Q1 East Dunbartonshire Council is in favour of the Bill. The Bill shows a clear commitment to supporting Service Users and Carers through personalisation and choice of services to meet their assessed needs. The Service Users/Carers will have a greater degree of flexibility on how and when they wish to receive their support and from who support will be provided. The process for receiving support gives Service Users/Carers the opportunity to become more active in its direction. The Bill makes clear the continued role of the Local Authority in the assessment of Service User/Carer needs and reinforces the fact that assessments are carried out in collaboration with the Service User /Carer (dependent on their age and capacity to be involved). The Bill’s Explanatory Notes acknowledges that Local Authorities will need to review their infrastructures/functions i.e. Information Technology, Financial Processes and Systems. This will require additional resources. It is of concern to the Council that additional expenditure may be incurred, if the arrangements in the Bill are given effect. We have concerns that a Resource Allocation System might not be a suitable tool to identify every Service User’s individual budget. There will be complex and unique cases which will not fit in with a Resource Allocation System which is primarily designed to be used for all Service Users. The Bill will require Social Care Providers to review their capacity and implement cultural and organisational changes to provide innovative and diverse support services for people directing their own support. This may prove difficult for some Providers as Local Authorities make the transition from block contracting to individualised purchasing.

Q2 East Dunbartonshire Council supports the principles proposed. In common with other Local Authorities, we already encourage independent freedom of choice for Service Users. The principles of the Bill will support Service Users/ Carers in exercising their wishes over the choice of how their care will be delivered and by whom. It might be helpful to include a principle which relates to the responsibilities of those receiving support e.g. responsibility of Carers to ensure that their choice (i.e. of option re SDS) does in fact meet the assessed need, but also of their responsibility to collaborate with the Local Authority in the ongoing monitoring and review of the service in place in terms of whether it is achieving the intended outcome. Concerns still centre on whether certain SDS options will lead to purchases of inappropriate support i.e. risk to health and safety, which in turn could lead to the Service User’s assessed outcomes not being met. Local Authorities, Service Users, Carers and Providers need to work together to find a balance between risks and benefits involved in the decisions/actions taken when agreeing the Service User’s Support Plan. Clear distinctions have to be made within the Bill and statutory guidance that where there are concerns regarding capacity or vulnerability/safe guarding of adults/children that the Local Authority has the power to instigate and provide support under SDS Option 3 and refuse requests for support under SDS Options 1, 2 and 4. Clarity has to be given within the statutory guidance regarding the Local Authority’s position when the Service User requests that support is purchased by the Local Authority, on their behalf (as per SDS Option 2), from support providers not established within the Local Authority.
Authority’s procurement and commissioning framework. The Local Authority has clear, current and consistent financial and procurement procedures that must be followed when purchasing support services. We welcome statutory guidance in relation to the Service User’s rights and responsibilities and the responsible use of public funds by both the Local Authority and Service User/Carer.

Q3 The four options for SDS are clear within the content of the Bill, and provide clarity to support a consistent approach across the Authority regarding allocation of resources/individual budgets regardless of the option/s chosen. Contingency arrangements would require to be agreed in the Service User’s Support Plan to confirm arrangements should the support breakdown or be misused. As SDS becomes embedded, options for support may decrease if services have been decommissioned or reduced to accommodate SDS. Local Authorities will require to review the way that they plan and commission services.

Q4 Because the Bill clarifies that SDS is applicable when the Local Authority has decided to provide services under Section 22 of the Children (Scotland) Act 1995, it recognises that difficulties would arise if SDS were to apply in circumstances where children/young people are involved with the Local Authority on different legal bases (statutory measures). We have concerns where Section 22 has been deemed as an appropriate legal basis for working with a child/young person/family. The principle of minimum intervention has been applied but the Local Authority assessment is that support, direction and supervision by Social Work is required to ensure that the child/young person’s needs are being met. This could have unintended consequences, if the parent/Carer would have access to SDS when they do not meet the needs of the child/young person either because they are unable/unwilling to comply with the support, direction and supervision of Social Work. Unintended consequences could disadvantage the child/young person either because of the negative impact of misuse/misdirection of SDS funds available to the parent or could result in increased use of statutory measures as a result of the constraints on Local Authorities to provide SDS in these instances. Therefore we welcome the future statutory guidance to refer to certain exceptions where the Local Authority will have discretion to deny the person their preferred choice of SDS options and how Local Authorities should balance their duties on protection with their duties on SDS. Local Authorities already involve the child/young person in discussions and decisions regarding the care and support that they receive. While in agreement that the individual child/young person of varying ages will have different degrees of control over the SDS process, the same concerns and discretions would apply as noted previously.

Q5 East Dunbartonshire Council fully agree with the provisions regarding the requirement for information and advice. The introduction of new policies and procedures to implement SDS requires full explanation and to be accessible to Service Users and Carers. In some instances the relationship between the Assessor and Service User can be a complex one and we agree that there is a role for other persons (with an interest in the care of the Service User) and/or support/advocacy services to assist the Service User in making decisions about their SDS options and support. Bringing more people into the process increases the pool of skill and knowledge for the process and Service User’s experience of
SDS. However, it is essential that the role of each party/person involved in the process is made clear and that the Local Authority role in assessing need is not undermined through confused information or advice. While the Bill makes provisions for the Service User, who does not lack capacity but requires support or assistance from another person with regard to making decisions re SDS options and support, there are concerns regarding checks on the suitability of the person providing this assistance. This could lead to inconsistencies across Local Authorities of identifying persons who have an interest in the care of the Service User. It does however provide the Service User with support without going through a time consuming legal process. As mentioned in the Policy Memorandum we agree however, if there are issues with capacity or absence of any indication of an individual’s preferences, then the Local Authority will proceed to make decisions and arrange support (under Section 13ZA of the Social Work (Scotland) Act 1968 or seek an appropriate order under AWI legislation). Clear distinctions have to be made within the Bill and statutory guidance that where there are concerns regarding capacity or concerns regarding vulnerability/safe guarding of adults and children that the Local Authority has the power to instigate and provide support under SDS Option 3 and refuse the request for support under SDS Options 1, 2 and 4. The “provision of information” for all stakeholders is a broad term and requires capacity building work to be undertaken to help Local Authorities to realise potential costs of providing information in all appropriate methods and languages.

Q6 We believe that the method for modernising Direct Payments in the Bill will produce change in relation to its uptake as one of the SDS options. The modernisation of Direct Payments brings this option in line with the choices and flexibility afforded by other SDS options. The issues noted in the previous section regarding suitability of the person providing support in managing their Direct Payment monies is still a concern which could arise for individual Service Users. This could inflict inconsistency on the SDS process for Service Users, not only across Practitioners but across Local Authorities, but it will remove the requirement for time consuming legal processes to establish power of attorney or guardianship when there are no issues about capacity. We would welcome further statutory guidance regarding the suitability of ‘other persons’.

Q7 While East Dunbartonshire Council would agree with the provisions relating to adult Carers, sometimes the Carer and Service User’s best interests are not compatible whereby the Service User is not in agreement to the services that the Carer wishes to deploy/purchase. The importance of advocacy involvement in communication with and supporting Carers/Service Users is highlighted by this issue. The Bill should be amended to make clear the primacy of the purpose of Self Directed Support which is to support the needs/outcomes of the person who needs care, albeit we do this at times through support to that person’s Carer.

Q8 While we understand the flexibility afforded by not placing restrictions on the categories of people that may be employed by the Service User under SDS Option 1 we remain concerned regarding the suitability of such persons and we would welcome statutory guidance recommending robust approaches to ensure that Service Users are aware of their responsibilities as employers. However, we find this approach rather confusing given (i) the duty to ensure appropriate use of
public funds (ii) the duty to ensure services in place meet the assessed need (iii) the duties of Local Authorities in relation to child and adult protection. The approach taken by the Scottish Government risks hindering the ability for the Local Authority to give effect of these duties and potentially could put children and adults at risk. We have concerns that the authorisation for the Service User to employ a close relative will rest with individual Local Authorities. It is envisaged that this will lead to inconsistencies across Authorities when different views on the definition “relevant people” may be taken. Where the Local Authority is clear and has written evidence that it would not be in the interests of individual Service Users to employ a relative i.e. risk, health and safety, vulnerability, safe guarding etc we would not be in a position to grant this request. We acknowledge that the Scottish Government envisages that any increase in Carers Assessments will be in response to the Carers Strategy rather than the implementation of the SDS Bill but we are extremely concerned that by not restricting unpaid Carers being employed by the Service User (except for in exceptional circumstances) that this could set a risky and costly precedent with non-paid Carers requesting payment for their time. The Local Authority does not have the resources to meet what could be a high demand from Service Users and Carers requesting payment for their caring role (that they currently undertake on a non-paid basis). We would suggest that the statutory guidance needs to consider these concerns.

Q9 At this time it is difficult to estimate what the extent of change will be, what resources/support Service Users will wish to purchase and therefore in the longer term it is difficult to estimate, as recognised in the Financial Memorandum, the costs associated with SDS and whether they will, and how long it will take, to balance these costs with financial savings made in other areas. Additional resources required within areas such as Planning and Commissioning, Finance and Information Technology, balanced with those people opting to receive home based support as opposed to traditional services, should in the long term be balanced out by the reduction of some administration processes, reduction in block contracts, reductions in wasted or unwanted services, reduction in building based services etc. Significant changes such as these described require significant work, administratively and managerially, before changes can be implemented and savings accrued to balance out increased expenditure due to SDS and changing demographics. There is no transitional funding to support Local Authorities during what could be a lengthy transitional period during which there may be a need to effectively ‘double-fund’ services. “Cost Neutrality” will not be revolutionary. Local Authorities are, due to financial constraints, limited in the availability of non mandatory training courses, and while we welcome the short term funding to assist with implementation of the SDS strategy, broader resource issues could arise in relation to staff time costs to attend training, in particular in circumstances where back filling of staff is required to ensure that essential duties continued to be carried out during training periods. There are resource concerns regarding the Bill regulation whereby an individual can choose to receive their Direct Payment as gross or net. As recognised in the Financial Memorandum, payments on a gross basis incur administrative costs to Local Authorities and are administratively more time consuming to Service Users. To ensure that the cost impact of SDS is minimised would it be more appropriate to provide Direct Payments as net only, therefore cost impact to the Local Authority is lessened and it is “administratively convenient” to the Service User. Any administrative costs to
the Local Authority has an impact on overall budgets for service delivery and we feel that Service Users would be understanding of the Local Authority’s financial position in opting for the most cost effective route.

We would welcome the opportunity to be consulted on further work in relation to the suggestion of future regulations to remove current restriction on the use of Direct Payments for residential care and the effects on the National Care Home Contract. Our previous concerns would still apply: Any changes in this area would have a corresponding effect on Free Personal and Nursing Care legislation, where the contract is currently between the Care Provider and the Local Authority: Issues and difficulties regarding child care residential accommodation; Free Personal Care legislation would require to be updated; Issues regarding the maintenance of time limits.

Q10 In addition to the comments made above, and as per previous consultation comments, the Bill focuses emphasis on the Service Users’ needs and outcomes. There are issues and concerns regarding contingencies. Complete transformation of services with no fall-back position removes choice. There continues to be a danger that without consistency across Resource Allocation Systems, there could be a postcode lottery. There may also be a disproportionate uplift of SDS in more affluent Local Authority areas and a preponderance of choice and control sitting with articulate and confident service users and carers.

East Dunbartonshire Council
23 April 2012