Social Care (Self-Directed Support) (Scotland) Bill
Royal College of Psychiatrists

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

The College is generally in favour of the bill and its provisions. The bill will help people to decide on the sort of support that they might want and has the potential to help improve the person centeredness of services. The College does have significant concerns about the vulnerability of people who are disadvantaged by mental health problems but who retain capacity to make decisions about their affairs. More needs to be said about the support available to them to make direct payments and to fully understand their position as employers. There is insufficient information relating to how safeguards will be implemented for those with capacity but requiring assistance with communicating their wishes.

2. What are your views on the principles proposed?

The College is generally in favour of the Principles proposed with the following specific concerns. There should be more emphasis on vulnerability across all the principles. In relation to principle 2, more information is required on the specific nature of how assistance will be provided. This should include the nature of assistance, how assessments will be made and how the provision of advocacy will be ensured. In principle 4, the nature of collaborative assistance and what form this collaboration will take should be expanded on.

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

If option 1 is to be used then the person requiring support (or their guardian or representative) needs to have total involvement. Risk management and responsibility for this should be considered alongside risk enablement. For many, there would need to be continuing support available to allow them to make use of the direct payment option.

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?

The Mental Health (Care and Treatment) (Scotland) Act 2003 gives a right to all individuals covered by the act to access independent advocacy regardless of age. This
right should also be extended to individuals of any age not covered by legislation, when considering their options for self-directed support. The degree of control must take in to account the level of understanding and maturity of the individual child. Where capable, the child must be involved as much as possible.

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?

The College does not believe that the provisions relating to information and advice are adequate. Advice and information should be readily available in forms other than written, advice may also need to be given in a number of ways. There should be checks to ensure that the most vulnerable have been able to understand the advice.

There is already a lack of communication and a lack of mental health service provision for BME communities, asylum seekers and refugees. This social isolation, lack of networks, and barriers in terms of language and cultural differences, combined with sometimes extremely difficult circumstances for seeking asylum should not be worsened by insufficient provision of advice.

The College believes there should be a comprehensive assessment made of how the increase in demand for advocacy services is to be met. This should include a mechanism to ensure a consistent standard of advocacy advice is given.

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

Due to a lack of ongoing support in operating direct payments this option may not be open to many people with Mental Illness. The experience within our membership thus far is that the use of direct payments is driven mainly by service users themselves and that the uptake of this option has been low. The Government must consider that a change in the legislation may not deliver the change that is required. If this is the outcome, then the default position must be considered (i.e. what is the effect of defaulting to Option 3 – arguably the status quo - rather than Option 1, 2 or 4?)

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

The proposals in the Bill could place a significant amount of responsibility on individuals and their families, particularly in managing risk. Risk aversion, particularly from older service users, must be taken in to account. 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). As stated previously, the uptake of direct payments has been low and the change in legislation may not deliver the change that is required.
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 College does not agree with this approach, there needs to be some way of assuring the quality of support. A robust and accountable mechanism of assuring quality standards will need to be rigorously maintained. There also needs to be some form of agreed risk management in place to ensure vulnerable people are protected.

There is insufficient information given in relation to how the duties placed on individuals as employers will be managed. The Scottish Government publishing statutory guidance which advises individuals of their duties as employers, and the risks in not adopting safe employment will not be enough to protect service users from the possibility of action being taken against them by employees. The difficulty of how to communicate this information effectively needs to be addressed.

There is a significant danger of conflicts of interest where a welfare or financial guardianship order is in place. This may place people with mental illness at significant risk. The College would like to draw attention to the recommendations made in the Mental Welfare Commission report on Powers of Attorney and their Safeguards.

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

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?

Unless all people with mental illness, learning disability and personality disorder are supported correctly in relation to this bill, it may not have the desired impact for them. This may disadvantage them in relation to the use of direct payments and the four options for self-directed support. Many people may wish to use varying forms of self-directed support but would need more support than others around their duties and the execution of these as well as ensuring the suitability of those supporting them. They may also need extra support in understanding the trade off in losing or using one type of support versus another. A concern would be that unless this is addressed people without families to support them would be more likely to fall into option 3 as a default position.

11. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?
Much work will need to be done with health professionals to ensure that they understand the changes in people’s support. This may change the input of support into care packages that allow people currently to live in the community and result in readmission to hospital unless the changes are intimated and risk management plans changed. The effect of decommissioning and rebuilding traditional, core and low level services should be monitored closely.

The College believes that the Bill should include more information about people subject to compulsory treatment or compulsion orders under the Mental Health (Care and Treatment) (Scotland) Act 2003. Specifically, what is the realistic scope for personal involvement where someone may be legally required to accept some form of support against their wishes?

In line with the requirements of the Equalities Act 2010 there must be an elimination of discrimination in provision of services to individuals with mental illness, learning disability and personality disorders. This will promote and support a rights based model in respect of the treatment, care and protection of individuals with mental illness, learning disability and personality disorders. This is of particular importance in relation to comparative under resourcing of services for older people.

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22 May 2012