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 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?

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