1. SAMH

SAMH is a mental health charity which provides an independent voice on all matters of relevance to people with mental health and related problems, and delivers direct support to around 3000 people through over 80 services across Scotland. SAMH provides direct line-management to respectme (Scotland’s anti-bullying service) and ‘see me’ (Scotland’s anti-stigma campaign).

2. GENERAL COMMENTS

- Are you generally in favour of the Bill and its provisions?

2.1 SAMH believes that Self Directed Support presents an unprecedented opportunity to empower people to live fulfilling lives, as valued and participating members of society. We particularly welcome initiatives which aim to offer people with mental health problems more flexible ways to meet their individual needs and circumstances. As such, we are broadly in favour of the Bill and its provisions.

2.2 SAMH responded the forgoing Scottish Government consultations on the Self Directed Support Bill. We are therefore pleased that subsequent amendments appear to address several of the concerns we had previously raised. However, the Bill could be further improved still to deliver better outcomes for people experiencing mental ill-health throughout Scotland.

3. DETAILED COMMENTS

- What are your views on the principles proposed?

3.1 SAMH supports the principles of ‘involvement”, “informed choice” and “collaboration”. We would expect these principles to form part of a broader rights-based approach to the design and delivery of public service support to disabled people.

3.2 We are pleased that the wording of the current Bill has been amended to limit the scope for local authorities to act out-with the spirit of the legislation i.e. ‘should’ has now been replaced with ‘must’. However, the Bill could be further strengthened in this regard; SAMH would argue that local authorities must ‘uphold’ the principles rather than just ‘have regard’ to them.

3.3 We particularly welcome the theme of principle 1(3) which, by providing assistance, should enable the person to make an informed choice about their treatment. It is essential that guidance under the Bill makes clear that the level of assistance which might be reasonably required will differ depending on the person’s mental health condition, and local authorities will need to take this into account when deciding what is ‘reasonable’. SAMH would also like to see an
insertion at 1(4) to state that local authorities must also collaborate with a person in relation to the provision of assistance in respect of 1(3).

- What are your views on the four options for self-directed support proposed in the Bill?

3.4 SAMH is pleased that the Bill provides a menu of options, with no single option assumed to be the default and a sliding scale of control. We also welcome the addition at 4(5) which will introduce a requirement for all decisions to refuse a direct payment to be in writing and any other means appropriate to the person’s disability or communication requirements.

3.5 The Bill gives local authorities’ discretion to deny a person their preferred choice. SAMH would want assurances that the decision-making process to reach this conclusion would be transparent, and scrutinised by the Scottish Government; and that the right of the individual to appeal such a decision would be upheld. The updated Section 10 appears stronger in outlining a person’s right to have a decision reviewed by a local authority if it decides that a person is ineligible to receive direct payments. However, the Bill still does not allow the decision of the local authority to be appealed or reviewed, except when a person has been deemed ineligible for direct payments. We hope that the Bill will be strengthened to ensure that all decisions could be appealed and reviewed. Transparent decision-making, appropriate scrutiny and a robust appeals process will be fundamental to ensuring the success of self directed support.

- 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?

3.6 SAMH opposed initial proposals for local authorities to have the power to facilitate an appropriate person arrangement. We are pleased that the revised Bill appears to address many of the concerns we raised. Section 5 maintains the duty on authorities to take reasonable steps to enable the supported person to make a choice. It also places a duty on local authorities to identify and involve interested persons to assist the individual to make a choice. This seems more aligned to the original intent of enabling interested parties to assist those with limited capacity, rather than risking a situation whereby appointed persons are making decisions for people who lack capacity. However, the Bill does leave some aspects open to interpretation and SAMH would seek further clarification on these. In particular, it is not clear what would constitute an ‘interest’ in a person’s care and treatment. Furthermore, the Bill should contain a provision to ensure that local authorities take all reasonable steps to ascertain and uphold the wishes of the service user. Ideally, it should be the social care user who decides whether or not it is appropriate to involve third parties.

3.7 SAMH welcomes the inclusion at 8(2)(c) for information about how to manage support to be provided. This could be a particular issue for some
people with fluxuating mental health needs, who may not always have the insight necessary to manage their own support. We also welcome the inclusion of information about support by persons who are not employed by the local authority. However, it remains a concern that information pertaining to advocacy has not been included. The provision and sustainability of quality and timeous information, advice and advocacy services will all be crucial to the success of this Bill.

- **Do you have any views on the provisions relating to adult carers?**

3.8 SAMH is clear that expenditure should and must not be the key driver in providing support to carers. We are therefore pleased that the section requiring local authorities to consider “whether provision of the support would be likely to prevent or reduce expenditure that the authority might otherwise incur” has been removed.

3.9 It must be made absolutely clear when payments are intended for carers’ own personal needs and when they are intended to meet the needs of the person being cared for. Local authorities will require robust guidance detailing how these provisions are intended to help meet carer’s needs, or there will be substantial risk that these powers will be interpreted differently.

- **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?**

3.10 SAMH believes that individuals should be empowered to select the method of care and support which best meets their needs and to have their views on who should be involved in their care taken seriously. However, we reiterate that robust safeguards will be required ensure that people receive the services or support they need and that funds intended for them are not abused or misdirected. Account must also be taken of the disparity in the current level of inspection that we and other social care agencies are subject to and relative lack of inspection/regulation that carers working directly for individuals will be subject to. As such, the potential for exploitation of vulnerable people is high. It must be ensured that any person providing support is properly skilled, willing and able to do so.

3.11 SAMH understands that the Scottish Government intends to publish statutory guidance which would cover ensuring individuals are aware of their duties as an employer and the risks in not adopting safe employment practices. In our experience, people’s awareness and understanding in this regard is extremely low and so this guidance will be particularly important.

- **Effects on equal opportunities, human rights, island communities and sustainable development. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?**
3.12 SAMH is satisfied that the Social Care (Self-directed Support) (Scotland) Bill, in itself, is both equality and human rights compliant. The UK Parliament’s Joint Committee on Human Rights recently raised concern about the effects of reductions in funding for local authorities, changes to Disability Living Allowance under the Welfare Reform Bill, and caps on housing benefit, and the way in which these changes might interact to restrict enjoyment of the right to independent living.  

SAMH believes that Self Directed Support presents an opportunity for Scotland to mitigate some of these impacts, but this will only be possible if the Bill is implemented effectively and backed by sufficient resource and investment.

4. CONCLUSION

4.1 SAMH believes that this Bill presents an excellent opportunity to ensure that people have greater involvement in their communities and opportunities to control their own lives. We are pleased that the Bill has been amended in a number of key areas, making it better able to deliver its intended aims. We very much hope that the recommendations we have made in this response will be used to further strengthen the Bill.

4.2 The funding and sustainability of effective and timely information, advice and advocacy services will be crucial to the success of this Bill. Furthermore, robust safeguards and guidance will be required to ensure its safe and effective implementation. Other aspects which are not addressed by this Bill, such as the eligibility criteria for care and support, will also be key to its success.

Scottish Association for Mental Health
24 April 2012

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1 Joint Committee on Human Rights, Implementation of the Right of Disabled People to Independent Living, Twenty-third Report of Session 2010–12