

# **SOCIAL CARE (SELF-DIRECTED SUPPORT) (SCOTLAND) BILL**

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## **EXPLANATORY NOTES (AND OTHER ACCOMPANYING DOCUMENTS)**

### **CONTENTS**

1. As required under Rule 9.3 of the Parliament's Standing Orders, the following documents are published to accompany the Social Care (Self-directed Support) (Scotland) Bill introduced in the Scottish Parliament on 29 February 2012:

- Explanatory Notes;
- a Financial Memorandum;
- a Scottish Government Statement on legislative competence; and
- the Presiding Officer's Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 10–PM.

## **EXPLANATORY NOTES**

### **INTRODUCTION**

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

### **SUMMARY**

4. The policy objective of the Social Care (Self-directed Support) (Scotland) Bill (“the Bill”) is to make legislative provisions relating to the arranging of care and support (“community care services” and “children’s services”) in order to provide a range of choices to individuals as to how they are to be provided with their support. The Bill provides general principles to guide and inform decisions made under the Bill’s framework of duties and powers. It introduces the language and terminology of self-directed support into statute. It places a duty on local authorities (“authorities”) to offer four options to individuals who they assess as requiring care and support under section 12A of the Social Work (Scotland) Act 1968 (“the 1968 Act”), section 2 of this Bill (support for adult carers) and section 24 of the Children (Scotland) Act 1995 (“the 1995 Act”). It requires authorities to provide information and assistance to individuals in order that they can make an informed choice about the options available. It provides a discretionary power to authorities in order that they can provide support to carers following a carer’s assessment under section 12AA of the 1968 Act or section 24 of the 1995 Act (section 2). It repeals and reframes provisions relating to direct payments as currently contained within sections 12B and 12C of the 1968 Act.

### **COMMENTARY ON SECTIONS**

#### **Section 1 – General principles**

5. Section 1 places a duty on an authority to have regard to certain general principles in carrying out its functions under the Bill, Part 2 of the 1968 Act (with the exception of the provisions mentioned in subsection (5)) and sections 22 to 24 of the Children (Scotland) Act 1995. This means the principles will apply to authorities’ social welfare responsibilities (the provision of care and support) to both adults and children.

6. The principles provided under subsections (2), (3) and (4) are, in short-hand terms, related to “involvement”, “informed choice” and “collaboration”. Under the principle provided in subsection (2) (“involvement”) a person must have as much involvement in the assessment of their social care needs and the provision of support or services as the person wishes. Under the principle provided in subsection (3) (“informed choice”) a person must be provided with reasonable assistance in order that they can express their own views about the choices available to them and make an informed decision about their preferred choice. Under the principle

provided in subsection (4) (“collaboration”) authorities are required to collaborate with a person in both the assessment of the person’s needs and the provision of support or services following the assessment.

7. When local authorities are carrying out their functions in relation to the provisions set out in subsection (5), they do not have to have regard to the principles in this Bill (nor offer the options for self-directed support).

8. Subsection (6) clarifies various references which appear in the principles. References to “assessment of a person’s need” mean references to assessments under sections 12A, 12AA of the 1968 Act or, as the case may be, sections 23(3) or 24A of the 1995 Act. References to the “provision of support for a person” are references to the provision of section 2(4) in the Bill. References to the “provision of services for a person” are references to the provision of community care services under section 12 of the 1968 Act or, as the case may be, the provision of services under section 22 of the 1995 Act.

## **Section 2 – Support for adult carers**

9. Section 2 provides a power to authorities to provide support to a carer following an assessment completed under section 12AA (carers assessments relating to carers of those aged 18 or over) of the 1968 Act or section 24 (carers assessments relating to carers of those under the age of 18) of the 1995 Act. Under both of those provisions a carer who provides care by virtue of a contract of employment or as a volunteer for a voluntary organisation is ineligible for a carers assessment. As a result, such a carer will not be eligible for support under this provision.

10. Subsection (2) requires the authority to consider the outcome from the relevant assessment and to decide if the carer has needs in their own right as regards their ability to care. Subsection (3) requires the authority, where it has decided that the adult has needs, to consider whether those needs could be satisfied fully or in part by support. The definition of “support” in subsection (5) means that this is support that would help the adult to care or to continue in their role as an unpaid carer. If an authority decides that those needs could be met by support, subsection (4) provides a discretionary power to the local authority to provide support to the carer.

11. Subsection (5) provides definitions of “person cared for” and of the support which could be provided to a carer under subsection (4). That support is any form of services or assistance which will help the adult to provide, or continue to provide, care. This is distinct from any need which the carer has for community care services (i.e. needs they have as an individual and not in their role as a carer), which would be assessed separately under section 12A of the 1968 Act.

12. Where the local authority has decided to provide such support section 6 would apply, meaning that the carer would be given the choice of the four options for self-directed support set out in section 3.

## **Sections 3 to 12 – Options for self-directed support**

### *Section 3 – Options for self-directed support*

13. Section 3(1) provides the four options for self-directed support, which will be available to individuals when they are assessed as needing care and support or support as an adult carer. The options are:

- Option 1: the local authority makes a direct payment to the supported person in order that the person can then use that payment to arrange their support.
- Option 2: the supported person chooses their support and the local authority makes arrangements for the support on behalf of the supported person.
- Option 3: the local authority selects the appropriate support and makes arrangements for its provision by the local authority.
- Option 4: a mix of options 1, 2 and 3 for specific aspects of a person's support. This is to recognise that some individuals may wish to take one of the options for particular aspects of their support needs, but to receive their remaining support under one or other of the remaining options.

14. Section 3(2) defines a “direct payment” as a payment of an amount that the local authority considers is a reasonable estimate of the cost of securing the provision of support to which the direct payment relates, for the purpose of enabling the person to arrange for the provision of support by any person (including the authority). It also provides that references to “supported person” and “support” must be read in accordance with sections 4, 6 and 7.

### *Sections 4 to 7 – Choice of options*

15. Sections 4, 6 and 7 apply to the three groups of supported people: adults assessed as requiring support under section 12A of the 1968 Act; adult carers; and children (and/or their families) receiving support under section 22 of the 1995 Act (which includes children who are carers). All three sections require the authority to give the supported person the opportunity to choose one of the options for self-directed support. All three sections clarify the authority's duties where the person is deemed to be ineligible to receive direct payments.

#### *Section 4 – Choice of options: adults*

16. Section 4 applies to adults provided with support by an authority following an assessment under section 12A of the 1968 Act (commonly known as a “community care assessment”) (subsection (1)).

17. Subsection (2) places a duty on the local authority to offer the four options to adults who have been assessed under section 12A of the 1968 Act as needing a service, unless that adult is ineligible for direct payments. The grounds for ineligibility for direct payments will be provided for in regulations made under section 13.

18. Subsections (3) and (5) make provision for what the local authority must do if they consider the supported person ineligible to receive direct payments. If the local authority deem the supported person ineligible for direct payments, the local authority is required to inform the

supported person in writing and, if necessary, such other form as is appropriate of the reason why they are deemed ineligible and inform them that they may seek a review of that decision if there is a material change in their circumstances relevant to that decision (see section 10).

19. Subsection (3)(b) requires the authority to give the person a choice of the remaining eligible options for self-directed support (Options 2, 3 and, in so far as the person is eligible, Option 4). Subsection (4) provides that that if the supported person makes no choice then they are deemed to have chosen Option 3, whereby the local authority selects the support and makes arrangements on the person's behalf in order to meet their assessed needs. Subsection (6) provides that an individual is ineligible to receive direct payments if they are a person described in regulations under section 13.

*Section 5 – Choice of options under section 4: assistance*

20. Section 5 places a duty on authorities to take reasonable steps to identify and involve people to assist the individual to make a choice with regards to their options for self-directed support under section 4. This applies only where it appears that because of mental disorder or difficulties in communicating due to physical disability, the person would benefit from receiving such assistance. This duty would apply, for example, where an individual, because of a particular mental illness encounters difficulty in understanding or selecting their choice of self-directed support on their own.

21. Subsection (3) places a duty on the authority to take reasonable steps to enable the adult to choose from the four options for self-directed support set out in section 3 or, where they are deemed ineligible for direct payments, a choice of the options other than direct payments. This means that a local authority is obliged to allow someone to make a choice even if they have difficulties in doing so.

22. Subsection (4) places the further duty on the local authority to take reasonable steps to identify people with an interest in the care of the supported person (this would usually be relatives and friends of the individual) and to involve the relevant people in making decisions relating to the supported person's options for self-directed support.

23. Subsection (2) sets out conditions which must be satisfied before subsections (3) and (4) can be applied. The duty should not be applied when there is a guardian or welfare attorney with relevant powers present, or when an intervention order has been granted which relates to the provision of assistance with the assessment. Such an attorney or guardian (or individual empowered by an intervention order) would have the power to make self-directed support decisions on the adult's behalf (in accordance with the principles of the Adults with Incapacity (Scotland) Act 2000).

24. Subsection (5) provides definitions for the various terms used in subsections (1) to (4).

*Section 6 – Choice of options: adult carers*

25. Section 6 makes provisions with the same effect for adult carers as section 4 makes for adults as regards the choice of options for self-directed support (the procedure for which is set

out in paragraphs 15 to 19 above). Section 6 applies where a local authority decides to provide support under section 2(4).

*Section 7 – Choice of options: children and family members*

26. Section 7 provides that the four options must be available to children, and/or their family, where a local authority decides to provide services under section 22 of the Children (Scotland) Act 1995. Provision of services under section 22 can involve a range of types of support and various categories of supported children including children who are carers, disabled children and any other child deemed to be “in need” within the definition of section 93(4) of the 1995 Act. Services under section 22 can also be provided to a member of the child’s family.

27. Section 7(2) requires the authority to offer the four options to the “supported person” unless they consider the supported person ineligible to receive direct payments (as may be defined in regulations under section 13). If the authority consider that the supported person is ineligible to receive direct payments subsection (3)(a) requires the authority to inform the supported person of the reason for that decision and to inform them that they can request a review of the decision. As with services for adults, where this is the case the authority is required to give the person a choice of the other options for self-directed support (subsection (3)(b)).

28. Subsection (9) provides definitions of “appropriate person” and “supported person” which are important to the wider operation of this section. In general terms an “appropriate person” is a person with parental rights and responsibilities, or their equivalent under the laws of England, Wales and Northern Ireland. The definition under subsection (9) sets out the relevant enactments which provide for those rights.

29. It is the “supported person” who has the ability to make the choice under subsection (2). The supported person is first of all identified on the basis of whether they receive any support under section 22 of the 1995 Act (which may be whole or partial). If the supported person is a child (i.e. under 18) who is either 16 or 17 they will make the choice. If the supported person is a child who is under 16 it is an “appropriate person” who makes the choice but that person must give the child an opportunity to express a view on the choice (subsections (5) and (6)). If the supported person is an adult, then that person makes the choice.

30. As with the provisions on adults, subsection (7) provides that when the supported person does not make a choice they are deemed to have chosen option 3 whereby the local authority selects and makes arrangement for the provision of services.

*Section 8 – Provision of information about self-directed support*

31. Section 8 imposes certain duties on the local authority to provide information and advice about the options (available under section 3) and the provision of support under any of those options. These duties are imposed where under section 4, 6 or 7 a person is given the opportunity to choose an option for self-directed support.

32. Section 8(2)(a) places a duty on the local authority to explain what each option means in practice to the person. An example may be the opportunities and responsibilities that go with the option. Subsection (2)(b) requires the local authority to provide the person with information

about how they might manage their support after they have chosen their preferred option. Subsection (2)(c) requires the authority to provide the person with information about persons who can provide help or further advice to them to help them to choose an option. This includes sources of advice or information other than the authority itself. In practice this will include organisations known as direct payment or self-directed “support organisations”. Subsection (3) requires the authority in all three instances to provide the relevant information both in writing and, where appropriate, in alternative formats appropriate to the person’s communication needs.

*Section 9 – Local authority functions*

33. Section 9 sets out a local authority’s functions when a choice is made under section 4, 6 or 7.

34. Subsection (2) requires the authority to give effect to the option selected by the person under section 3 and accompanying section 4, 6 or 7.

35. Subsection (3) provides that a local authority has fulfilled its duty to provide support under either the 1968 Act or the Children’s (Scotland) Act 1995 when it has offered the options as set out in section 3 and when it has given effect to the chosen option.

36. Subsection (4) provides that compliance with subsection (2) does not extinguish any other function of a local authority. It is similar to provision made by section 12C of the 1968 Act (to be repealed by section 23 of the Bill). If for example, a person’s needs were not being met by the support they were being provided a local authority’s duty has not been extinguished by virtue of their already having provided support. In particular subsection (4)(b) states that the exercise of an authority’s power to make available assistance in cash to or in respect of the person in an emergency persists.

*Section 10 – Eligibility for a direct payment: review*

37. Section 10 places a duty on the local authority to review their decision (on the request of the supported person) to deem a person ineligible for a direct payment where there is a material change in the circumstances which led to the person being deemed to be ineligible.

*Section 11 – Further choice of options on material change of circumstances*

38. Section 11 places a duty on the local authority to offer the supported person the opportunity to change their choice of the options set out in section 3. This duty applies 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. This could, for example, cover the situation where someone has received a direct payment, has managed the direct payment payment with assistance from a family carer, but where the carer is no longer able to provide this assistance. In such circumstances the individual must then be offered a choice once again (subsection (2)). Subsection (3) provides that the authority and the person may agree additional circumstances under which the opportunity to review might apply (for example, by agreeing to an annual review).

*Section 12 – Power to modify section 3*

39. Section 12 provides for a regulation-making power for Scottish Ministers to modify the four options and, in so far as necessary, to modify the accompanying section 4, 6 or 7 in consequence of any changes made to section 3.

**Sections 13 to 14 – Direct payments**

*Section 13 – Power to make further provision about direct payments*

40. Section 13(1) provides for Scottish Ministers to make regulations about direct payments and the provision of support to which they relate.

41. Subsections (2)(a) to (j) set out specific powers included within the power in subsection (1).

42. Subsection (2)(a) provides the power to specify descriptions of persons who will be ineligible for direct payments. This will inform the definition of ineligibility for direct payments throughout the Bill. Section 4(6) states for the purposes of section 4 that a person is ineligible for direct payments if they are of a description prescribed in regulations (under this power) and that definition is applied to the whole Bill by section 22.

43. Subsection (2)(b) provides the power to specify circumstances where the local authority will not be required to offer the supported person option 1 (a direct payment) or option 4 so far as it relates to option 1. This would include, for example, excluding a direct payment from being used to secure a particular service.

44. Subsections (2)(c) to (e) provide power to prescribe how direct payments are paid, circumstances in which a contribution to the cost of support may be required and how individuals are assessed to ascertain the individual's ability to contribute. They also provide power to describe how the repayment of a direct payment may be made following the assessment or reassessment of an individual's ability to contribute. For example, enabling deduction from direct payments, separate repayment or payment by instalments.

45. Subsection (2)(f) provides circumstances that may be specified where a local authority may, must or may not terminate a direct payment.

46. Subsection (2)(g) gives power to set out the circumstances when the local authority would be able to make a direct payment to a person other than the supported person. Subsection (2)(h) gives power to specify persons to whom such direct payments may not be paid.

47. Subsection (2)(i) and (j) provide that regulations may set out descriptions of persons who are prohibited from providing support to which a direct payment relates, other than where specified circumstances apply and where specified conditions have been met.

*Section 14 – Misuse of direct payment: recovery*

48. Section 14 provides for the local authority to require repayment of all or part of the direct payment from the supported person if they have used all or part of the direct payment on things other than the assessed services or support required or where the person has contravened any regulations made under section 13.

**Sections 15 to 18 – Local authority functions**

*Section 15 – Assessments under section 12A of the 1968 Act: assistance*

49. Section 15 inserts section 12AZA after section 12A of the 1968 Act. It applies where the authority is assessing a person's needs under section 12A of the 1968 Act. It is similar to, although at an earlier stage than, the duty under section 5 requiring assistance to an adult making a choice of an option for self-directed support.

50. Section 12AZA places a duty on authorities to take reasonable steps to identify and involve people to assist the individual where it appears that because of mental disorder or difficulties in communicating due to physical disability, the person would benefit from receiving such assistance. This duty would apply, for example, where an individual, because of a particular mental illness encounters difficulty in understanding or selecting their choice of self-directed support on their own.

51. Subsection (3) places a duty on the local authority to take reasonable steps to identify people with an interest in the care of the supported person (this would usually be relatives and friends of the individual) and to involve the relevant people in making decisions about matters to do with the assessment.

52. Subsection (2) sets out conditions which must be satisfied before subsection (3) can be applied. The duty should not be applied when there is a guardian or welfare attorney with relevant powers present, or when an intervention order has been granted which relates to the provision of assistance with the assessment. Such an attorney or guardian (or individual empowered by an intervention order) would have the power to make self-directed support decisions on the adult's behalf (in accordance with the principles of the Adults with Incapacity (Scotland) Act 2000).

53. Subsection (4) provides definitions for the various terms used in subsections (1) to (3).

*Section 16 – Power to charge for services provided under section 2*

54. Section 16 amends Section 87 of the 1968 Act (authorities' power to charge for services or support). This has the effect that authorities may charge for support provided to carers under section 2 of the Bill.

*Section 17 – Promotion of options for self-directed support*

55. Section 17 places a duty on a local authority to take steps to promote the options available to individuals.

*Section 18 – Delegation*

56. Section 18 amends section 15 of the Community Care and Health (Scotland) Act 2002. The effect is that Ministers can lay regulations which prohibit delegation of functions which would otherwise be permitted to be delegated by a local authority entering into an arrangement in accordance with section 15 of the 2002 Act. A prohibition under the new power in section 18 would state that certain functions may only be delegated where the arrangement entered into also delegates the appropriate self-directed support duties in the Bill.

**Sections 19 to 27 – General**

*Section 19 – Guidance and directions*

57. Section 19(a) amends section 5(1) of the 1968 Act in order to require authorities to perform their functions under this Bill under the general guidance of Scottish Ministers. Paragraph (b) amends section 1B of the 1968 Act to enable Scottish Ministers to issue directions to authorities, either individually or collectively, as to how they are to exercise their functions under this Bill.

*Section 20 – Regulations: general*

58. Section 20 provides for general ancillary powers to the other regulation making powers under the Bill. In particular it allows the regulations to make different provision for different cases and to make such ancillary provision (i.e. supplementary, incidental, consequential, transitory and transitional provision and savings) as the Scottish Ministers consider appropriate. Subsections (2) and (3) set out the Parliamentary procedure to which regulations will be subject.

*Section 21 – Power to modify application of Act*

59. Section 21 (1) provides a power to Scottish Ministers to make regulations which specify circumstances when the duties on the local authority to give the supported person a choice of the four options will not apply. Subsection (2) provides that such regulations may include provision for or in connection with deeming a person to have chosen Option 3 or disapplying or modifying any other section in consequence of this.

*Section 22 – Interpretation*

60. This section defines terms that are used frequently in the Bill. In particular “community care services” has the meaning given by section 5A of the 1968 Act except that it does not include a reference to services under any of the provisions mention in section 1(5) of the Bill: sections 27 to 27B, 28 and 29 of the 1968 Act.

*Section 23 – Consequential repeals*

61. This section repeals sections 12B and 12C of the 1968 Act which are replaced in substance by the power to make regulations under section 13, and the provisions of section 14, of this Bill.

*Sections 24 and 25 – Ancillary provision and Transitional provision etc.*

62. These sections give the Scottish Ministers the power to make consequential, supplemental, incidental, transitional, transitory or saving provisions by order for the purpose of giving full effect to the Act. Under section 24 any order which makes textual amendments to primary legislation will be subject to the affirmative procedure, otherwise an order will be subject to the negative procedure. Orders under section 25 will be subject to the negative procedure.

*Section 26 – Commencement*

63. Section 26(1) provides for certain provisions of the Bill to come into force on the day after Royal Assent. Subsection (2) gives power to Ministers to appoint a day for the coming into force of the other provisions of the Bill. Subsection (3) provides that a commencement order may include transitory, transitional or saving provision.

*Section 27 – Short title*

64. Section 27 gives the short title of the Bill.

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## **FINANCIAL MEMORANDUM**

### **INTRODUCTION**

65. This document relates to the Social Care (Self-directed Support) (Scotland) Bill (“the Bill”) introduced in the Scottish Parliament on 29 February 2012. It has been prepared by the Scottish Government to satisfy Rule 9.3.2 of the Parliament’s Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament. The Memorandum summarises the costs implications of the Bill across the following areas:

- The Bill’s “framework” provisions, encompassing the legislative principles; duties on local authorities to offer a range of self-directed support options; duties to involve “circles of support” to assist people who have difficulties making informed decisions on their own; and, the provision of information and advice to individuals. (Note: costs associated with general training and awareness, publicity and transformation associated with the Bill are included in this section);
- Powers to provide support to carers, and to ensure choice as to how that support is provided;
- Duties in relation to direct payments; and
- Joint working, specifically with NHS professionals and NHS bodies.

66. The analysis and estimates contained in this memorandum draw on a variety of sources including consultation responses to the draft Business Regulatory Impact Assessment, a variety of research publications (including a study by Stirling University commissioned by the Scottish

Government<sup>1</sup>) and a range of formal and informal surveys and meetings with COSLA, local authorities, care and support providers and the Bill Steering Group. It should be read in conjunction with the Policy Memorandum, which sets out more fully the reasoning behind the Bill and a range of non-financial benefits associated with it. The Policy Memorandum also sets out how the Bill, including financial costs, will be monitored and evaluated.

67. The purpose of this Bill is to underpin the aim to deliver choice and control for those who receive social care and support as set out in the Scottish Government's 10-year National Self-Directed Support strategy. The specific impacts of the Bill provisions themselves are relatively narrow. However, there are a range of costs associated with transforming culture, systems and approaches to social care provision in response to the Bill and the wider Strategy. This Memorandum therefore attempts to distinguish between the costs associated specifically with the Bill and wider financial support which the Scottish Government is providing to translate the Bill's principles and aims into real changes to the experiences of those who use care and support.

## **SUMMARY OF GOVERNMENT INVESTMENT**

68. Table 1 summarises Scottish Government investment in self-directed support

| Table 1: Summary of Scottish Government investment (£m)   |          |            |              |          |              |
|---|----------|------------|--------------|----------|--------------|
|   | 2011/12  | 2012/13    | 2013/14*     | 2014/15  | Total        |
| <b>a) Costs directly associated with Bill implementation</b>  |          |            |              |          |              |
| Framework:  |          |            |              |          |              |
| i) Workforce development (specifically training on Bill duties for relevant staff members) (paragraphs 96 and 107 to 109) | 0        | 0.3        | 0.382        | 0        | <b>0.682</b> |
| ii) Information and advice (signposting to relevant services) (paragraph 98)  | 0        | 0          | 0            | 0        | <b>0</b>     |
| Duties in relation to direct payments (paragraphs 123 to 129)   | 0        | 0          | 0            | 0        | <b>0</b>     |
| Support to carers (paragraphs 114 to 122)   | 0        | 0          | 0            | 0        | <b>0</b>     |
| Joint working with the NHS (paragraphs 130 to 135)  | 0        | 0          | 0.73         | 0        | <b>0.73</b>  |
| <b>Subtotal</b>   | <b>0</b> | <b>0.3</b> | <b>1.112</b> | <b>0</b> | <b>1.412</b> |

<sup>1</sup> Rummery, K., Bell, D., Bowes, A., Dawson, A. & Roberts, E. (2012) *Counting the Cost of Choice and Control: Evidence for the costs of Self-directed Support in Scotland*. Scottish Government, Social Research Report. Available from: <http://www.scotland.gov.uk/Publications/2012/02/9547/0> [Accessed 28 February 2012]

| <b>b) Costs indirectly associated with Bill implementation (associated with the wider strategy)</b> |             |             |               |           |               |
|---|-------------|-------------|---------------|-----------|---------------|
| Framework:  |             |             |               |           |               |
| i) Transformation (local authorities) (paragraphs 101 to 106)                                       | 1.12        | 6           | 11            | 6         | <b>24.12</b>  |
| ii) Transformation (care and support providers) (paragraphs 110 to 113)                             | 1.1         | 2           | 2             | 2         | <b>7.1</b>    |
| iii) Workforce development (awareness raising amongst the wider workforce) (paragraph 97)           | 0           | 0.2         | 0.888         | 2         | <b>3.088</b>  |
| iv) Information and advice (capacity building) (paragraph 99)                                       | 1           | 2           | 2             | 2         | <b>7</b>      |
| <b>Subtotal</b>   | <b>3.22</b> | <b>10.2</b> | <b>15.888</b> | <b>12</b> | <b>41.308</b> |
|   |             |             |               |           |               |
| <b>Total (all costs)</b>  | <b>3.22</b> | <b>10.5</b> | <b>17</b>     | <b>12</b> | <b>42.72</b>  |

\*If the Bill is passed, it is expected to commence in the latter half of 2013/14, with the first full year of implementation being 2014/15.

69. This table refers to short-term implementation costs only. In terms of long-term recurring costs, self-directed support is expected to be cost neutral (see paragraphs 79 to 81). The table also splits costs into those directly associated with Bill implementation, and those indirectly associated with Bill implementation. The costs directly associated with the Bill are limited to specific training on the duties contained in the Bill (to include both local authority and NHS staff) signposting to relevant information and advice services, support to carers and duties in relation to direct payments. The costs indirectly associated with the Bill are those associated with the wider strategy, building on the Bill's framework in order to ensure the maximum possible range of choices for users. The Bill can be enacted without this investment, and consequently they are not considered to be direct costs. However, 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. The additional investment marks out the difference between basic compliance and genuine cultural change.

70. The short-term costs are best estimates for the implementation of this Bill and significant costs are not expected to extend beyond 2014/15. Commencement and implementation of the Bill will be overseen by a joint committee of stakeholders, coordinated by Scottish Government officials and including COSLA and the Association of Directors of Social Work (ADSW).

## **BACKGROUND**

### **Bill content**

71. The Bill contains provisions relating to social care (or "community care") assessments undertaken by local authorities and children's services. It imposes a range of duties on local authorities and, through regulations, enables them to be placed on the NHS, though in relation to

the NHS the duties are imposed only where the relevant authorities have chosen to delegate the relevant social care functions to the NHS. The aim is to ensure that people eligible for social care and support can choose from a range of options on how they will receive that support. The policy memorandum provides further detail on the policy aims.

## **Statistics**

72. There has been a steady increase in the number of people in receipt of direct payments in Scotland<sup>2</sup>, from 207 in 2000/01 to 4,392 in 2010/11.<sup>3</sup> However direct payments remain a fairly small portion of overall provision. In terms of financial data the value of direct payments increased to £50.2m in 2010/11 from £2.1m in 2000/01. To put this in context, Scottish local authorities' total net expenditure on social work services was £2.4bn in 2007/08, £2.7bn in 2008/09 and £2.8bn in 2009/10<sup>4</sup>, with the resources allocated through direct payments in these years totalling £28.8m, £33m and £39.3m. This shows that direct payments are increasing very slowly as a percentage of social work expenditure, from 1.2% in 2007/08 to 1.4% in 2009/10.

73. People with physical disabilities remain the largest client group of direct payment recipients, comprising 40% of all recipients. The volume of direct payments amongst other groups such as people with learning disabilities, people with mental health problems (including dementia) and frail older people are growing, but direct payment users remain a small proportion of the overall social care client base. Take up amongst the over 65s remains lower than in younger age groups, but has increased over the last 10 years (7% of direct payment users were over 65 in 2000/01, 33% were over 65 in 2010/11).

## **Wider financial context**

74. Self-directed support aims to reshape the way that social care and support is provided in future years, to improve outcomes for those requiring support and to ensure better value for money. Demand for services is increasing as the demography of Scotland changes. Projections suggest the number of people in Scotland aged over 65 will be 21% greater in 2016 than in 2006, and 63% greater by 2031.<sup>5</sup> For those 75 and over, the increase is 21% and 83% respectively. This, combined with both the current fiscal situation and rising expectations from those requiring support, will place social work budgets under significant pressure. It is generally accepted that

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<sup>2</sup> Figures taken from Scottish Government (2011) *Self-directed support (Direct Payments), Scotland, 2011*. [Online] Available from: <http://www.scotland.gov.uk/Publications/2011/09/27143400/0> [Accessed 9 January 2012].

<sup>3</sup> The Scottish Government collects statistics on direct payments only. Existing data collection forms are being revised to capture more information on different self-directed support mechanisms, and this will be used to monitor progress in future years. A small cross organisational working group has been established (July 2011) to review the self-directed support statistical evidence with a view to collect and publish improved evidence from 2012. Limited 'Individual Budget' information was collected from local authorities for the first time in 2011 (optional item) as part of the Home Care Statistical Return.

<sup>4</sup> Figures extracted from Scottish Government (2011) *Scottish Local Government Financial Statistics 2009-10*. [Online] Available from: <http://www.scotland.gov.uk/Publications/2011/02/21143624/0> [Accessed 9 January 2012]. Due to changes to accounting practices for PFI/PPP projects, some elements of the PPP/PFI unitary charge payments previously included in social expenditure are now recorded elsewhere. As a result, published total social work expenditure data for 2009-10 is not, strictly speaking, comparable with previous years. However, in respect of social work services this affects only two authorities (Angus and City of Edinburgh) and has a total value of under £1 million. It is therefore not considered material and is ignored for the purposes of this memorandum.

<sup>5</sup> Scottish Government (2011) *Reshaping Care Programme for Change – 2011 – 2012*. [Online] Available from: <http://www.scotland.gov.uk/Topics/Health/care/reshaping/programme> [Accessed 9 January 2012].

reform to health and social care is necessary in order to respond to these challenges. As research from the Centre for Public Policy for Regions noted, “local authorities could simply allocate diminishing resources to the growing client group, increasing the likelihood that the services provided are actually inappropriate or inadequate”.<sup>6</sup> A variety of studies have concluded that current services and approaches fail to fully and appropriately meet need and that doing nothing is not a feasible option.<sup>7</sup> The Scottish Government’s response to the Christie Commission’s report cited the Bill on self-directed support as one part of its response, helping to “underpin new models of support, placing greater control and responsibility in the hands of citizens and thereby enhancing people’s independence and wellbeing”.<sup>8</sup> People have made it clear that they want greater choice and control over the services and support that they receive - more of the same will not work. Self-directed support gives people more choice and control over their social care and support. Research has shown that it can lead to better outcomes and improved quality of life for individuals.<sup>9</sup>

## **COSTS**

75. Self-directed support is about improving outcomes for individuals. Such benefits are often measured in qualitative, rather than quantitative ways, meaning they are hard to set against monetarised costs. Self-directed support enhances the empowerment of individuals to gain equality of opportunity and sustain their citizenship. It contributes to improving health and well-being and tackling health inequality, and shares the common ambition of improving the quality of life and opportunities in life for people across Scotland. The costs discussed below should therefore be considered in the light of the additional qualitative benefits of self-directed support, discussed in the Policy Memorandum.

## **DUTIES ON LOCAL AUTHORITIES TO OFFER A RANGE OF SELF-DIRECTED SUPPORT OPTIONS (FRAMEWORK PROVISIONS)**

76. The Bill requires local authorities – in practice social workers or care managers - to provide individuals with a choice of all the self-directed support options for which they are eligible<sup>10</sup>, and to abide by and uphold whatever choice is made, so long as it meets the agreed

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<sup>6</sup> McLaren, J. & Armstrong, J. (2010) *Personalisation of the Provision of Care and Support – securing independence and increasing efficiency*. [Online] Centre for Public Policy for Regions. p.27 Available from: <http://www.cppr.ac.uk/centres/cppr/reportsandspeeches/> [Accessed 9 January 2012]

<sup>7</sup> See for example: Glasby, J., Ham, C., Littlechild, R. (2010) *The case for social care reform – the wider economic and social benefits*. [Online] Birmingham, Health Services Management Centre/Institute of Applied Social Studies. Available at: <http://www.birmingham.ac.uk/schools/social-policy/departments/health-services-management-centre/publications/index.aspx> [Accessed: 9 January 2012]

<sup>8</sup> Scottish Government (2011) *The Government’s response to the Christie Commission*. [Online] Part 5. Available at: <http://www.scotland.gov.uk/Publications/2011/09/21104740/5> [Accessed: 9 January 2012]

<sup>9</sup> See: Witcher, S., Stalker, K., Roadburg, M., & Jones, C. (2000) *Direct payments: The impact on choice and control for disabled people*. [Online] Edinburgh, Scottish Executive Central Research Unit. Available at: <http://www.scotland.gov.uk/Publications/2000/10/2f2d68f2-4138-417a-9755-17e1148928bc> [Accessed: 9 January 2012]; Homer, T. & Gilder, P. (2008) *A review of self-directed support in Scotland*. [Online] Scottish Government, Social Research Report, Available at: <http://scotland.gov.uk/Publications/2008/05/30134050/0>, [Accessed 9 January 2012]; and, Ridley, J., Spandler, H., *et al* (2011) *Evaluation of self-directed support test sites in Scotland*. [Online] Scottish Government, Social Research Report. Available at: <http://www.scotland.gov.uk/Publications/2011/09/20090337/0> [Accessed: 9 January 2012]

<sup>10</sup> There are limited categories of people who are not eligible for a direct payment – these are to be set out in regulations.

outcomes for the individual. This applies both to adults and to children and their families. The local authority is required to provide information about the implications of each option and to signpost the individual to sources of information and advice, to help them to understand, make and manage a decision. Taken together, these provisions comprise the main duties within the Bill, or the “framework” provisions. Local authorities have been placed under a duty to offer and provide direct payments since 1996 and some local authorities have made tentative steps to implement alternative mechanisms such as Individual Service Funds. However, local authorities will need to ensure that they provide the framework of choice which the Bill seeks to underpin. This will give rise to a range of costs associated with transforming culture, systems and approaches to social care provision in response to the Bill and the wider Strategy, and these are detailed below.

### **Long-term recurring costs and savings**

77. Consultation, research and discussion with stakeholders, including a survey of local authorities by COSLA, identified a number of potential areas for recurring costs associated with the Bill’s framework provisions. These mainly related to changes in assessment practice in order to embed genuine choice and to involve the individual in co-producing their agreed outcomes and support plan, and increased demand for support and advice services. Administratively, the range of self-directed support options will lead to increased numbers of contracts as there is a shift from block contracting to individualised purchasing of support. There is a view that the desirability of tailored support will result in more individuals presenting for assessment. It is difficult to estimate costs for any of these, as they will vary significantly by local authority and in relation to individual choice (for example, the number of people choosing to leave block contracting arrangements).

78. To balance these, potential recurring savings are thought to be possible<sup>11</sup> with more people electing to arrange support at home as opposed to in residential accommodation. There is also evidence that people who are given direct control of a resource can and do use it in more cost-effective ways as they can be more flexible and creative<sup>12</sup>. In contrast to the increased demand for support that is self-directed, there may also be a reduction in “wasted” or “unwanted” provision of arranged services, as individuals tailor their needs to a specific budget rather than simply use whatever services are provided. Systems changes should also reduce bureaucracy with some administration costs transferring to individual citizens<sup>13</sup> (for instance, costs of liaising with providers).

79. In the long term (that is, once change has been effected) a shift towards self-directed support (in practice, greater uptake of options 1 and 2 in the Bill) is expected to be broadly cost-

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<sup>11</sup> See McLaren, J. & Armstrong, J. (2010) op.cit. p.16.

<sup>12</sup> See for example Glasby, J., Ham, C., Littlechild, R. (2010) op.cit. p.46. Also McLaren, J. & Armstrong, J. (2010) op.cit. p.26. There are numerous qualitative examples of individuals achieving better outcomes when directing their own support – see for example Scottish Government (2010) *Self-Directed Support – A National Strategy for Scotland*. Edinburgh, Scottish Government. pp.3-4; and, Alzheimer Scotland (2010) *Lets Get Personal – personalisation and dementia*. Edinburgh, Alzheimer Scotland. p.7.

<sup>13</sup> Direct payments are often paid at a rate that is lower than the cost of a local authority service to take this into account. Local authorities anticipate long term savings in terms of their reduced role - see for example Rummery, K., Bell, D., Bowes, A., Dawson, A. & Roberts, E. (2012) op. cit. Individuals responding to our consultation also noted the costs that they themselves were taking on in place of their local authority.

neutral, so the recurring costs and savings will be expected to cancel each other out. This is borne out in the Scottish context by research commissioned by the Government from the University of Stirling, which found that self-directed support packages are roughly similar to standard arrangements in terms of hours. The study found no significant difference between direct payment users and those receiving traditional community care services in terms of hours of care, and predicted no significant rise in demand or reduction in service as a result of self-directed support. The study acknowledged that the cost of providing social care services in Scotland will continue to rise but noted that this would not be as a result of the shift to self-directed support, but from increased need for services, which arise from changing demographics.<sup>14</sup>

80. The IBSEN study in 2008<sup>15</sup>, a study of the personalisation pilot sites in England, found that the difference in the mean weekly cost of support funded by an individual budget and for standard mainstream services was not statistically significant.

81. Taken together with the Stirling findings, the Government views this as an indication that, in the long term, self-directed support is broadly cost-neutral, with increases in social care costs more likely to arise from wider changes in demographics and other associated factors. As costs are difficult to estimate for the multiple factors which feed into cost-neutrality, implementation activity associated with the Bill and the strategy will include ongoing monitoring of this situation.

82. In terms of recurring savings, or, more accurately, the potential for avoided costs, there is tentative evidence that people directing their own support can help to avoid or reduce costs to other public agencies. For example, Alzheimer Scotland conducted a pilot project across three local authorities in Ayrshire, supporting people with dementia and their families to choose self-directed support. Interim reports indicated that costs of self-directed packages can be significantly lower than the cost of residential care which is the main alternative for many people with dementia. Data from the pilot revealed that the total cost of direct payment packages for 6 people with dementia was £880 per week. This compared to the equivalent weekly cost of a residential care placement at £474 per person per week, amounting to £2,845 per week across the 6 individuals. The study estimated a potential cost saving of £1,965 per week, equating to £102,180 per year. Though small in scale and limited in terms of social care client group this evidence demonstrates that personalised, creative and flexible care plans, underpinned by direct payments or other self-directed arrangements, have the potential to assist people with dementia to stay in their own homes for longer, and thus defer the costs of residential care.

#### *Costs to Scottish Government*

83. As self-directed support is expected to be cost-neutral in the long term, there is not expected to be a long-term demand for increased funding within the annual local government finance settlements arising from this new framework of choice. Some of the savings that are expected to accrue from self-directed support, in terms of the long term health benefits, may

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<sup>14</sup> Rummery, K., Bell, D., Bowes, A., Dawson, A. & Roberts, E. (2012) op. cit.

<sup>15</sup> Glendinning, C., *et al* (2008) *Evaluation of the Individual Budgets Pilot Programme: Final Report*. York, University of York, Social Policy Research Unit .

accrue to bodies such as the NHS rather than local authorities.<sup>16</sup> However, as health and social care become more integrated, it is expected that the boundaries between these budgets will be more flexible.<sup>17</sup>

#### *Costs to local authorities*

84. All local authorities are at different stages in the growth of the self-directed support agenda, meaning that costs will vary widely.

#### Social care assessments

85. Self-directed support is predicated on outcomes-based assessment, which is considered best practice and for social workers who already conduct assessments in this way, change will be minimal. For those who do not, there may be an increase in length and complexity of assessment as discussion of outcomes and choice of self-directed support options are built in. Responses to a recent COSLA survey of local authorities varied considerably on the need for increased capacity amongst care managers to cope with these changes, and reflected the different stages of local authority development. In mitigation of any increased cost that might arise from a longer and more complex assessment, review and monitoring, the Stirling study found that 2 out of 3 local authorities thought the level of monitoring and review needed for direct payments was not significantly greater than that needed for traditional care management and indeed that as systems for assessment and monitoring became more streamlined, more responsibility could be handed to users, potentially freeing up care manager time to be reinvested elsewhere.<sup>18</sup> Savings were anticipated from the reduced role that local authorities would play as care commissioners, which could offset the costs associated with transformation, although the timescale for such savings is unclear. A separate study in England noted that ‘the fact that the support planning process took longer was seen as offset by the fact that the plans were less likely to require revision because of the process by which they had been completed’.<sup>19</sup>

86. Some stakeholders, including local authorities and user-led organisations, have speculated that there may be a growth in demand for social care assessments as new clients present. This would arise from people who are eligible for local authority support but have chosen not to take it in the past, now attracted by the increased choice and control available to them. It is difficult to quantify how many people, if any, this might involve, and the Stirling study concluded that what it terms the ‘woodwork effects’ of self-directed support are uncertain.<sup>20</sup> This effect was seen with greater than expected uptake of local authority free personal care services, following the passing of the Community Care & Health (Scotland) Act 2002. However, that Act made freely available a service which previously users had faced charges for. The most flexible form of self-directed support, the direct payment, has been legally available in Scotland since 1996 and has not resulted in a noticeable increase in demand for

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<sup>16</sup> See for example Hurstfield, J., Parashar, U. and Schofield, K. (2007) *The Costs and Benefits of Independent Living*. London, Office for Disability Issues. p.103.

<sup>17</sup> Scottish Government (2011) *Integration of Health and Social Care*. [News release, 12 December]. Edinburgh, Scottish Government. Available at: <http://www.scotland.gov.uk/News/Releases/2011/12/12111418> [Accessed: 10 January 2012]

<sup>18</sup> Rummery, K., Bell, D., Bowes, A., Dawson, A. & Roberts, E. (2012) op. cit.

<sup>19</sup> Hurstfield, J. (2011) *Individual budgets for families with disabled children. Final case study report: Coventry pilot site*. Department for Education. Research report DFE-RR145i.

<sup>20</sup> Rummery, K., Bell, D., Bowes, A., Dawson, A. & Roberts, E. (2012) op. cit.

social care provision overall. Therefore, it is the view of the Government that it is unlikely that there will be a significant increase in people presenting to local authorities for assessment as a result of this Bill. Any increase in presentations is more likely to be a result of demographic change and an ageing population and additional costs in response to the Bill are not anticipated in this respect.

#### Information about self-directed support

87. Section 8 in the Bill requires local authorities to explain the nature and effect of each of the options for self-directed support, to give people information about how to manage their support and to signpost people to sources of information and advice, including independent sources. All of these must be given in writing and in any other form as is appropriate to the needs of the person. The requirement to provide information in writing and any other form as is appropriate is in line with the duty to make reasonable adjustments set out in the Equality Act 2010, section 20(6). Local authorities already have a duty to comply with this. Where they do not already do so, it is expected that local authorities will develop generic material to describe the nature and effect of options, and this will come under short-term transformation costs, discussed below. Local authorities already provide funding to self-directed support advice organisations in their area. Some provide an in house service (about a quarter of local authorities), others outsource the service (about a half). Some do both, and some make other arrangements. In addition, there are independent sources of advice and support which may not receive local authority support.

88. Nevertheless the Stirling study noted the importance to self-directed support users of investment in advice and advocacy services.<sup>21</sup> The Government's view is that local authorities will not require to set up or fund significant numbers of new organisations, but will need to work with existing organisations to ensure efficiency, effectiveness and value for money. One of the aims of the short-term funding for independent support and advice services (see paragraph 99) is to help address this. The National Strategy Implementation Group subgroup on support will be monitoring and evaluating all the activities funded by this money, with a view to identifying which provide best value for money. This is intended as a guide for local authorities seeking to commission services and support in the future, to ensure cost effectiveness as well as sustainability and capacity.

89. Taking account of the Stirling study's findings, and with the growth of self-directed support, there is expected to be a change in the size and shape of demand for access to information and advice. Current self-directed support policy is focused on direct payments, which are generally the most resource-intensive choice in terms of requirements for information and advice. However, they can also remove certain burdens from the local authority such as day-to-day administration, which typically transfer to individuals.

#### Assistance for service users

90. The Bill also requires local authorities to take reasonable steps to ensure that supported people can make an informed choice, which can include involving relatives and friends of the supported person to assist them in making decisions about relevant matters. This concept of 'circles of support' is in line with best practice under the Adults with Incapacity (Scotland) Act

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<sup>21</sup> Rummery, K., Bell, D., Bowes, A., Dawson, A. & Roberts, E. (2012) op. cit.

2000. Guidance under the Bill will clarify what “reasonable steps” under section 5(4) in the Bill will mean in practice. For instance, it should not involve unreasonable and costly processes. The involvement of close family and friends is common practice for social work, particularly where the supported person requires such assistance and therefore no additional costs specific to this Bill are expected to arise.

### *Costs to others*

#### Care and support providers

91. Recurring costs for providers are expected to centre around administrative and workforce issues. Changes to contracting - a move away from block contracting to framework and spot contracting - and requirements for a more flexible workforce will create greater uncertainty around business planning and incur higher risk premiums. As with local authorities, providers are at different stages in adopting self-directed support. Some are already offering the flexible, personalised services that individuals want, and expanding into new areas to meet demand; others are further behind. This makes it difficult to estimate potential costs, because they will vary so widely. However, providers will be able to focus on providing good, high quality services that people want. Evidence from England<sup>22</sup> suggests that service users are willing to pay for the factors they consider important. Providers have the opportunity with self-directed support to grow and expand in flexible ways, providing a tailored and valued service.

#### Individuals

92. Individual service users, and in some cases their carers, may face an increased administrative burden if they choose to take the direct payment option. This is not new – this choice has been legally available since 1996, and this Bill does not increase the existing burden. They may choose to outsource some tasks but if not this requires an investment of their time. They will need to find and secure the support they require, keep detailed records and submit returns as required. Where a person chooses to become an employer they also take on the administrative duties associated with that, such as advertising a post, interviewing, setting up contracts, dealing with tax, national insurance and other requirements and managing staff. There is a scarcity of specific cost data in relation to this aspect. However, although individuals may face an increased administrative burden, and a financial cost if they choose to outsource tasks (for example to a brokerage organisation or a payroll provider), this is through their own choice and is not imposed upon them.

#### **Short-term implementation costs**

93. Consultation, research and continuing dialogue with stakeholders confirms that short-term implementation costs associated with the ‘framework’ provisions of the Bill are expected to be in the following areas:

- Transformation costs;
- Activities to support culture change, training and workforce development and publicity activities associated with the Bill; and
- Access to information and advice.

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<sup>22</sup> Wood, C. (2010) *Personal Best*. London, DEMOS.

### *Costs to Scottish Government*

94. A shift to self-directed support is already happening in Scotland, but the Bill accelerates the pace of change. Although no *direct* costs fall on the Scottish Government as a result of the Bill, implementation of the legislation will lead to a range of costs to the sector which the Government will fund, in particular the short term non-recurring costs needed to effect a change in approach and culture. The Government invested £3.4m in 2011/12 and will invest a further £39.5m over the next 3 years, providing additional funding to local authorities, care and support providers and support organisations to support the implementation of the Bill and associated strategy.

### Transformation costs

95. A large portion of the available Scottish Government funding - £2.22m in 2011/12 and an expected £29m over the next 3 years – is allocated to transformation costs which fall on both local authorities and care and support providers. More detail on this is set out in paragraphs 101 to 106 and 110 to 113 below. Transformation costs are not considered to be directly associated with Bill implementation. They are associated with a shift in culture and processes, which is vital to the spirit of self-directed support, but not necessarily required by the law. Transformation requirements will be different for each local authority and provider, and are not prescribed by the Government.

### Training and awareness

96. Costs arising from training and awareness raising can be split into two – specific Bill related training and awareness raising in the wider workforce. Costs for those parts of the workforce with specific duties to carry out under the Bill – social workers and some NHS staff – are set out in paragraphs 107 to 109 and 130 to 135. Together, these Bill-specific costs amount to £1.412m (£0.682m under this framework heading and £0.73m under the heading of joint working with the NHS). These costs will be spread over two years (2012/13 and 2013/14) as these will be the key years for preparation for and then enactment of the Bill. These costs arise directly from the Bill as they are essential to ensuring that the relevant professionals know about the duties being placed on them and are aware of how they should be fulfilled.

97. In addition, the Government recognises that it has an important role in raising awareness and enshrining the values and principles of self-directed support amongst the wider workforce at a national level. This is not directly associated with Bill implementation as it is for people who do not have any duties placed on them by the Bill. As with transformation costs, the Bill can be enacted without this but it is a key part of the accompanying cultural shift in the national self-directed support landscape. The National Strategy Implementation Group workforce subgroup is looking at what activity is necessary, and the Government will provide £3.088m over 3 years to achieve this.

### Advice and support services

98. Section 8 in the Bill requires authorities to direct individuals to sources of assistance or information to help them to make decisions about the options and to manage their support. The duty itself is relatively narrow, and is considered to have minimal cost as it is simply signposting. However, to ensure that the Bill is implemented in an effective way there must be sufficient capacity amongst advice services. Although there are already a variety of sources of

independent advice and support in Scotland, the sector will need to build its capacity to meet a change in the size and shape of demand. Sustainability and geographical spread are also important, to ensure that everyone who wants to access them can do so in addition to any local authority provided services.

99. The Government recognises a short-term need to help the independent sector to identify areas for development and support growth. After a bidding process, £1m was allocated to begin this process in 2011/12. A further £2m per annum will be allocated over the next 3 years. These costs are not considered to arise directly from the Bill. It is not intended to set up a large number of new organisations in order to meet demand. Independent advice and support services already exist in Scotland and the Bill simply requires local authorities to signpost individuals to them. Potential increases in demand for these services are difficult to estimate, given that this will very much depend on individual choices, and difficult to assign specifically to the Bill, given that the Bill is expected to have a gradual impact on the choices that individuals make. These costs are therefore considered to be part of the wider strategy push to ensure that individuals have access to an effective, convenient choice of services.

#### *Costs to local authorities*

100. Direct payment guidance issued in 2007 indicated the necessity for local authorities to begin shifting the basis of their existing budgets to take account of self-directed support and at that time an additional £2m per annum was provided in the Grant Aided Expenditure (GAE) to mainstream self-directed support. However, this has not been sufficient to deliver the necessary changes and further investment is required.

#### Transformation costs

101. The majority of short-term implementation costs associated with the Bill will fall to local authorities, and therefore the majority of Government funding will be invested here. Transformation costs are the largest area. This heading covers a number of areas, including:

- Bridging finance;
- Leadership;
- Commissioning and contracting;
- Systems (such as IT and accounting);
- Development of information material;
- Administration (including back office requirements); and
- Reporting requirements.

102. Of these, bridging finance has been the most difficult to estimate with any certainty. The case for bridging finance arises from the fact that local authorities will have social care contractual commitments spread over several years with a provider or groups of providers, or significant investments in buildings-based facilities such as day centres. Should service users choose to move away from these services under self-directed support, local authorities would continue to be expected to comply with commitments to retain day centre facilities or block contracts until the end of their contract period. Depending on the number of people that choose

to move, this would carry the potential to create double funding pressures for local authorities, who would be required to fund both the new care packages and the existing contracts. However, while many in local authorities have said that bridging finance is necessary the evidence sources available to the Scottish Government have demonstrated that there is little clarity on how much is required. Variables affecting the level of bridging finance necessary include:

- the stage the local authority has already reached with the reform of their contractual commitments and disinvestment in or diversification of buildings-based facilities - in many local authorities this is occurring independently of self-directed support;
- the numbers of supported people who actually choose to change the mechanism by which their support is provided. Unlike England, in Scotland there are no targets in this regard as it is believed that self-directed support should be available to all yet imposed on no one. The Government does not anticipate a ‘big bang’ shift in individuals directing their own support;
- the mechanism chosen by an individual wanting more control over their support. (Bridging finance needs will be most acute where an individual chooses a direct payment and local authorities are therefore required to liquefy resources. However, evidence from England is that increasing numbers are choosing to direct the available resource, rather than take a direct payment<sup>23</sup>); and
- the numbers of people choosing to direct their own support who will seek radical change (a study in England found that, of people who had received a direct payment or personal budget, 41% had changed nothing about their support, 29% had changed a little, 23% had changed a lot and only 7% had changed everything<sup>24</sup>).

103. Bridging costs are therefore sensitive to a variety of circumstances. While the Stirling University study concluded that the systems required to support self-directed support would not be significantly different from traditional community care services and direct payments, it also concluded that some costs would be incurred in the development and implementation of these systems.<sup>25</sup>

104. In England, £520m was made available to local authorities for transformation over 3 years (2008-2011) to support reform and redesign of the system. Based on a 10% share, a Scottish equivalent would be £52m over 3 years. However, in the absence of a formal evaluation it is difficult to come to firm conclusions on how this money has been spent and how effective it has been. In addition, the money in England was to meet specific and stretching targets which included moving 30% of service users on to a personal budget by April 2011.

105. Various estimates of the cost of bridging and transformation in a Scottish context have been made, with varied results, as set out in table 2 below. There has been no published estimate of macro-level whole systems transformation in Scotland and therefore the various projections below are used as a best estimate of potential scenarios.

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<sup>23</sup> Think Local Act Personal (2011) *councils meet 30 percent target for personal budgets*. [News release, 14 June] Available at: <http://www.thinklocalactpersonal.org.uk/News/PersonalisationNewsItem/?cid=8981> [Accessed: 10 January 2012]

<sup>24</sup> Wood, C. (2010) op.cit.

<sup>25</sup> Rummery, K., Bell, D., Bowes, A., Dawson, A. & Roberts, E. (2012) op. cit.

| Source                            | Amount per annum | Timescale | Scope  | Scaled up for all of Scotland |
|-----------------------------------|------------------|-----------|--|-------------------------------|
| Glasgow <sup>26</sup>             | 0.52m            | 3 years   | Transformation of all learning disability services   | 4.6 pa*                       |
| West Dunbartonshire <sup>27</sup> | 0.14             | 3 years   | 33% of learning disability daycare recipients moving to direct payments per annum                    | 8.96 pa**                     |
| Edinburgh <sup>28</sup>           | 0.393            | 3 years   | 2.35% of homecare clients switching to direct payments and moving away from local authority services | 5.632 pa**                    |

\*2010 prices \*\*scaled up to 2011/12 prices from 2003/04 prices using a factor of 1.28, taken from the indices for Personal and Social Services, for Local Authorities, Child and Adult Services, published by PSSRU

106. The estimates above average out at £6.397m per annum, or £19.192m over 3 years. It is possible that costs may be slightly higher, because of the breadth of transformation required and therefore the Government will provide £23m over the next 3 years to assist with transformation, based on an implementation period of 3-5 years. This equates to £6m in 2012/13, £11m in 2013/14 and £6m in 2014/15 – the increase in year 2 is to support the expected increase in activity as the Bill comes into force. It will build on the commitment of £1.12m in 2011/12 - £0.035m per local authority, to build on existing work and support the development of self-directed support in every local authority. The Government is currently in negotiation with COSLA about how this transformation funding will be allocated. Any additional transformation costs not covered by this funding would need to be covered from within local authority budgets. At the current time, and for the next few years, the Change Fund for Older People will provide a potential source of additional transformational resource. Although this is specifically for older people, this encompasses the majority of social care clients.

Activities to support culture change, training and workforce development and publicity activities associated with the Bill

107. The Bill places duties on staff who have responsibility for social care assessments and for the arrangement and ongoing monitoring of support packages. This means that there will be additional costs associated with providing training to the relevant staff – local authority social workers, social work teams and their managers - on their legal obligations under the Bill. These Bill-specific training costs have been estimated on the basis of a) the development of a comprehensive training module and materials and b) delivery of training to all relevant staff.

<sup>26</sup> Glasgow City Council (2010) *Personalisation of Social Care*. [Report to Health and Social Care Policy Development Committee – 22 September 2010]. Available at: <http://www.glasgow.gov.uk/councillorsandcommittees/viewDoc.asp?c=e%97%9Df%8Fpz%88> [Accessed: 10 January 2012]

<sup>27</sup> Direct Payments Scotland (2003) *Direct Payments Finance Project Report*. Direct Payments Scotland. This report is also known as the Reid report.

<sup>28</sup> *ibid.*

Costs are based on estimates from other comparable pieces of legislation<sup>29</sup>. The estimated cost for the training module is £0.1m. If costs are higher, there is flexibility for this to be met from within the allocation for wider workforce development (discussed above at paragraph 97). The estimate for delivery to relevant staff is £0.582m. This is based on an assumed cost of £500 per day for the services of a consultant to deliver training (although this may be done by the SDS lead in some local authorities). It assumes one day's training per person, with an average of 15 people per session. This was scaled up to take account of all relevant staff who will require training on the duties set out in the Bill. It is not possible to be accurate about how many relevant staff there are across Scotland. However, using the most recent breakdown of the overall social care workforce, the number is likely to be between 13,446<sup>30</sup> and 17,462<sup>31</sup>. The cost calculation is based on the higher figure, although this is likely to be an overestimate, to allow for contingencies. The overall cost for Bill-specific training to local authority staff is therefore calculated at £0.1m for the training module and £0.582m for delivery, or £0.682m overall. This will be spread over two years, 2012/13 and 2013/14, as these are the key years for preparation for, and then enactment of, the Bill.

108. The Scottish Government will cover this cost. However, local authorities will need to allow staff time for the relevant awareness raising and training. It is expected that this will fit into existing staff training time allowances.

109. It is envisaged that training on the Bill provisions will eventually form part of Continuous Professional Development requirements for the relevant social care staff, and will also feature in training programmes for new entrants. Work to further integrate the principles and practice of SDS into existing and planned professional programmes is already underway through the strategy implementation workforce subgroup. This group is contributing to the review of National Occupational Standards for social care and liaising with NHS Education for Scotland (NES) and Scottish Social Services Council (SSSC).

#### *Costs to others*

110. There are no direct duties on care and support providers in the Bill and therefore no direct costs on them arising from it. However, they will need to reform how they deliver services to respond to the changing climate. The Government will assist with this reform, incurring costs to itself. It is expected that transformation costs for this sector will centre around:

- Systems (such as IT and accounting); and

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<sup>29</sup> Protection of Vulnerable Groups (Scotland) Act 2007 and Adult Support and Protection (Scotland) Act 2007.

<sup>30</sup> Scottish Government (2011) *Staff of Scottish Local Authority Social Work Services, 2010 – additional tables*. [Online] Available at: <http://www.scotland.gov.uk/Publications/2011/06/24105744/8> [Accessed: 10 January 2012] Calculation is based on table 9, and includes all staff counted under the following categories: senior managers etc, social workers, other qualified fieldwork staff and social work/OT assistants.

<sup>31</sup> Scottish Government (2011) *Staff of Scottish Local Authority Social Work Services, 2010 – additional tables*. [Online] Available at: <http://www.scotland.gov.uk/Publications/2011/06/24105744/8> [Accessed: 10 January 2012] Calculation is based on table 17, and includes all staff of class 3 and above. This is based on the function descriptions provided in the equivalent 2010 report (Scottish Government (2010) *Staff of Scottish Social Work Services, 2009*. [Online]. Available at: <http://www.scotland.gov.uk/Publications/2010/07/01092227/0> [Accessed: 10 January 2010]) at 11.18. This is likely to be an overestimate for the purposes of this Bill, as it includes some categories of staff who are unlikely to have responsibilities set out above. However, in the absence of more accurate data it is a useful guide.

- Administration (including back office requirements).

111. There has been no estimate of transformation finance requirements for providers, and as with local authorities, these will be uncertain and will vary by provider. As supported people exercise more choice and control, it may be that some providers will lose business or need to significantly change the services that they provide in order to survive. However, it is likely that other providers will thrive and flourish, leading a vibrant, innovative provider sector.

112. The Government has provided £0.1m in 2011/12 to the Coalition of Care and Support Providers in Scotland (CCPS) to oversee transformation for providers, and this funding will continue (likely at a rate of approx. £0.07m per annum) for the next 3 years. In addition, after a bidding process, the Government has allocated £1m in the second half of 2011/12 to deliver increased capacity and transformation amongst providers. The Government intends to sustain this funding, at a level of £2m per annum for the next 3 years, to build on and sustain this approach. It is expected that this will equip providers with the tools to be more personalised and flexible in their approach.

113. As with costs to local authorities, any transformation costs to providers not covered by Scottish Government funding would need to be covered from within their own budgets. As these costs are not known, and will vary by organisation, it is difficult to estimate what these might be.

## **SUPPORT TO CARERS**

114. The Bill provides a power for local authorities to provide support to carers in their own right. A similar power has been available to local authorities in England since 2002.

### **Potential savings arising from support to carers**

115. Support to carers in order to help them to continue in their caring role can help to avoid or minimise costs that might otherwise have to be borne by the state. Demographic change and the current fiscal situation are likely to impact on both the number of carers and the pressure on resources and the Bill's power to support carers allows for greater flexibility in the allocation of scarce resource. Research into the economic value of the support provided by carers puts the figure for Scotland at £10.38bn per annum based on an estimated 517,387 unpaid carers nationwide.<sup>32</sup> The available evidence points to current and potential future savings across health and social care arising from effective support to carers.<sup>33</sup> Support to carers, as underpinned by the Bill, is an example of preventative spend, where comparatively modest expenditure in the short-term can avoid or negate significant costs to other agencies at a subsequent date.

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<sup>32</sup> Buckner, L. & Yeandle, S. (2011) *Valuing Carers 2011: calculating the value of carers' support*. London, Carers UK and University of Leeds. Available at: <http://www.carersuk.org/professionals/resources/research-library/item/2123-valuing-carers-2011> [Accessed: 10 January 2012]. Other figures put the estimated number of carers in Scotland at approximately 657,000.

<sup>33</sup> See, for example, *ibid.* Also, Conochie, G. (2011) *Supporting Carers: The Case for Change*. Woodford Green, Princess Royal Trust for Carers, Crossroads Care. Available at: <http://www.carers.org/our-publications> [Accessed: 10 January 2012]

### **Current support for carers**

116. The Scottish Government invested £15.8m in support to carers and young carers during the period 2007-11. In 2011-12, the budget for carers support increased to £8.4m. Spend over the current Spending Review cycle is projected to be £8.7m per annum. In addition, at least 20% of the Change Fund for older people will be dedicated to supporting carers. In 2012-13 this Change Fund is £80m, therefore the share for support to carers should amount to approximately £16m. Local authorities' net revenue expenditure on support for carers, including respite care, was £100m in 2006-07, £117.034m in 2007-08 and £134.74m in 2008-09.

### **Costs to Scottish Government**

117. The Bill provides a statutory basis for what is already a routine and ongoing cost for local authorities. As such, the Bill itself should not place any new costs on the Scottish Government. It simply adds a further dimension to carers' support, in providing that carers can direct their own support, and local authorities will have to consider how they respond to a demand for increased flexibility in the provision of support to carers. As such, there will be no specific additional costs arising to the Government from this part of the Bill.

### **Costs to local authorities**

118. Again, as the Bill provides a statutory basis for existing actions the overall funding pot available to support carers will not be affected by the Bill.

119. The main reform is in *how* carers might choose to access the available resource and, consequently, in how local authorities provide it. It is impossible to forecast with any degree of certainty how support to carers might divide in future years between the main options of i) information and advice, ii) service provision, or iii) self-directed support options such as direct payments. However, it is possible to examine data from England, where a similar power has been in place for around a decade, and consider the potential distribution if Scotland was to follow a similar pattern. English data from 2008/09 indicated that of those carers receiving some form of support around 42% received "information and advice only" and 58% received what was termed a "carer specific service".<sup>34</sup> A smaller proportion of the overall carers support "interventions" (around 10%-15%) appear to have been direct payments. This represents approximately 0.5% of total carers. Spend on direct payments for carers is a voluntary return, and so data is only available for 20% of local authorities in England. For these local authorities, the average direct payment to a carer was £1,775 per year. The average conceals some degree of variation, with around half of local authorities reporting an average value of direct payment to carers of less than £600 per year. This compares to the average cost of a direct payment to a supported person of £6,377 per year.

120. If Scotland were to follow a similar pattern to England and approximately 0.5% of carers were to choose to access support from local authorities as a direct payment, this would mean around 3,000 carers receiving direct payments. Putting a monetary value on this support is

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<sup>34</sup> The NHS Information Centre, Adult Social Care Statistics (2010) *Community Care Statistics 2008-09: Social Services Activity Report, England*. [Online] The NHS Information Centre for health and social care. Accessible at: <http://www.ic.nhs.uk/pubs/carestats0809asr> [Accessed: 10 January 2012]

difficult, due to the range in support discussed above, but it may be between £2.1m and £5.8m.<sup>35</sup> This does not represent increased financial requirements for local authorities, but is rather a transfer of resource between service types.

121. A further financial impact, raised by some respondents to the Bill consultation, was the potential for an increase in the number of carers seeking assessment in response to publicity surrounding the Bill. The Scottish Government does not collect data on the number of carers assessments completed annually. However, several Freedom of Information (FOI) requests have been made to local authorities in recent years, and these would suggest that it is reasonable to conclude that around 6,000 - 7,000 “formal” local authority-led carers assessments take place per annum; in other words, assessments completed by local authorities in relation to carers who provide a substantial amount of informal care on a regular basis. This is thought to mask quite a high number of informal assessments completed locally by carers’ organisations and self-assessments<sup>36</sup>. It is reasonable to conclude that the volume of carers’ assessments in Scotland is not significantly lower than in England and would not be expected to rise substantially in response to the Bill. Equally, however, the Carers Strategy, published in 2010, suggests that there is a need to improve both the uptake and quality of carers’ assessments. There may well continue to be an increase in both formal and informal assessments, but this will be in response to wider work on the implementation of the Carers Strategy rather than in response to the Bill.

### **Costs to others**

122. Carers’ centres may face increased demand for their services, if more carers look to them for advice and support. However, they can access the Government funding intended to support access to information and advice which can help them manage this demand. Where a carer takes on a direct payment, then they also take on the additional administrative burdens that entails. As with supported people, it is important to note that, although individuals may face an increased administrative burden, and a financial cost if they choose to outsource tasks, this is a choice available to them and is not a cost that is imposed on them. Carers’ Information Strategies (funded through existing Government investment outlined above) and more general self-directed support information and advice services will assist the carer in making informed choices and managing their support.

## **DUTIES IN RELATION TO DIRECT PAYMENTS**

123. Existing legislation relates to direct payments rather than self-directed support (direct payments are a mechanism of self-directed support). The Bill and regulations made under it will consolidate existing laws on direct payments, clarifying the rules for service users and providers and modernising the law.

### **Costs to Scottish Government**

124. No costs to the Scottish Government arising from this section of the Bill have been identified.

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<sup>35</sup> The lower figure assumes a cost of direct payment of £650, the median cost in England, and the upper a cost of £1,775, the English mean.

<sup>36</sup> For example, Glasgow City Council has developed self-assessment for carers in partnership with a wide range of statutory and voluntary agencies.

## **Costs to local authorities**

125. This section of the Bill includes regulation making powers. The exact content of regulations has yet to be determined but is likely to include the following:

- the ability to employ a close relative in certain circumstances; and
- the ability to choose whether to receive a direct payment gross or net.<sup>37</sup>

### *Employment of close relatives*

126. The ability to employ a close relative is not thought to give rise to additional costs. It would be to replace costs that would otherwise be incurred through the provision of services to the supported person. Under the regulations the decision on whether or not to sanction the employment of a close relative will continue to rest with the local authority and will be subject to meeting a range of tests regarding “appropriate” and “inappropriate” circumstances. It will require the same monitoring and review as any direct payment.

### *Costs arising from a person’s ability to choose whether to receive their direct payment gross or net of their individual contribution or “charge”*

127. Under the Bill and associated regulations, it is expected that individuals will be able to choose whether they wish to receive their direct payment gross or net of their individual contribution or charge. This reflects current statutory guidance on self-directed support. Payments on a gross basis incur administrative costs to local authorities that are otherwise avoided with a net payment. This is due to the separate billing and collection systems and, in a small number of instances, potential loss of resource due to an element of non-recovery or write off of charges which are avoided by the individual. If *all* people in receipt of a direct payment chose to take it gross, then this would give rise to administrative costs for local authorities who do not currently pay them that way. In practice, however, it is not anticipated that significant numbers of people will choose this. For most people, net payments will be more administratively convenient, and so we would expect the cost impact to be minimal.

### *Direct payments for residential accommodation*

128. A further regulation making power is around the use of direct payments to fund residential care. It is the intention of the Government to work towards removing the current restriction on using direct payments in this way. This may have some effect on the National Care Home Contract, which is in any case renegotiated on a regular basis. Any regulations on this matter would be consulted on and known far enough in advance for negotiations to take them into account.

## **Costs to others**

129. Where an individual acquires administrative duties in relation to choices they have made as a result of regulations laid, as with supported people and carers, it is important to note that,

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<sup>37</sup> Currently most local authorities pay direct payments net of individual contribution. However, some direct payment users would like to be paid gross – this is a point of principle, to ensure parity with non-direct payment users, who are not charged for services in advance.

although individuals may face an increased burden, and a financial cost if they choose to outsource tasks, this is through their own choice and is not imposed upon them.

## **JOINT WORKING WITH THE NHS**

130. Where social work functions are delegated to the NHS the Bill will enable the self-directed support duties to be delegated as well.

131. Costs are associated with the training and awareness-raising implications of this delegation, with specific implications for the awareness of those health professionals who are most likely to undertake social care assessments or joint assessments. For NHS staff, unlike local authority staff, no prior knowledge of self-directed support can be assumed and therefore awareness raising will need to address their specific needs and take account of the greater cultural shift required. These costs arise directly from the Bill as they are essential to ensuring that the relevant professionals know about the duties being placed on them and are aware of how they should be fulfilled.

## **Costs to Scottish Government**

132. Activity to raise awareness in the wider NHS workforce will fall under the wider strategy workforce awareness raising mentioned above at paragraph 97. In addition to this general activity, Bill-specific costs arise for the variety of NHS professionals who will need to be aware of the duties that they may have to discharge as a result of the Bill, if duties are delegated to them. The National Strategy Implementation Group workforce subgroup is working with NHS Education for Scotland (NES) to talk about training requirements, and self-directed support pilots in NHS Lothian and NHS Fife have been developing a training module for health service staff, which will be available to all by the time this Bill is enacted. The NHS Lothian pilot is also in negotiation with Napier and Queen Margaret Universities in Edinburgh about an e-learning module for pre-qualification training for NHS staff. This means that the development of training modules has already been funded, and the costs arise from delivery of training to the relevant staff. The estimate for this is £0.73m. This is based on the same formula as described in paragraph 107 – an assumed cost of £500 per day for the services of a consultant to deliver training, and one days training per person with an average of 15 people per session. This has been scaled up to take account of the number of relevant staff. The workforce subgroup has determined that this group is likely to comprise occupational therapists, physiotherapists, community nurses, mental health nurses and community psychiatric nurses. This is a potential 21,883 people.<sup>38</sup> As with local authority staff, this is likely to be an overestimate. However, bearing in mind the health and social care integration agenda and the need to look ahead and build capacity for joint working in the future, it seems sensible to provide contingency for large numbers.

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<sup>38</sup> Information Services Division, NHS Scotland (2011) *NHS Scotland Workforce*. [Online] Available at: <http://www.isdscotland.org/Health-Topics/Workforce/Publications/index.asp#577> [Accessed: 10 January 2012]  
Sum of the following categories: in Nursing and Midwifery – community nurses, district nurses, mental health nurses, learning disability nurses, other; in Allied Health Professionals – occupational therapists, physiotherapists, speech and language therapists, multi-skilled.

*These documents relate to the Social Care (Self-directed Support) (Scotland) Bill (SP Bill 10) as introduced in the Scottish Parliament on 29 February 2012*

133. The £0.73m estimated cost is all concentrated in 2013/14. This is the year in which, if passed, the Bill is expected to be enacted, and therefore training costs are expected to arise there. However, there is flexibility within the allocation for wider workforce development (discussed above at paragraph 97) which would allow costs to spill into other years if necessary.

#### **Costs to local authorities**

134. No costs to local authorities arising from this section of the Bill have been identified.

#### **Costs to others**

135. NHS boards will need to allow staff time for the relevant awareness raising and training. It is expected that this will fit into existing staff training time allowances, and that there would be no additional costs falling to NHS Boards.

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### **SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE**

136. On 29 February 2012, the Cabinet Secretary for Health, Wellbeing and Cities Strategy (Nicola Sturgeon MSP) made the following statement:

“In my view, the provisions of the Social Care (Self-directed Support) (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

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### **PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE**

137. On 28 February 2012, the Presiding Officer (Tricia Marwick MSP) made the following statement:

“In my view, the provisions of the Social Care (Self-directed Support) (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

*These documents relate to the Social Care (Self-directed Support) (Scotland) Bill (SP Bill 10) as introduced in the Scottish Parliament on 29 February 2012*

# **SOCIAL CARE (SELF-DIRECTED SUPPORT) (SCOTLAND) BILL**

## **EXPLANATORY NOTES (AND OTHER ACCOMPANYING DOCUMENTS)**

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