Social Care (Self-directed Support) (Scotland) Bill

East Renfrewshire CHCP

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

We are generally in favour of Self Directed Support and committed to implementing the SDS strategy.

2. What are your views on the principles proposed?

We are in favour of the three principles, of “involvement”, “informed choice” and “collaboration” and find them helpful in guiding our functions under the Bill.

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

We find the four options helpful although would wish for more detail in the guidance particularly with regard to procurement regulations on non direct payment options.

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 are committed to Getting It Right for Every Child (GIRFEC) and the SHANARRI\(^1\) outcomes. We have some concerns about SDS in the context of child protection and endorse the COSLA response in this area.

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 support that those individuals who encounter difficulties in expressing an informed decision have the right, and are supported, to find ways to be fully involved in the decision making process. It is commendable that Scottish Government recognises the challenge in ensuring that individuals have the right to greater control while balancing this against the protection of those who may require statutory intervention to prevent harm or in ensuring their rights.

The Policy memorandum is explicit however the wording of the Bill does not reflect this well and could cause confusion. It should be made more explicit that if a person lacks capacity then the safeguards available within the Adults with Incapacity (Scotland) Act 2000 or 13ZA of the Social Work (Scotland) Act 1968 should be considered.

\(^1\) Safe, Healthy, Active, Nurtured, Achieving, Respected and Responsible and Included
It would seem that this section would be better split into two parts;

- those who lack capacity to make decisions due to mental disorder or an inability to communicate that cannot be made good, [and where assistance, as defined in the Bill, is an insufficient safeguard]

- those who may experience variable capacity or an illness which affects their decision making at times and where assistance, as defined in the Bill may be of benefit.

Moreover, the term ‘difficulties in communicating due to physical disability’ as defined in the Bill fail to reflect the AWI context expressed in the policy memorandum that it is an ‘inability to communicate because of physical disability: but a person shall not fall within this definition by reason only of a lack or deficiency in a faculty of communication if that lack or deficiency can be made good by human or mechanical aid; and incapacity should be construed accordingly.

Without this qualifier statement the Bill could be perceived as discriminatory to those who have difficulties in communication but manage to communicate very well. A difficulty in communication does not automatically mean that the adult would wish to have assistance to reach decisions about support and would likely expect to be consulted and give consent to support from an interested party.

Section 20 and 50 of the explanatory notes refers to those who, because of a particular mental illness, encounters difficulty in understanding or making a selecting their choice of self directed support on their own. These adults may well benefit from assistance as defined in Section 5.

Other matters

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

The recent report relating to Mr and Mrs D and misuse of Powers of Attorney reminds us that capacity is difficult to determine. Mr and Mrs D had capacity but were very vulnerable and subjected to undue pressure. The Bill does not provide any safeguards in relation to those providing assistance - we would wish this to be considered.

Section 4 (6) It would have been helpful if the information relating to ineligibility regulations under section 13(2) (a) i.e. descriptions of person who are ineligible had been available so that this could be cross referenced to aspects of assessment and decision making by the local authority.

Those with mental disorder as defined in the Mental Health (Care and Treatment) (Scotland) Act 2003 have a right to independent advocacy we
suggest that this should be highlighted to serve as a reminder to all concerned.

East Renfrewshire CHCP
24 April 2012