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