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

**General principles underlying the Bill**

Section one of the Bill proposes three principles, which are described as “the general assumptions under which professionals and individuals should operate.” (Policy Memorandum, para 17). The principles encourage “involvement”, “informed choice” and “collaboration”. Local authorities would have a duty to have regard to these principles when carrying out their functions under the Bill.

**General Overview Response**

1. We welcome the general objectives and provisions of the Self Directed Support (SDS) Bill, the move to consolidate and update existing legislation and acknowledge the Bill will help broaden understanding of self directed support beyond direct payments. The Bill represents a shift and incorporates comments expanding on detail requested from the previous consultations 2010/11. For example key concepts are developed there is more clarity on a number of areas which will impact positively on local authorities, whilst maintaining flexibility to adapt to changing practice and conditions, as set out and explained more fully in the explanatory notes, policy and delegated powers memorandums.

2. We appreciate the positive aspirations and spirit of the Bill and recognise the challenges outlined in the policy memorandum with the need to deliver responsive services in the current climate. The principles of involvement, informed choice and collaboration are relevant to the interface between public services and citizens but are also necessary for the cultural shift required of public services as a whole to collaborate in order to meet our obligations to provide responsive services. Principles of co-production, partnership and mutuality are also relevant. We note these principles have been included and expanded on within the policy memorandum (p6). We note further statutory guidance will elaborate further on the application of these principles including:

- individual rights and responsibilities, we note further guidance will be developed.
- balancing rights with risks- linked to national work underway to develop risk enablement approaches and practice.
- advice and information- the importance of a range of support to ensure citizens can make informed choices. Including collaborative approaches through the national strategy work streams to develop advocacy, communication support and development of the assessment journey to facilitate informed decision making.
- Workforce development – we acknowledge the supporting work underway to ensure the necessary skills development of social
workers, care managers and others is progressed to empower staff to work with and manage complexity. To work more effectively with citizens to consider SDS options.

- There are some areas we would value further exploration and clarity in the statutory guidance to be developed, which includes interface between local authorities duties of care under existing legislation, balancing protection with enablement. We make further comments in relation to these issues the following sections of this response.

The advances outlined in the Bill and supporting memorandums acknowledge the practice realities of implementation and will support local authorities in developing local arrangements to meet the Bills aspirations.

3. We believe the Bill and supporting memorandum are consistent with our preferred approach in developing a range of support options. In particular if our partners in health, education and housing are to support the potential of better outcomes we need to see a cultural shift backed up by guidance and some regulation to ensure a partnership approach is realised. We welcome reference to further guidance being developed acknowledging the complexities in practice.

This was an area of concern in earlier consultations and we acknowledge efforts to develop more clarity on the interface and application of various pieces of legislation.

4. We appreciate implementation is supported by the work underway through the national strategy work streams along with the financial framework and funding to support the significant work required, for example to develop skills of workforce at all levels of public services and with voluntary and community sector to facilitate transition and service redesign to facilitate implementation.

5. We note that the Bill sits alongside existing Health and Community Care legislation and the bill will apply to NHS services where there is a social care element to the provision of services. We acknowledge that there is an expectation through the acceleration of integration of health and social care services, (which may be subject to separate legislation) partners including the NHS will be subject to the provisions of the Self Directed Support Bill.

We feel further explanation, detailed guidance and the facility to bring forward regulations will be necessary to ensure shared decision making and shared resourcing can be achieved with the range of public service partners.

6. The interface between further or secondary legislation in relation to integration will need to be aligned to the challenges in relation to Welfare Reform which will contribute to local authorities ability to develop a range of community based options and funding arrangements.

We acknowledge the Scottish Government in partnership with Cosla and others have been proactive, undertaking extensive mitigation activity, including the potential of legislation to protect, for example, passported
benefits, which would have a positive impact on the promotion of self directed support, particularly participation in social leisure and community activities.

7. The challenges and impact of welfare reform adds to the need for local authorities in conjunction with health, education and housing partners and providers to collaborate more effectively, shared resourcing is essential to ensure a range of options are developed and are genuinely made available in the spirit of the Bill.

2. What are your views on the principles proposed?

Options for self-directed support

Sections 3-4, 6-12 and 17 of the Bill contain the core self-directed support provisions. Included are that the local authority must offer an individual four options in how they would like to direct their support – “direct payment”; “direct available resource”; “mix of approaches”; or, “local authority arranged support”. The provisions would relate to adults assessed as requiring community care services, and also children and their families where a local authority decides to provide services under the Children (Scotland) Act 1995. Other provisions include that individuals must be provided with information and advice to help them make that choice, and those who may have difficulties in making informed choices are provided the necessary support to do so.

We agree that those in need of care and support should have all options of support delivery made known to them, across all service groups. This raises the importance of transitions which the supporting documents to the bill expand on in more detail.

Developing a mix of support options consistently will represent a challenge to local authorities which reinforces the need for guidance and development of regulations to support implementation.

The interface with and application of eligibility criteria, the use of and development of resource allocation systems are relevant here and the policy memorandum refers to linkages with the national strategy work streams and support funding in order to develop local arrangements.

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

We agree with the four options proposed

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?
We agree with the options and acknowledge greater clarity in the process realising more detailed work is underway, supported by funding to advance the change management required to undertake cultural change at a local level. Buy in by our partners and the interface with other legislation existing or proposed will be essential to achieving a shift in care arrangements as outlined in our points under question one.

We note reference to GIRFEC and existing legislation including child protection in Section 7, p10 of the Policy Memorandum and Statutory Guidance will clarify what this will mean in practice for local authorities. The evolving use of SDS in Children and Families work will change practice over time therefore linkages, practice development and skills development will be required as outlined in relation to adult and community care services outlined above.

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 acknowledge and support the emphasis on information and advice. By implication requires local authorities in conjunction with our partners to raise the profile and practice in relation to the role of information and advocacy providers- within and out with the local authority- extending role of and developing alternative methods of support such as circles of support, communication support, talking mats.

This raises the profile and need for training and skills development on the interface between Equality and Human Rights legislation, Self Directed Support, Independent Living and Social Inclusion as a priority for local authorities and partners to embed proactive approaches in practice.

We acknowledge the investment by the Scottish Government to develop this work and to facilitate transition collaboratively.

Direct payments

The Bill seeks to modernise and consolidate current legislation on direct payments, in order to make it more flexible to respond to individuals’ needs. Whilst local authorities would retain a range of duties and powers, the Scottish Government does not wish these to impinge on people’s ability to determine their own support. However, section 13 of the Bill would seek to do this through secondary legislation by granting Ministers powers to introduce regulations, rather than setting this out on the face of the Bill.

Secondary legislation may be necessary to fully develop local authorities influence to make SDS a reality. SDS is dependent on a holistic collaborative approach with all public service partners to develop community support and infrastructure, this requires development either in the Bill or through the facility to develop the regulations.
Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?

Adult carers

Currently, adult carers of other adults or children are entitled to have an assessment of their needs. However, section 2 of the Bill proposes that local authorities should have the power to provide support to a carer on the basis of that assessment. Where a local authority decided to provide such services, section 6 would require it to offer a choice of the four self-directed support options to the adult carer.

We agree with the principle to offer support to carers, as stated in previous consultations. There is a risk of a tension and conflict between the needs of a carer and cared for, the supporting documents go some way to clarify arrangements for carers. However further work through the national strategy work streams and evolving guidance for the Bill could expand on practice realities to minimise potential tensions.

7. Do you have any views on the provisions relating to adult carers?

Individuals’ responsibilities and risk enablement

The proposals in the Bill could place a significant amount of responsibility on individuals and their families, particularly in managing risk. The Policy Memorandum (para 26) accompanying the Bill makes particular note of the current ability of people to employ personal assistants through the use of direct payments (option 1 in the Bill). Whilst the Bill does not place any restrictions on the categories of people that may be employed by an individual, the Scottish Government would 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.

We acknowledge the Scottish Governments desire to promote flexibility, enabling and empowering practice and has provided more clarity by expanding on the local authorities’ role in relation to its duty of care, the interface of other legislation, for example, provisions under;

- Adult Support and Protection,
- Adults with Incapacity Act and
- Mental Health Care and Treatment Act.

Referenced in the Policy Memorandum p9 sections 26, 27 and 28 extending to p10 section 32 with the use of section 13ZA of the Social Work (Scotland) Act.

Practice is still evolving in the application, knowledge and case law emerging in terms of the interface of these pieces of legislation which in effect provides a framework for adult protection in Scotland. More work is required on; the interface between these pieces of legislation, aligned with the national work...
underway on risk enablement, linked to our duties and responsibilities under equality and human rights legislation to provide equal access to services.

Safe practice and flexibility is also required to ensure local authorities can act and intervene appropriately to avoid exploitation or the risk of harm therefore safe recruitment and more detailed guidance on suitability of persons who can be employed will be essential in developing risk enablement approaches for SDS.

The identification of the PA workforce with measures to promote mediation, peer support and conflict resolution will also have greater prominence. There is evidence to suggest that citizens can become more vulnerable to risk in the community and this will need to be effectively managed by public services with citizens who take up SDS options and when undertaking significant cultural change in the way services are delivered.

More detailed guidance on appropriate safe recruitment and good employment practice is crucial in developing an approach which signals a fundamental shift in how services will be delivered in the future.

We note reference to appropriate person but would ask there is further work to explain and agree who can be an appropriate adult and whether or not there is scope to define this in more detail as requested in previous consultation.

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?

As outlined above this needs careful consideration and needs fleshed out linked to the experience of the implementation of Adult Support and Protection and related legislation to date, augmented with case studies or examples to encourage awareness of positive and negative experiences in developing practice. Flexible responsive practice to SDS will require robust flexible arrangements supported by legislation and guidance to ensure the balance between rights, responsibilities protection and independence can be achieved.

We would prefer more detailed guidance and regulation in order for local authorities to be able to discharge their duties in the best interests of citizens with support needs or who maybe at risk of harm.

Financial Memorandum

The Financial Memorandum accompanying the Bill sees much of the Bill being cost-neutral in the long term. However there is an acceptance there will be transitional costs associated with transforming the culture, systems and approaches to social care provision as a result of the Bill and the Government’s wider strategy.
9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

We welcome the Scottish Government’s commitment to provide funding to support transitional arrangements to drive forward significant change to the way services are delivered. As outlined above the impact of welfare reform and the intentions to accelerate integration of health and social care will influence how local authorities can manage change effectively at a local level, with the potential of these factors presenting challenges to the ability to provide effective levels of service and delivery in the way intended by the spirit of the SDS Bill.

**Effects on equal opportunities, human rights, island communities and sustainable development**

The Policy Memorandum (para 52-63) accompanying the Bill outlines the assessments made by the Scottish Government on the potential impact, if any, on equal opportunities, human rights, island communities and sustainable development.

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 welcome the comprehensive assessments undertaken in respect of the Bill. We would add welfare reform and acceleration of integration of health and social care are 2 significant factors that could impact on effective implementation of SDS positively or negatively. A third factor would be policy in relation to reserved matters and potential impact on devolved powers. We recognise these are unintended consequences and whilst the Bill on balance anticipates neutral impact we are advocating caution in this respect.

**Other matters**

11. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

Inverclyde Council
24 April 2012