

SPICe Briefing

Social Care (Self-directed Support) (Scotland) Bill: Stage 3

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This briefing provides a summary of the parliamentary scrutiny of the Social Care (Self-directed Support) (Scotland) Bill prior to the Stage 3 proceedings, due on 28 November 2012. The briefing outlines in more detail:

- The Health and Sport Committee's Stage 1 report recommendations and the Scottish Government's response
- Amendments agreed to at Stage 2
- Issues that were raised at Stage 2 but did not result in amendment to the Bill
- Amendments that have been lodged for Stage 3



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INTRODUCTION

The Social Care (Self-directed Support) (Scotland) Bill (“the Bill”) was introduced to the Scottish Parliament on 29 February 2012 by Michael Matheson MSP, Minister for Public Health (“the Minister”). The Bill was accompanied by [Explanatory Notes](#), which include a Financial Memorandum, a [Policy Memorandum](#) and a [Delegated Powers Memorandum](#).

The Bill seeks to ensure adults and children (including carers and young carers) are given more choice and control over how their social care needs are met. It would enshrine “self-directed support” (SDS) options into legislation, and stipulate the forms of SDS that must be offered by local authorities to those assessed as requiring community care services, namely: Direct Payments; directing the available resource; local authority arranged support; or a mix of the first three options. Whilst current legislation does not prevent these options from being offered already, and indeed they are being in some areas, the Bill would place a specific duty on local authorities to offer the different options together with other obligations, such as providing advice and support to service users in order that they are able to make the best choice for them.

The [SPICe Briefing](#) on the Bill as introduced (Payne, 2012) discusses the policy context to the Bill, current legislative provisions for self-directed support and the provisions in the Bill itself.

STAGE 1 PROCEEDINGS

Stage 1 scrutiny of the Bill was undertaken by the Health and Sport Committee (the Committee). During Stage 1 proceedings the Committee took evidence at four meetings between 8 and 29 May 2012. In addition, the Committee conducted an informal fact-finding visit to Glasgow on 14 May, where it met with representatives of Glasgow City Council Social Work Services, and held discussion sessions, with carers and service users. The Stage 1 debate took place on 18 September 2012. Further details on the Committee’s scrutiny of the Bill can be accessed from its [Social Care \(Self-directed Support\) \(Scotland\) Bill](#) webpage. Additional detail on scrutiny of the Bill is available through the Scottish Parliament [webpage](#) dedicated to the Bill.

Table 1: Summary of Parliamentary Consideration

Stage 1: Health and Sport Committee call for written evidence	Closed 24 April 2012
Stage 1: Finance Committee evidence consideration	7 March 2012 and 9 May 2012
Stage 1: Subordinate Legislation Committee consideration	8, 15 and 22 May 2012, and 18 September 2012
Stage 1: Subordinate Legislation Committee report published	30 May 2012
Stage 1: Health and Sport Committee evidence sessions	8, 15, 22 and 29 May 2012
Stage 1: Health and Sport Committee report published	6 July 2012
Stage 1 Plenary Debate	18 September 2012
Scottish Government Response to the Stage 1 Report	4 September 2012
Stage 2: Health and Sport Committee	30 October 2012
Prior to Stage 3: Subordinate Legislation Committee report on Bill as amended at Stage 2	21 November 2012
Stage 3: Plenary Debate and consideration of amendments	Scheduled for 28 November 2012

STAGE 1 REPORT

In its [Stage 1 Report](#) (Scottish Parliament Health and Sport Committee, 2012a) the Committee recommended that the general principles of the Bill be agreed to by Parliament. In its conclusion it stated that it was satisfied that there was a need for a legislative approach to take forward self-directed support (SDS), though it also noted the various challenges that implementation would pose:

“...individuals and their carers will require information and advice in order to make informed choices about their care and support; local authorities will need to redesign services to become more flexible and responsive to people’s needs and wishes; and independent and voluntary sector providers will need to adjust to a market for social care in which many more individuals purchase their own bespoke care packages.” (para 261).

Table 2 highlights the key recommendations in the Stage 1 Report where the Committee sought an action from the Scottish Government, or where an action followed, and summarises the subsequent [response](#) of the Scottish Government (Scottish Government, 2012a).

Table 2: Stage 1 Report Recommendations and Subsequent Response of the Scottish Government

Committee Recommendation and Reference	Government Response	Outcome
General principles – independent living		
<p>Whilst independent living is implicit, the Committee recommends that consideration should be given to making the principles of independent living more explicit with direct reference being made on the face of the Bill. The Committee therefore welcomes the commitment by the Minister to give further consideration to this issue (para 18).</p>	<p>The Minister stated that he had asked officials to explore the possibility of an amendment which would result in a direct reference to independent living on the face of the Bill (p 2).</p>	<p>The Minister lodged Amendment 1 at stage 2, which would mean local authority’s having regard to an individual’s dignity and to respect their desire to participate in the life of their community. (See Table 3, below).</p>
Allocation of budgets		
<p>“The Committee recommends that the Scottish Government makes clear that in implementing self-directed support, local authorities must ensure that the assessment process is robust and service users are offered a package which meets their needs” (para 63).</p>	<p>The Scottish Government stated that local authorities must ensure that they meet their statutory duties and ensure support is provided to individuals according to their assessed needs. In addition, it noted that professionals “should work with individuals and carers and empower them to contribute to their assessment”. However, it added that the statutory and best practice guidance would reiterate these points. (p 2).</p>	<p>The Minister lodged amendments 2 to 7, 11, 12 and 20 aimed at making the financial component of all SDS options transparent (see Table 3).</p> <p>Richard Simpson MSP lodged amendments 7A, 11A, 12A, 21 and 22 aimed at clarifying various related matters (see Table 4, below)</p>

Committee Recommendation and Reference	Government Response	Outcome
Calls for a formal appeals process		
<p>“The Committee acknowledges the strength of feeling among witnesses about the perceived need for a formal appeals process to adjudicate over disputes arising from social care assessments. The Committee considers that the statutory complaints procedure is inappropriate for this purpose and believes that local authorities need to make a clear distinction between complaints and appeals.”</p> <p>“The Committee notes the evidence from the Minister that a review of the outcome of a social care assessment can already be requested by a service user. The Committee also notes that some local authorities have established risk panels to review disputed decisions. These represent two alternatives to the creation of a statutory appeals system. The Committee therefore invites the Scottish Government to provide its view on how best practice in this area can be identified and shared” (para 81-82)</p>	<p>The Minister agreed with the distinction between complaints and appeals made by the Committee and referred to the Scottish Government’s recent consultation on how social work complaints procedures might be updated. In light of the findings from the consultation a working group is to be set up to consider what additional provisions are needed for social work services in recognition of the importance of these services and the impact they have on people’s lives. One of the tasks of the group will be to consider the issues raised by the Committee. (p 3).</p>	<p>No additional action.</p>
Independent advocacy		
<p>The Committee reflected on the evidence it had received on whether or not there should be a specific provision in the Bill relating to independent advocacy. Whilst recognising the value of independent advocacy, the Committee concluded that a right to it was not analogous to self-directed support. The Committee accepted the evidence of the Minister that not everyone will want or require independent advocacy to help them to make their choice about self-directed support and was reassured that, as presently drafted, section 8(2)(c)(i) of the Bill as introduced, required local authorities to direct people towards services that can provide such advocacy support.</p>	<p>As there was no recommendation by the Committee for action, there was no response from the Scottish Government to this conclusion.</p>	<p>Drew Smith MSP lodged amendment 32 at stage 2. This would have provided that those given the choice of one of the four options for self-directed support would have a right to access independent advocacy. (See Table 4).</p>

Committee Recommendation and Reference	Government Response	Outcome
Adult carers		
<p>“The Committee believes that it is extremely important that carers’ health and wellbeing is supported to ensure that they can continue to provide their caring role. The Committee acknowledges the desire of many carers and their representatives to strengthen the Bill’s provisions, so that the discretionary power proposed becomes a duty on local authorities to provide support following an assessment. During Stage 1 scrutiny, the Committee did not obtain the view of the Scottish Government on this request. The Committee therefore invites the Government to reflect on this issue and confirm its position in its response to this report” (para 111).</p>	<p>Whilst the Scottish Government acknowledged the importance of supporting carers, it believed that introducing a duty to support carers would inevitably be linked to strict eligibility criteria where only those carers experiencing substantial need would be supported. The Minister preferred not to impose such restrictions which he felt would work against providing early, preventative support to carers.</p>	<p>No additional action.</p>
Power to charge for services provided under section 2		
<p>“The Committee notes that local authorities currently have discretionary powers to charge for non-personal care services. The Committee invites the Scottish Government to clarify its policy intention regarding the power contained in section 16 of the Bill when it responds to this report” (para 116).</p>	<p>The Scottish Government noted that the Bill creates a separate power for councils to provide support to carers. It argued that this meant that a distinct power to charge was necessary. However, the Scottish Government noted that this is a discretionary power to councils and it would not require councils to charge for carers support.</p>	<p>Jackie Baillie MSP lodged amendment 40 at stage 2 which sought to leave out section 16 (see Table 4).</p>
Assistance		
<p>“The Committee welcomes the Minister’s commitment to engage with the Mental Welfare Commission, Office of the Public Guardian, and the Law Society of Scotland regarding the drafting of these complex sections of the Bill. The Committee wishes to receive an update on the outcome of these discussions in advance of the Stage 1 debate” (para 151).</p>	<p>The Scottish Government noted that officials had met with representatives from the Mental Welfare Commission, Office of the Public Guardian and Law Society on 10 July 2012 to explore the points that were raised in relation to the technical drafting of Sections 5 and 15 of the Bill. Officials had been asked to consider what amendments could be made to those sections.</p>	<p>The Minister lodged amendments 8, 9, 10, 14, 15 and 16 at stage 2 which sought to address the issues raised in connection with sections 5 and 15 (see Table 3, below). Dr Richard Simpson MSP also lodged amendments 23, 24, 25, 26, 27, 35, 36, 37, 38 and 39 (see Table 4).</p>

Committee Recommendation and Reference	Government Response	Outcome
Specific choice provisions related to children and their families		
<p>“The Committee received evidence which raised concerns regarding how transition planning from children’s services to adult services (particularly from school to further education) was currently being managed and the role self-directed support could play within this. The Committee seeks further information from the Scottish Government on how those involved in transition planning will be made aware of the support available under the Bill and whether guidance on transition planning will be amended to reflect this” (para 136).</p> <p>“The Committee also received evidence calling for implementation of the provisions relating to children and young people to be delayed until a full analysis of current projects regarding self-directed support and children and families had been analysed. The Committee seeks further information from the Scottish Government regarding how the findings of these pilots would be incorporated into the development of SDS for children and their families” (para 137).</p>	<p>In its response the Scottish Government noted that the legislative framework for schools to support pupils post-school transitions. Whilst referring to areas of positive practice, it recognised that more needed to be done to support those working with children and young in this area. It stated it would publish a long-term plan of support for implementation of the guidance which will include a series of actions to support practice, and also that that the statutory code of practice will be reviewed as part of the long-term plan.</p> <p>In reference to individual budgets including contributions from a range of agencies, the Scottish Government stated that the SDS strategy includes a commitment to discuss with Education leads whether and how Disabled Students Allowance and other relevant funds in further, special, and higher education can be included in self-directed support packages. It added that the statutory guidance on the Bill will include a section on transition planning, which will include practical examples for practitioners and providers via the various good practice guides which are planned for both social work practitioners and providers.</p> <p>Finally, the Scottish Government made note of the rising number of Direct Payments packages for those under the age of 18, and believed it to be an “established option”. However, it made commitments to ensure that the further roll out of SDS for children takes account of the learning from current and previous projects in Scotland and throughout the UK.</p>	<p>No additional action.</p>

Committee Recommendation and Reference	Government Response	Outcome
Employment of personal assistants		
<p>“The Committee notes the Scottish Government’s decision not to regulate personal assistants, but instead to rely upon the protecting vulnerable groups scheme in order to mitigate some of the risks for those who wish to employ a PA. However, the Committee considers that more could be done to reduce the risks associated with this form of self-directed support, while at the same time enhancing the status and value of the PA workforce. To this end, the Committee invites the Scottish Government to give consideration to the recommendations made by the SSSC in its submission to this Committee and to set out its views in its response to this report” (para 172).</p>	<p>The Scottish Government provided a response to each of the five SSSC recommendations concerning: regulation of PA employment agencies; PA awareness of the SSSC Code of Practice; minimum induction training for PAs; restriction on the social care support for complex care and “particularly vulnerable service users”; and, investment in workforce development and planning for PAs.</p>	<p>Jackie Baillie MSP lodged amendments 34, 43 and 17A at stage 2, which sought to provide Ministers with the power to introduce a regulatory scheme (see Table 4)</p>
Employment of close family members		
<p>“The Committee respects the desire of service users to determine for themselves who is best placed to deliver their care and support and that this may be a family member. The Committee considers that the current definition of exceptional circumstances is no longer appropriate. However, the Committee believes that in order to protect the interests of the supported person, appropriate safeguards must be put in place by the local authority. The Committee would welcome additional information from the Scottish Government about how these safeguards can be applied in practice” (para 182).</p> <p>“The Committee welcomes the commitment from the Minister that, through regulations, a more consistent and pragmatic approach to this question may be achieved” (para 183).</p>	<p>The Scottish Government noted the intention to launch a consultation on a new set of regulations, should the Bill reach Royal Assent. It also outlined its view that any new regulations should feature a section on appropriate and inappropriate circumstances for the employment of close relatives. These would seek to change the dominant culture from one of <i>exceptional</i> circumstances and towards one which seeks to identify and provide <i>appropriate</i> circumstances. The Scottish Government’s response includes further information on its proposals in this area.</p>	<p>No additional action.</p>
Cost implications		
<p>“The Committee received assurances from the Scottish Government about the financial resources accompanying the Bill. Following further discussions between the Scottish Government and COSLA, the Committee seeks confirmation from the Scottish Government that these resources are indeed sufficient to facilitate the process of change required in order to implement the provisions of the Bill” (para 218).</p>	<p>The Scottish Government considered the funding proposed would be adequate and that officials had and would continue to meet with both COSLA and ADSW in the run up to the legislation being implemented.</p>	<p>No additional action.</p>

STAGE 2 PROCEEDINGS

Stage 2 proceedings took place on 30 October 2012. The [Marshalled List of Amendments for Stage 2](#) (Scottish Parliament, 2012b) and the [Official Report](#) of the Health and Sport Committee 30 October 2012 (Scottish Parliament, 2012b) are available online.

Table 3, below, outlines the amendments agreed to by the Committee at Stage 2 and provides column references to the Official Report where the full debate on each can be viewed. Michael Matheson MSP, Minister for Public Health took forward the amendments on behalf of the Government.

Table 3: Summary of Amendments Agreed to at Stage 2

Issue and Reference	Amendment and Effect	Outcome
<p>After section 1: Further general principles: independent living (col 2912-2913)</p>	<p>Amendment 1 was moved by the Minister, and was in response to calls for an explicit reference to the principles which encompass independent living. The effect would be that the local authority, when exercising functions under the Bill, will be aware of the need to respect the dignity of the person and their desire to participate in the life of the community.</p>	<p>The amendment was agreed to unanimously by the Committee. The Minister has lodged amendments 14-16 for Stage 3.</p>
<p>Section 3: Options for self-directed support - cost of options (col 2913 – 2917)</p>	<p>Section 3(1) of the Bill provides the four options for SDS. The Bill as introduced included the concept of a “relevant amount” (the amount estimated as the cost of the support) within the definition of SDS option 1 only (i.e. the direct payment). The Minister moved the following:</p> <ul style="list-style-type: none"> • Amendments 2-6 sought to adjust section 3 so that a transparent financial resource (the concept of a “relevant amount”) features in the definition of all four of the options available to people. The effect will be that in choosing any option the individual will be aware of the financial resource that they can direct. • Amendments 7, 11 and 12 sought to place an explicit duty on local authorities to inform the individual of the amount of funding available for each option and the period to which that funding relates. • Amendment 20 was is a minor consequential amendment in order to provide for an accurate reference to “relevant amount” within the Bill’s Interpretation section. 	<p>All amendments were agreed to unanimously by the Committee. The Minister has lodged amendments 17 and 18 for stage 3.</p>

Issue and Reference	Amendment and Effect	Outcome
<p>Section 5 (and 15): Assistance for choice and for assessment - circumstances in which given (col 2918-2921)</p>	<p>Section 5 of the Bill would place a duty on local authorities to take reasonable steps to identify people who have an interest in the care of a supported person and involve them in assisting the supported person in making their choices of SDS options.. The duty to facilitate assistance would apply where it appears to the local authority that the supported person would benefit from assistance due to mental disorder or difficulties in communicating due to physical disability. The local authority would only take such steps if there was no guardian or welfare attorney with relevant powers, and if there was no intervention order that has been granted over relevant matters. The same provisions exist in section 15 but these are in relation to assessments of need made under the Social Work (Scotland) Act 1968.</p> <p>The following amendments were moved by the Minister and relate to the issue of “Assistance” raised in the Committee’s Stage 1 report (see table 2, above), and in particular to concerns raised by the Law Society of Scotland.</p> <p>Amendments 9 and 15 sought to amend sections 5 and 15 to require the supported person to consent to the involvement of the person or persons who are identified by the local authority to assist them in making or communicating their decision about SDS. The effect would be that the supported person would not be forced to accept assistance and the local authority could not involve any identified person(s) without the supported person’s consent. This assistance could only be given to supported persons who have capacity, as in practice consent could not be granted by persons lacking in capacity.</p> <p>Amendments 8, 10, 14 and 16 relate to sections 5 and 15 of the Bill, which, in the Bill as introduced, could not be applied where a guardian or welfare attorney has been appointed. The purpose of the amendments was to extend this to a continuing attorney within the meaning of section 15 of the Adults with Incapacity (Scotland) Act 2000. This includes continuing attorneys appointed under the law of another country.</p>	<p>The amendments were agreed to unanimously by the Committee.</p> <p>Bob Doris MSP has lodged amendments 19-22 and 25-28 on assistance for Stage 3.</p>

Issue and Reference	Amendment and Effect	Outcome
<p>Section 7: Choice of options: children and family members - views of children (col 2925)</p>	<p>Amendments 28 and 29 were moved by Mark McDonald MSP. Section 7(5) of the Bill states that the “age and maturity” of the child must be taken account of when a choice of SDS option is being made. However, amendment 28 sought to remove the reference to “age”, in order that the provision is consistent with Article 12 of the United Nations Convention on the Rights of the Child, which assumes that all children have the right to be heard, with no age limit applied and no definition of the age of maturity. Section 7(6) stated that a child aged 12 or over was to be presumed to have “sufficient age and maturity” to form a view. Amendment 29 sought to remove “age” from this subsection to keep it in line with the proposed change under amendment 28.</p>	<p>The amendments were agreed to unanimously by the Committee.</p> <p>The Minister has lodged amendment 24 for Stage 3.</p>
<p>Regulations made under the Bill (col 2934-2935)</p>	<p>Amendments 13, 17, 18 and 19 were moved by the Minister, and were in response to recommendations made by the Subordinate Legislation Committee.</p> <p>Section 12 of the Bill allowed for Ministers to modify the SDS options by regulation, whilst section 21 provides a power to Ministers to make regulations which could be used to disapply the duty on councils to offer the options for self-directed support to adults or children.</p> <p>Amendment 17 will make consultation a formal precondition before draft regulations that are made under section 12 or section 21 can be laid before Parliament. That requirement will be in addition to use of affirmative procedure, which already applies to such regulations that are to be made under the Bill.</p> <p>Amendment 13 was a technical amendment and applied to the power to modify options contained in section 12. It sought to add sections 13(2)(b) and 21(1A) to the list of provisions that may be amended under section 12.</p> <p>Amendments 18 and 19 related to section 21 of the bill. The purpose behind the proposed power in the Bill as introduced was primarily associated with options 1 and 2, where there are likely to be specific circumstances in which choice over provision would simply not be appropriate. The intention of the section as introduced was to remove choice in such circumstances, not to remove support. The amendments therefore sought to clarify this by stating that if the section 21 power is used, the regulation “must”—rather than “may”—include provision to deem a person to have chosen option 3.</p>	<p>The amendments were agreed unanimously by the Committee.</p>

Table 4 provides a summary of the amendments which were not moved or not agreed to by the Committee at Stage 2 and provides column references to the Official Report where the full debate on each can be viewed. As well as providing the outcome at Stage 2, the table also shows if any relevant amendments to the issue have been lodged for stage 3.

Table 4: Summary of Amendments Not Moved or Not Agreed to at Stage 2.

Issue and Reference	Amendment and Effect	Outcome
<p>Section 3: Options for self-directed support - cost of options (col 2913 – 2917)</p>	<p>Dr Richard Simpson MSP lodged amendments 7A, 11A, 12A, 21 and 22, which were related to the amendments lodged by the Minister on the same issue (see Table 3, above).</p> <p>Amendment 21 sought to amend Section 3(1) in relation the second SDS option, where the user selects the support that they wish, using the budget available to them, though where the local authority arranges matters on the individual’s behalf but under their direction. The amendment sought to make it clear that these arrangements on behalf of the supported person could also be undertaken by the third sector.</p> <p>Amendment 22 sought to ensure that in calculating the “relevant amount” to be devoted to a SDS package that there could be no automatic assumption that support under options one (Direct Payment) and two (directing the available resource) could not cost less than option 3 (where the local authority arranges support on behalf of the supported person).</p> <p>Amendments 7A, 11A and 12A, sought to amend the related amendments of the Minister to stipulate that the local authority would be required to provide in writing the reasons for why there may be differences in the financial allocation to the different options.</p> <p>During the debate on these amendments, the Minister stated that such matters would be dealt with in guidance.</p>	<p>Dr Simpson moved amendments 21, 22 and 7A. All of these were disagreed to (by division): For 4, Against 5, Abstentions 0.</p> <p>Amendments 11A and 12A were not moved.</p> <p>Dr Simpson has lodged amendments 6, 7, 10 and 11 for Stage 3.</p> <p>The Minister has lodged amendments 17 and 18 for Stage 3.</p>

Issue and Reference	Amendment and Effect	Outcome
<p>Sections 5 (and 15): Assistance for choice and for assessment - circumstances in which given (col 2918-2921)</p>	<p>Section 5 of the Bill would place a duty on local authorities to take reasonable steps to identify people who have an interest in the care of a supported person and involve them in assisting the supported person in making their choices of SDS options.. The duty to facilitate assistance would apply where it appears to the local authority that the supported person would benefit from assistance due to mental disorder or difficulties in communicating due to physical disability. The local authority would only take such steps if there was no guardian or welfare attorney with relevant powers, and if there was no intervention order that has been granted over relevant matters. The same provisions exist in section 15 but these are in relation to assessments of need made under the Social Work (Scotland) Act 1968.</p> <p>The following amendments were lodged by Dr Richard Simpson MSP and relate to the issue of “Assistance” raised in the Committee’s Stage 1 report (see table 2, above). The amendments were lodged at the suggestion of the Law Society of Scotland.</p> <p>The Law Society was concerned that the reference to adults with physical and mental disabilities creates an ambiguous and incorrect notion that section 5 (and 15) should be applied where the supported person does not have capacity. Amendments 23, 27, 35 and 39 sought to remove these terms, thereby broadening the definition, and meaning that the local authority must provide assistance to anyone who requires it.</p> <p>In addition, the Law Society was concerned that the wording of section 5(2), which made the stipulations concerning guardians, welfare attorneys and intervention orders (see above), did not place any obligation on the authority to ensure that the supported person had the capability and the capacity to make a decision. Thus, amendment 24 sought to place that obligation on the local authority and ensure a safeguard against the appointment of assistance to a supported person who lacks capacity. Consequential to this, amendment 36 dealt with the question of competence in section 15 concerning assessments, and would provide that if the local authority was satisfied that the supported person was not incapable, then it can go ahead with the assessment.</p>	<p>Dr Simpson moved amendments 23, 24 and 27. All of these were disagreed to (by division): For 4, Against 5, Abstentions 0.</p> <p>Amendments 35 and 39 were not moved</p> <p>Dr Simpson has lodged amendments 8, 9, 12 and 13 for Stage 3.</p> <p>Bob Doris MSP has lodged amendments 19-22 and 25-28 for Stage 3.</p>

Issue and Reference	Amendment and Effect	Outcome
<p>Sections 5 (and 15): Assistance for choice and for assessment – suitability of persons (col 2922-2923)</p>	<p>Dr Richard Simpson MSP lodged amendments 25, 26, 37 and 38 at the suggestion of the Law Society of Scotland.</p> <p>The Law Society of Scotland was concerned that the Bill does not provide the necessary safeguards, or place an obligation on local authorities, to protect against undue influence being exerted over an assisted person. Amendment 25 would apply to section 5 and require that the local authority take reasonable steps to ensure that any person who is appointed to assist someone is suitable, in accordance with the new subsection proposed by amendment 26. Amendment 26 is a consequential amendment that sets out how a suitable person would be identified. It requires the local authority to have regard to the variety of conditions that are set out in the amendment and to be satisfied that they have been met.</p> <p>Amendments 37 and 38 simply repeat the contents of amendments 25 and 26, but in section 15 concerning assessments.</p> <p>The Minister stated that he intended for such matters to be taken forward through Statutory Guidance.</p>	<p>Dr Simpson moved amendments 25 and 26. All of these were disagreed to (by division): For 4, Against 5, Abstentions 0.</p> <p>Amendments 37 and 38 were not moved.</p>
<p>Section 8: Provision of information about self-directed support (col 2925-2927)</p>	<p>Section 8 of the Bill would place a duty on the local authority to provide information and advice to a person where that person is given the opportunity to choose from the four SDS options.</p> <p>Alison McInnes MSP lodged amendments 30 and 31, which aim to make it clear that the provision of information should be tailored to the individual's needs. Amendment 30 sought to ensure that such information included an explanation of how each option might apply to the individual's circumstances. Amendment 31 sought to ensure that when local authorities were directing service users to other independent sources of information and advice, this should include sources which provide information that would assist the individual to structure and commission a package of support.</p> <p>The Minister considered that such matters were already adequately dealt with in existing provisions, and that this could be further elaborated in guidance.</p>	<p>Alison McInnes moved amendments 30 and 31. These were disagreed to (by division): For 4, Against 5, Abstentions 0.</p>

Issue and Reference	Amendment and Effect	Outcome
<p>After section 8: independent advocacy (col 2928-2931)</p>	<p>Drew Smith MSP lodged amendment 32, which sought to provide for a right of access to independent advocacy in the Bill. Under the amendment each local authority would be required to secure the availability of independent advocacy services to those given the opportunity choose form one of the four SDS options, and to take appropriate steps to ensure those persons have the opportunity of making use of those services. The amendment is similar to the provision made in section 238 of the Mental Health (Care and Treatment) (Scotland) Act 2003 for those with a mental disorder to access independent advocacy services.</p> <p>The Minister considered such a provision would privilege one type of support when many people will choose to access other sources. He also noted that the statutory and best-practice guidance that will accompany the Bill will advise social work professionals to consider whether advocacy is required each time that they have a discussion with or assess an individual. Finally he offered to have further discussions on the issue with Drew Smith prior to stage 3.</p>	<p>Drew Smith, moved amendment 32, and, with no Member having objected, withdrew the amendment, in lieu of the Minister’s offer of discussions.</p> <p>Drew Smith has lodged amendment 1 for stage 3.</p> <p>The Minister has lodged amendment 23 for stage 3</p>
<p>Section 11: Further choice of options on material change of circumstances (col 2931-2933)</p>	<p>Section 11 would place a duty on the local authority to offer the supported person the opportunity to change their choice of the SDS options. The duty would apply after an individual has made a choice and where the local authority becomes aware of a material change in the person’s circumstances after the choice has been made.</p> <p>Alison McInnes MSP was concerned that the reference to “material change”, as the basis of providing the supported person with the opportunity to change option could be interpreted narrowly. She lodged amendment 33, which sought to remove reference to “material change”, so that the opportunity to change option would be based on what is best for the supported person.</p> <p>The Minister considered this issue was already dealt with another provision, though stated that the statutory guidance accompanying the Bill would make this point clear.</p>	<p>Alison McInnes moved amendment 33. This was disagreed to (by division): For 0, Against 8, Abstentions 1.</p>

Issue and Reference	Amendment and Effect	Outcome
<p>Section 13: Power to make further provision about Direct Payments – Scheme for regulation of quality of support and procedure for regulations under section 13 (col 2935-2941)</p>	<p>During stage 1, the Committee took evidence on whether personal assistants employed by supported persons through direct payments should be regulated. In brief, the debate concerned balancing the wishes of service users to have as much control as possible over which they employed against potential risk of harm to the supported person.</p> <p>Jackie Baillie MSP lodged amendments 34, 43 and 17A. Amendment 34 proposed that Ministers be given powers to introduce a scheme for the regulation of personal assistants employed by supported persons using direct payments, and who were not already subject to professional regulation. Amendment 43 sought to ensure that such regulations would be introduced through the affirmative procedure, whilst amendment 17A was a technical amendment.</p>	<p>Jackie Baillie moved amendment 34. This was disagreed to (by division): For 4, Against 5, Abstentions 0.</p> <p>Amendments 43 and 17A were not moved</p> <p>Jackie Baillie has lodged amendments 2, 4 and 5 for stage 3.</p>
<p>Section 16: Power to charge for services provided for under section 2 (col 2942-2943)</p>	<p>Section 16 of the Bill would amend section 87 of the Social Work (Scotland) Act 1968 (concerning local authorities' powers to charge for services or support) and would have the effect of allowing local authorities to charge for support provided to carers under section 2 of the Bill. This provision, which seeks to provide consistency on the face of the law, would bring these services into line with other community care services. However, local authorities would have the discretion as to whether or not they would charge.</p> <p>Amendment 40 was lodged by Jackie Baillie MSP, and sought to leave out section 16.</p> <p>Noting the complexity of the area and unintended consequences, the Minister offered to meet with Jackie Baillie prior to stage 3 to discuss the matter further.</p>	<p>Jackie Baillie, moved amendment 40 and, with no Member having objected, withdrew the amendment, in lieu of the Minister's offer of discussions.</p>
<p>Section 17: Promotion of options for self-directed support - promotions of options to those discharged from secondary health care (col 2943-2945)</p>	<p>Section 17 would require local authorities to take steps to promote the availability of the options of self-directed support.</p> <p>Nanette Milne MSP lodged amendment 41 at the suggestion of Health and Social Care Alliance Scotland. It sought to amend section 17 so that people discharged from secondary care were specifically mentioned in regards to the promotion of the SDS options. This was on the basis that it was important that information on accessing SDS was offered to people who may be entitled to it at the very earliest opportunity.</p> <p>The Minister considered this was a matter best dealt with through statutory guidance.</p>	<p>Nanette Milne moved amendment 41. This was disagreed to (by division): For 1, Against 8, Abstentions 0.</p>

Issue and Reference	Amendment and Effect	Outcome
<p>Section 17: Promotion of options for self-directed support – duty on local authorities to promote availability of suitable providers</p> <p>(col 2945-2946)</p>	<p>Nanette Milne MSP lodged amendment 42 at the suggestion of Health and Social Care Alliance Scotland and Coalition of Care and Support Providers in Scotland. It sought to put a duty on local authorities to take reasonable steps from time to time to promote and sustain the availability of a suitable range of providers. This is on the basis of the view that it would help to realise the Bill’s objectives by giving greater choice and control to users within a diverse marketplace of service providers.</p> <p>The Minister was concerned about the reference to “sustaining” services, but said he supported the principle behind the remainder of the amendment. Whilst noting that the statutory guidance would address some of the issues associated with the amendment, the Minister stated he would be happy to work with Nanette Milne to draft an amendment for stage 3 that would encourage local authorities to facilitate diversity.</p>	<p>Nanette Milne moved amendment 42 and, with no member having objected, withdrew the amendment, in lieu of the Minister’s offer of working on an amendment for Stage 3.</p> <p>Nanette Milne has lodged amendment 17 for stage 3.</p>

The [Bill as amended at Stage 2](#) was published on 31 October 2012.

STAGE 3

In addition to the amendments listed in Table 4, above, the following amendments have been lodged for Stage 3:

- Section 1: General principles – Neill Bibby MSP has lodged **amendment 30** and Jim Hume MSP has lodged **amendments 31-33**
- Section 2: Adult carers – Jim Hum MSP has lodged **amendment 34**

The Stage 3 debate is scheduled to take place on 28 November 2012. The deadline for amendments was Thursday 22 November 2012 at 4.30 pm.

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