Delegation
In section 15(4) of the Community Care and Health (Scotland) Act 2002 (asp 5) (power to delegate certain local authority and NHS functions etc.)—

(a) the word “or” immediately after paragraph (f) is repealed, and

(b) after paragraph (g) add—
“(h) prohibiting the entering into of arrangements by virtue of subsection (1) for the delegation of such functions prescribed under subsection (2)(a) as may be specified unless the arrangements are also for the delegation of such functions under the Social Care (Self-directed Support) (Scotland) Act 2012 prescribed under subsection (2)(a) as may be specified.”.

General

19 Guidance and directions

In section 5 of the 1968 Act (guidance and directions under 1968 Act and certain other enactments)—

(a) in subsection (1), for the words from “and” to “1995” substitute “, Part 2 of the Children (Scotland) Act 1995 and the Social Care (Self-directed Support) (Scotland) Act 2012 (asp 00)”, and

(b) in subsection (1B), after paragraph (q) add—

“(r) the Social Care (Self-directed Support) (Scotland) Act 2012 (asp 00).”.

20 Regulations: general

(1) Regulations under this Act may—

(a) make different provision for different cases,

(b) include such supplementary, incidental, consequential, transitory and transitional provision and savings as the Scottish Ministers consider appropriate.

(2) Regulations under sections 12 and 21 are subject to the affirmative procedure.

(3) Otherwise, regulations under this Act are subject to the negative procedure.

(4) Before laying a draft of a Scottish statutory instrument containing regulations under section 12 or 21 before the Scottish Parliament, the Scottish Ministers must consult such persons as they consider appropriate.

21 Power to modify application of Act

(1) The Scottish Ministers may by regulations make provision for or in connection with disapplying section 4(2) or 7(2) in such circumstances as the regulations may specify.

(1A) Regulations under subsection (1) which disapply section 4(2) or 7(2) must include provision deeming a person to have chosen Option 3 of the options for self-directed support.

(2) Regulations under subsection (1) may include provision for or in connection with disapplying or modifying any other section.

22 Interpretation

(1) In this Act, unless the context otherwise requires—

“the 1968 Act” means the Social Work (Scotland) Act 1968 (c.49),

“the 1995 Act” means the Children (Scotland) Act 1995 (c.36),

“adult” means a person who is 18 years of age or over,

“child” means a person who is under 18 years of age,
“community care services” has the meaning given by section 5A of the 1968 Act (except that it does not include a reference to services which a local authority provides, or secures the provision of, under any of the provisions of that Act mentioned in section 1(5)),

“direct payment” has the meaning given by section 3(2),

“options for self-directed support” is to be construed in accordance with section 3(1),

“relevant amount” has the meaning given by section 3(2),

“support” has the meaning given by section 3(2).

(2) In this Act, references to a person’s being ineligible to receive direct payments are to be construed in accordance with section 4(6).

23 Consequential repeals

Sections 12B and 12C of the 1968 Act (which make provision in relation to direct payments in respect of community care services) are repealed.

24 Ancillary provision

(1) The Scottish Ministers may by order make such supplementary, incidental or consequential provision as they consider appropriate for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.

(2) An order under subsection (1) may modify any enactment.

(3) An order under subsection (1) containing provisions which add to, replace or omit any part of the text of an Act is subject to the affirmative procedure.

(4) Otherwise, an order under subsection (1) is subject to the negative procedure.

25 Transitional provision etc.

(1) The Scottish Ministers may by order make such provision as they consider necessary or expedient for transitory, transitional or saving purposes in connection with the coming into force of any provision of this Act.

(2) An order under subsection (1) may modify any enactment.

(3) An order under subsection (1) is subject to the negative procedure.

26 Commencement

(1) This section and sections 13, 20, 22, 24, 25 and 27 come into force on the day after Royal Assent.

(2) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.

(3) An order under subsection (2) may contain transitory or transitional provision or savings.

27 Short title

The short title of this Act is the Social Care (Self-directed Support) (Scotland) Act 2012.
Social Care (Self-directed Support) (Scotland) Bill
[AS PASSED]

An Act of the Scottish Parliament to enable local authorities to provide support to certain carers; to make provision about the way in which certain social care services are provided by local authorities; and for connected purposes.

Introduced by: Nicola Sturgeon
On: 29 February 2012
Bill type: Government Bill