



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

Bill Number:	SP Bill 10
Introduced on:	29 February 2012
Introduced by:	Nicola Sturgeon MSP (Government Bill)
Passed:	28 November 2012
Royal Assent:	10 January 2013

Passage of the Bill

The Social Care (Self-directed Support) (Scotland) Bill [as introduced] [SP Bill 10] was introduced in the Parliament on 29 February 2012. The Health and Sport Committee (the Committee) was appointed lead Committee for Stage 1 scrutiny of the Bill. The Committee first considered the Bill on 8 February 2012, and issued its call for written evidence on 1 March 2012. The Committee published its [Stage 1 Report](#) on 6 July 2012 with the [Stage 1 \(general principles\) debate](#) taking place on 18 September 2012. [Stage 2 proceedings](#) took place on 30 October 2012. The [Bill was passed](#) following the [Stage 3 parliamentary debate](#) on 28 November 2012. The Bill received Royal Assent on 10 January 2013.

Purpose and objectives of the Bill

The Bill sought to ensure adults and children (including carers and young carers) were given more choice and control over how their social care needs are met. Enshrining “self-directed support” (SDS) into legislation, it stipulated the forms of SDS that must be offered by local authorities to those assessed as requiring community care services.

The Bill also aimed to support efforts to promote greater personalisation in service delivery, including [‘Self-Directed Support: A National Strategy for Scotland’](#) published in November 2010.

Provisions of the Bill

The key provisions in the Bill included:

- A duty on local authorities to have regard to three principles – involvement, informed choice and collaboration - when undertaking their functions in relation to community care assessments and the provision of community care services.
- Providing local authorities with a discretionary power to provide services to support adult carers in their caring role following an assessment of their needs. It built on existing provisions where adult carers could request such an assessment.
- Providing for the four options for SDS:
 1. direct payments (DP) - 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 (already provided for through existing legislation)
 2. directing the available resource – where the supported person chooses their support and the local authority makes arrangements for the support on behalf of the supported person
 3. local authority arranged support - the local authority selects the appropriate support and makes arrangements for its provision by the local authority (can be viewed as the traditional model of social service delivery)
 4. a mix of the first three options
- A specific duty on local authorities to offer the different options to the three groups of supported people who could receive SDS – adults, adult carers and children (and/or their families), including young carers.
- Duties on local authorities to give the supported person the opportunity to choose one of the options for SDS, inform them of the amount of each of the options, and provide a process for dealing with situations where the individual may not be eligible for a DP.
- Specific choice provisions for children and their families, based on the age of the child.
- Duties on local authorities to provide information and advice to those where a person is given the opportunity to choose from the four SDS options. The duty includes signposting the individual to independent sources of such information.
- Further provisions in relation to direct payments
- A power to charge for services provided under section 3 in relation to support for adult carers.

Parliamentary consideration

In its Stage 1 Report, the Committee made a number of recommendations on the provisions of the Bill. These together with the Scottish Government's

response are contained in a [SPICe briefing¹](#), which outlines consideration of the Bill prior to stage 3. This briefing also discusses the key amendments that were laid at stage 2 and which were and were not agreed to. Over stages 2 and 3, the key areas of debate, included:

- the inclusion of “independent living” in the general principles underpinning legislation (agreed to at stage 2)
- providing a right to independent advocacy when making a choice over the SDS options (amendment withdrawn at stage 2 and disagreed to at stage 3)
- replacing a local authority’s discretionary power over the provision of support for adult carers with a duty (not agreed to at stage 3)
- whether Ministers should have the power to introduce regulations relating to personal assistants (not agreed to at stages 2 and 3)

Throughout the debate, the Minister for Public Health agreed to cover a number of issues in statutory guidance.

Power to charge for services provided under section 3

There was a particular debate concerning the power of local authorities to charge for services. Section 16² of the Bill sought to amend section 87 of the Social Work (Scotland) Act 1968 (the 1968 Act) (concerning local authorities’ powers to charge for services or support) which would have the effect of allowing local authorities to charge for support provided to carers under section 3 of the Act. The Scottish Government’s position was that this provision, sought to provide consistency on the face of the law, and bring these services into line with other community care services. However, during [stage 3](#), the Minister for Public Health also stated that he planned to use regulatory powers under this section to make it clear that all charges for support to carers should be waived in whole.

However, there was a view, articulated by Jackie Baillie MSP when speaking to her amendment at stage 3 (see col 14027-14030), that section 16 was not required, as the provision already existed in section 87 of the 1968 Act, and such support could already be charged for. Thus, Ministers could already use their powers to introduce regulations. The view was that section 18 effectively highlighted local authorities’ ability to charge carers. However, The Scottish Government’s position, as expressed by the Minister at stage 3, was that unless this section was in the Bill, and thus section 87 amended so as to specifically include support to carers, then there would be no legislative basis to make regulations waiving charges for this group.

The Minister also committed the Scottish Government to consult on any draft regulations.

¹ Scottish Parliament Information Centre. (2012) [Social Care \(Self-directed Support \(Scotland\) Bill: Stage 3](#).

² Please note that, following a number of amendments as the Bill progressed through Parliament, this became section 18 in the resulting Act.

