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 of 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\(^3\). 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.

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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

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⁵ Age UK (2010) Personalisation in practice: Lessons from experience