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