ENABLE Scotland

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

Introduction

ENABLE Scotland is the largest voluntary organisation in Scotland of and for children and adults who have learning disabilities and their families. We have a strong voluntary network with around 4000 members in 51 local branches as well as 500 national members throughout Scotland. Around a third of our members have a learning disability. ENABLE Scotland campaigns to improve the lives of people who have learning disabilities and their families and carers. ENABLE Scotland provides social care services to more than 2,000 people across Scotland who have learning disabilities or mental health problems.

Responses to Consultation Questions

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

ENABLE Scotland welcomes the Bill on self-directed support. We strongly support moves whereby people who have learning disabilities are empowered through choice and control over services that enable them to lead full and meaningful lives. ENABLE Scotland’s service provision and branch members extends across 29 local authorities. In our experience there are various degrees of enthusiasm from, and interpretations by, local authorities about the introduction of self-directed support, making legislation in this area important.

ENABLE Scotland believes that self-directed support can help people who have learning disabilities to achieve better outcomes and a better chance of getting the support that is right for them and their family. People who have learning disabilities and those who know them best are the right people to decide what they want in their lives and self-directed support can give them the opportunity to do this. It gives individuals power, rights and opportunities to determine what life they want to lead and the means to achieve this – often at better value for money than current models of social care provision.

However, we believe that the Bill should explicitly state that self-directed support should become the default option offered. Unless there is a commitment to wholesale transformation we are concerned that people will be denied the opportunity this Bill intends to provide. We remain concerned that if self-directed support is not the default position, it will only happen for a few. Option 3, for example, needs to be clear that the individual is choosing their support, not the Local Authority, and if this is not explicit then the Bill could suffer the same criticisms as direct payment law. As noted in the Bill’s explanatory notes, “if these wider transformational changes are ignored, the Bill is likely to be weak and ineffective in the long term, much as existing direct payment law is seen to be.”

1http://www.scottish.parliament.uk/S4_Bills/Social%20Care%20%28Self%20directed%20Support%29%20%28Scotland%29%20Bill/Ex_Notes_and_FM.pdf
As the Bill currently stands, if someone does not make a positive choice, the local authority will decide what to offer (section 4(4)). This may effectively make council arranged support the default option. We believe that there should be a more explicit principle that in such circumstances the option chosen should be the one that provides the most control to the individual, having considered their wishes and capabilities. This would be a similar principle to that of the ‘least restrictive alternative’ within the Mental Health (Care and Treatment) (Scotland) Act 2003.

2. What are your views on the principles proposed?

ENABLE Scotland welcomes the principles proposed within the Bill. Involvement, informed choice and collaboration reflect some of the principles of self-directed support. However, we also believe that transparency must be added to the guiding principles. Transparency of budgets and costs will allow individuals to make informed choices – a key starting point of the self-directed support process. There should also be transparency about the range of options available, the parameters within which people can direct their support and use their budgets, and in communication with stakeholders.

It has been our experience to date that even where local authorities take positive steps towards the implementation of self-directed support, key issues have been a lack of transparency of process and poor communication with key stakeholders. Self-directed support should be a journey that people go on, rather than something that is done to them. This includes creative use of budgets to ensure the person’s outcomes are met. As such, we believe that the Scottish Government needs to prescribe to local authorities that they cannot be overly restrictive about what people can spend their budget on.

Local Authorities will need to be clear about what changes will take place to ensure the principles contained in the Bill will be implemented in their area. It is difficult to see, for example, how the principles can be effectively applied within block-contract arrangements for care and support services. Clear local authority transition plans, with set objectives, milestones and timeframes will help achieve the transformation that the Bill seeks to achieve.

Local Authority Care Managers will have a critical role in ensuring the person’s outcomes are met and will need to work with the person and with other agencies in a holistic fashion, being realistic and honest about what choices are and are not available.

We believe that associated guidance should be produced to accompany these principles which explicitly show how the operation of self-directed support link with the National Care Standards or inspection of services delivered through self-directed support.
3. What are your views on the four options for self-directed support proposed in the Bill?

Self-directed support is not just about getting a direct payment and must be about having lots of different options. We welcome moves in the proposed Bill to replace the assumed norm (local authority arranged services) with clear options. Some people may just want to change one aspect of the support they currently get, some all of it and some none of it. All options should offer a level of flexibility that allow people to try something out and the chance to review it and change again if that is what is needed.

An individual may choose for a local authority to make arrangements for the local authority to provide support, however this is not for the local authority to decide. We believe that Option 3 – “the local authority selects the appropriate support and makes arrangements for its provision by the local authority” – does not sit comfortably within our understanding of self-directed support and should be reconsidered to reflect the principles of the Bill. This option leaves the power clearly with the local authority and, as worded, there is a danger that this will prevent the transformational change the Bill seeks to introduce.

Subject to amendment of option 3, these options are largely welcome. We would also note, however, that one of the critical success factors in the implementation of self-directed support will be the transparency of budgets. Therefore we would like to see explicit reference to the use of Individual Service Funds as a means for managing budgets on an individual’s behalf when that individual chooses not to hold their own budget.

It is our view that the Scottish Government should collect data from all local authorities on the roll-out of self-directed support and the use of each of the options available to measure progress and impact.

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?

ENABLE Scotland agrees that all forms of self-directed support should be available to children, young people and their families, and that they should have the same options as adults.

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 the provisions in the Bill related to information and advice. Communication will be vital in achieving the required cultural transformation, as everyone involved in providing social care must be clear about the implications of the change to self-directed support. This will require both a national and a local communication strategy. This must involve all points of
contact for social care – including Social Work, General Practitioners and schools. Although the Bill is primarily a social care Bill, a wider communication strategy that involves partners from the health sector, housing, education and other agencies is required.

The current model for accessing social work services is complicated and it is essential that there is accessible information available to promote the implementation of the legislation. The Scottish Government should give consideration to how people who have gone through the self-directed support process can share their learning with other people.

Clear information must also be available from local authorities on sources of assistance or information in each local area. Such information should be widely disseminated in various accessible formats and also through a national media campaign targeted towards people who use support services.

6. Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?

We welcome proposals that improve the flexibility of self-directed support and ensure that it responds to individuals’ needs. The critical intervention must be the flexibility to purchase goods or services to support the individual’s outcomes. People should be able to use Direct Payments and Individual Service Funds to support them to achieve the outcomes they have set for themselves and should be as least restrictive and as flexible as possible. We would seek an assurance that statutory guidance will specify how direct payments and Individual Service Funds cannot be spent rather than on how they can be spent.

We welcome the principle of Ministers being explicit about who is ineligible to receive a direct payment. However, we would seek further clarity about the criteria on which a person will be deemed ineligible before making a judgment on whether this will have a positive impact on the intentions of the Bill to modernise direct payments.

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

The text of section 6 of the Bill refers to the “supported person” rather than an adult carer. If the intention is for this to refer to the adult carer then we agree with the provisions of the Bill in relation to adult carers.

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?

In principle, we agree with the least restrictive approach to how direct payments and individual budgets can be used. However, we recognise that this is a complex area, raising questions around regulation of the workforce, workforce training and the need to protect people from harm (whilst acknowledging that there is existing legislation to protect vulnerable people
who are at risk of harm). We note in section 125 of the explanatory notes that in this area “the exact content of regulations has yet to be determined”, and would urge further consultation with individuals and family carers.

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

There will be a long run requirement before self-directed support is cost neutral, and the Financial Memorandum therefore recognises that there will be an overlap period where additional costs are inevitable. We are pleased to see transparent and funding arrangements detailed in the Memorandum. Transition funding is essential to ensure a successful promotion and uptake of self directed support. Communication and clarity on how to access transitional funding beyond that already allocated will be critical to a wide range of stakeholders including individuals, social care providers and communities.

ENABLE Scotland notes that £520m was made available to local authorities in England for transformation over 3 years. The equivalent for Scotland would be £52million. Although we recognise that a direct comparison is not possible, we note that what is being made available in Scotland is less than half (£23m over 3 years) than that made available in England, and we are concerned that this may hinder the implementation of self-directed support, limiting the numbers of people who are able to access it. Noting the current operating environment, which is characterised by increasing demand and decreasing public resources, achieving value for public money is critical. As noted in the Memorandum, there is evidence that self-directed supports are more cost-effective than traditional support arrangements, and so ENABLE Scotland believes that the Scottish Government should carefully monitor us of the funds it is making available to ensure implementation is not being delayed or impeded due to a short term lack of transition funding.

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?**

ENABLE Scotland agrees with comments in the Scottish Government’s Equality Impact Assessment that encouraging independence and wider participation in society advances equality of opportunity. However, it is important to recognise that the introduction of self-directed support is happening in a climate of decreasing budgets, meaning that there may be less formal, paid, supports available to individuals. We are concerned that this could have a disproportionate impact for women, whose unpaid care is most likely to replace any lost paid supports.

A lot of evidence within the Equality Impact Assessment appears to have come from pilots/demonstrations where there was no associated reduction in budgets for individuals moving from traditional support arrangements to self-directed arrangements. We are concerned that this may have given a false, overly positive picture as in reality Local Authorities are now making financial
savings when individuals go through the self-directed support process. We know that savings must be made by Local Authorities regardless of the models of support used, however we think that the EIA should give consideration to this reality.

According to the Equality Impact Assessment there is no requirement to carry out a further impact assessment related to age, disability or gender. We would argue that there is a need to carry out a further assessment, given the level of transformational change required across sectors, and the points made above.

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

The statute book is littered with attempts to empower disabled people, including the Chronically Sick and Disabled Persons Acts, the Disabled Persons (Services, Consultation and Representation) Act, and various attempts to support independent advocacy – none of which have had the intended impact. We believe that the Scottish Government should be explicit about what it would consider success to be, and undertake an independent review of the provisions after three years, to assess whether the intended cultural change has been achieved.

ENABLE Scotland has long believed that people who have learning disabilities and their carers are the best placed to determine what lives they want to lead and should have as much choice and control in achieving this. We believe that self directed support can be a very positive step in transforming the provision of social care.

ENABLE Scotland would welcome an invitation to give oral evidence in relation to the Bill.

ENABLE Scotland
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