Age Scotland welcome the opportunity to comment on the draft Social Care (Self-Directed Support) (Scotland) Bill ahead of the Committee’s consideration of it. Age Scotland believe this Bill and the Scottish Government’s Self Directed Support Strategy have the potential to revolutionise the way we deliver social care by giving the service user control over the care he or she receives, including who is to provide the services and how and when they are to be provided.

Given the breadth of the questions asked by the committee Age Scotland has not found it possible answer all eleven questions and keep to the submission limit therefore the charity has limited its response to areas where it can provide the greatest value to the committee.

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

Age Scotland believe Self-Directed Support (SDS) can have a positive effect towards sustaining and improving health through an emphasis on self-help and support that is continuous, integrated and individualised. The rebalance of the relationship between the state and individual is key to giving people more control over their lives and promoting confidence and well-being. Age Scotland recognises that when empowered to direct their own support, families effectively combine state resources around their own support systems – creating a truly personalised care package.

Further the charity recognises there is a significant level of research that demonstrates the benefits of a SDS approach to social care delivery for service users.

- The Scottish Government SDS test sites, which were launched to trial activities to around leadership and training, cutting red tape and bridging finance, found that those that accessed SDS packages were extremely positive about their support and very satisfied with the flexibility and choice that SDS had offered them.

- A North Lanarkshire Council review published in 2009 found individual budgets had “filled in the gaps” by enabling people to spend money on gym membership and other services not funded by the council and improved control and flexibility for users.

- A 2008 review of SDS conducted by the Scottish Government found that an overwhelming majority of users and informal carers had a positive experience of using SDS funding to purchase their support.

By focusing limited resources on personalised need, local authorities will be eliminating unnecessary waste and duplication, and delivering a system better suited to the needs of the individual. This was a key issue highlighted by the Christie Commission and is supported by the findings of a Age Scotland 2012
opinion poll where 75% of respondents over 50 said they wanted to have an input into how their local care services were delivered.

However Age Scotland believe that entrenched pockets of local authority resistance are denying many older people the opportunity to benefit from choice and control and that this will continue unless personalisation becomes the system, not an add-on or peripheral option. The SDS test site evaluation demonstrated that, overall, people with learning disabilities were the main group to access SDS and that other groups including those with mental health problems, older people and parents of disabled children were less likely to access SDS. Further, the test site evaluation concluded implementation of Direct Payments was seen as highly inconsistent, with some local authorities adopting more enthusiastic policy and practice than others and that the lack of sufficient support infrastructures for service users and carers was seen as a further obstacle.

The law in Scotland places a duty on local authorities to offer a direct payment to eligible groups after a formal assessment. In reality, this means that the individual has a right to opt in to direct payments but that the traditional method of obtaining care remains as the 'default' position. This has lead to somewhat patchy uptake of SDS provision across the country where Scottish Borders had the highest per capita clients receiving SDS at 26 per 10,000 and North Lanarkshire the lowest at 3 per 10,000. The lack of awareness about SDS is reinforced by the results of the four consultation events the charity held in 2010 to investigate the views of older people on SDS; and of the forty four older people consulted fewer than ten were even aware of SDS. Other anecdotal evidence obtained by the charity suggests there are doubts about eligibility and concerns about complex paperwork. Given the potential positive impact that personalisation can have for social care users Age Scotland believe there is a need for a Self Directed Support Bill which will raise the profile and awareness of SDS as a social care option.

2. What are your views on the principles proposed?

Age Scotland is fully supportive of the principles in the draft Bill, as detailed above public bodies need to capitalise on the experience of and commitment of service users and see them not just as beneficiaries but as participants and contributors. Involving them in the control, design and delivery of social care makes for higher quality and more appropriate services, and increases people’s satisfaction with the services they receive. Without this change we will fail in delivering the outcomes we need and at a huge cost to the public purse.

We do suggest however that given reduced availability of public money over the next few years and the Scottish Government’s focus on public service reform, as a way to improve the quality and economic efficiency of our public services, consideration should be given to whether a principle of prevention should be one the guiding principles of the legislation. This is suggested more widely for adult social care law reform in a Law Commission’s consultation submission in England and Wales. Their consultation paper suggests that “a principle might be based on a requirement that wherever possible support
should be provided that removes or reduces the level of help that will be required in the future and builds independence”. This would also build on the Power to Advance Well-Being that currently applies to local authorities in Scotland since 2003\(^3\). This discretionary power enables local authorities to do anything they consider is likely to promote or improve the well-being of their area and/or persons in it and the principle of prevention would fall under this power.

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

Age Scotland believes it is extremely important to ensure that SDS is promoted in its widest sense and is pleased the draft Bill contains a menu of options for people to choose from. We welcome the current position, where local authority arranged services are the assumed norm, being replaced with the clear framework of options detailed in the Bill.

SDS options should be a matter of choice for all service users (where possible), in full knowledge of both positive and potentially negative aspects, such as financial or employer responsibilities that not all service users want. The choice should be informed by an understanding of the support that will be available to the person to help them manage their SDS, should they be interested in receiving support in this manner. The system can be complicated for individuals and families to manage therefore local authorities, independent advocates, information centres and service providers should provide information to individuals and families about their options in a clear and simple way. In particular, there must be transparency in the decision-making process and the appeals system with decisions communicated in the means appropriate to the service users.

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?

To ensure there is sufficient knowledge about, uptake of and migration across the four options detailed in the Bill, developing the capacity of peer support organisations is a necessary pillar of SDS policy and practice implementation. While social work department will in most cases be the first port of call for service users there is a need to ensure all users can access independent advice, support and advocacy and the social work department should provide this signposting in a timely manner to ensure that the decision making process for service users is seen as transparent and not local authority led. Access to independent advice, information and advocacy should be available continually as a means to encourage service users to self review the service they receive to determine whether it can be improved upon. The charity recognise there are resource implications from continually reviewing and changing services but the principle of personalisation ensures that the service user has the right to migrate between SDS if their circumstances and needs change.
SDS is likely to increase demand on third sector advice and advocacy providers. The charity expect the third sector to take a leading role in providing independent, advice and support to service users but would encourage the Committee to seek assurances from the Scottish Government about any measurement it has made to ensure that there is a sufficient nationwide advice and information network established to support service users. The charity recognises the concern from some service users about the potential for conflict of interest where advice and information is provided by a local authority or even a third sector service provider. To address these legitimate concerns we believe the Bill should be amended to include a right of access to Independent Advocacy as defined by S259 of the Mental Health (Care and Treatment) (Scotland) Act 2003. A national right of access to advocacy services will ensure that everyone accessing SDS will make informed decisions about the services that are right for them.

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

While 3,000 older people in Scotland receive 20 hours or more care at home each week, 40,000 older people provide the same level of care for friends and family. Age Scotland recognise the vital role Scottish carers play in delivering preventative services and that as our population ages society as a whole will become even more dependent on their contribution to health and social care delivery.

SDS and the personalisation agenda means thinking about public services and social care in an entirely different way – starting with the person and their individual needs rather than the service and we are keen to.

There are of course issues about resource allocation that will be considered more fully by the committee and whether carers should be supported with money that would have been previously directed to service users, but the given the vital work the carers do in Scotland, and the strains that caring responsibilities put on finances and relationships Age Scotland support the measures contained in the draft Bill to allow local authorities to assess their relative need and then provide a menu of support options to carers. The Bill currently refers to SDS for carers who have undertaken a carers’ assessment, yet these assessments aren’t widespread and many carers aren’t aware that they can get one to access support. The committee should consider whether there is another, more effective, mechanism for encouraging carers to access Direct Payments.

Nonetheless the principle builds on the proposals set out in the Scottish Government’s Carer’s Strategy. This strategy and the upcoming Carers Charter are both crucial developments for Scotland’s unpaid carers – for the first time, existing rights for carers and the principles which should underpin support for carers will be consolidated and shared widely with the statutory sector and voluntary agencies. The proposed legislative changes in the draft Bill by enabling carers to access Direct Payments can in part realise the ambition in the Strategy and Charter. The extension of eligibility will also mirror practice in England where carers can access direct payments from local authorities.
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 current direct payment legislation states that in exceptional circumstances a close family member can be employed as a personal assistant, this proposal is an extension to this approach.

The majority of personal and other care in Scotland is currently provided by spouses, partners, and other family members, rather than by employees or agencies funded by the local authority. Although the public sector would be understandably reluctant to start paying for care that was previously unpaid it is critical that the Government appreciates the preventative nature of the care provided and that by investing in this care they will realise even greater savings.

For example by allowing individual to employ close relatives the Scottish Government can create a well designed, targeted, preventative early intervention and wellbeing service which has a huge potential to promote a healthier, more active and independent older age for many people and their carers; thereby reducing the negative aspects of ageing for individuals as well as easing demands on.

Age Scotland believe the current restrictions in relation to service users being prevented from employing carers and family members of their choice through direct payments are inadequate and discriminatory. For example current restrictions potentially discriminate against:

- BME carers, as they fail to give people with specific cultural and language needs the option to employ family members by right.
- People in rural and remote communities who often struggle to recruit and retain Personal Assistants
- People with conditions which result in challenging behaviour, or anxiety associated with unfamiliar people. In these circumstances the best outcomes for the service user is often care provided by those with whom trust has already been established, which may be family members.

Current needs such as these are not being met through the existing system, leading to inequalities in the provision and accessibility of services.

The existing landscape is the worst of all worlds with different local authorities interpreting regulations in different ways, leading to an inconsistent approach across the country to employing relations. An unambiguous national framework detailing where relations cannot be employed by service users would be desirable as this would help eliminate inconsistency in local practice. For example it may be appropriate to have national employment exclusions in place for people with power of attorney / guardianship.
However we would also draw the committee’s attention to circumstances where a personal budget is used to pay family members to provide care, there are reports of family members feeling under an open-ended obligation to be available and therefore we suggest that imposing some national guidance restrictions on availability (for example, at weekends) for some family members is appropriate in some situations.

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

The charity does not have any views on the calculation contained in the Financial Memorandum per se however it would re-iterate its response to question 5 where we detailed that the necessary advocacy and advice service are not developed across the country. Age Scotland recognise money has been allocated within the budget to increase the capacity of the information and advice sector (£1m was allocated in 2011/12 and a further £2m per annum will be allocated over the following three years) but believe the committee should seek assurances from the Government about the progress of this community capacity building and also what the financial costs will be to adequately develop Independent Advocacy services. Peer support and advocacy is necessary to overcome existing inertia in SDS uptake and the development of truly personalised social care provision.

The financial memorandum notes there will be an impact on administration costs of third sector providers due to the shift from block contracting to individualised purchasing of support but no estimation is made about the value of these costs. Given reductions to local authority budgets and a difficult funding environment for third sector organisation it is crucial that there is finance to cover new costs in short to medium term in delivering SDS or the capacity of many support organisations may be severely restricted.

10. Are you satisfied in the assessment that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?

Age Scotland agrees with the Scottish Government assessment made on the impact on island communities. One of the main attractions of the bill is that it can provide more flexible solutions for small and rural communities who may have a less developed statutory care sector. However to ensure that we deliver a truly national Bill that is empowering for all disabled people across Scotland, Age Scotland believe that Scottish Government must assess the respective local authorities ability to deliver on the bills principles and evaluate what further support is needed for those council with have a heavily weighted elderly and disabled population. This may include a review of local implementation strategies and ongoing support to overcome local barriers.

However there also a need for greater consistency and uniformity across all local authorities to consider the portability needs of all service users- a key human rights principle with respect to autonomy of decision making. Councils must not act in ways which are incompatible with the European Convention on Human Rights (ECHR) under section 6 of the Human Rights Act 1998. In
particular Article 8 (right to private and family life, including autonomy in decision making, the right to work and the right to live with dignity) and Article 14 (non-discrimination on a number of grounds, including “any other status”). Currently service users:

- Can’t take a support package from one local authority area to another;
- Will need to be assessed by new local authority;
- Don’t know if they will be eligible for SDS;
- Can’t be sure of getting the same level of SDS;

This localised support landscape may prevent or disadvantage service users from moving house and/or taking up job opportunities in other areas. To ensure SDS has an enabling framework for all service users in Scotland there is a need to overcome some of the challenges that 32 separate systems creates. The charity believe a clear set of minimum entitlements which are genuinely enforceable agreed by CoSLA and Scottish Government and/or a ‘passporting’ system supported by a protocol can help overcome the blockages with respect to any Equalities and Human Rights issues.

Age Scotland
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\(^{i}\)http://www.jitscotland.org.uk/downloads/1262961334-North%252520Lanarkshire%252520way%252520ahead%252520report%252520(3).pdf