

Health and Sport Committee call for evidence on the Social Care (Self-Directed Support) (Scotland) Bill

A response by the Association of Directors of Social Work

ADSW is generally in support of the proposed Bill and the changes and principles that underpin it. We have consulted our membership and responded to your consultation questions below. We would however like to stress up-front 4 major concerns we have with the Bill in its current form:

1. The term 'Social Care' has no place in a Bill that aims to shift power and control from organisations to individuals. We feel that the legislation should become the Self Directed Support (Scotland) Act. We have repeatedly made these comments.
2. It is essential, in the interests of identifying a strong, unambiguous national position on responsibilities, that the more contentious issues of the Bill are not relegated to 'Guidance'. For example, the need for 'eligibility criteria' to be applied (see section 9).
3. The Bill places too much emphasis on Direct Payment from the local authority. Self Direct Support can be achieved through an individual budget which includes health, welfare benefit and other monies. Including these other areas of support in the legislation would be more consistent with the agenda around the integration of health and social care and would better reflect policy priorities around best use of resources.
4. There remain concerns about people who lack (some) capacity being unintentionally excluded from directly accessing SDS, people who arguably are those who need most support to exercise choice and control over their life. An unintended consequence therefore may be to increase reliance on guardianship as the solution which is not in keeping with the principles of the Adults with Incapacity legislation and least restrictive options.

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

The objectives of the Bill and its provisions are generally supported.

2. What are your views on the principles proposed?

ADSW would like to see a further principle of 'reciprocity' included. This would entrench in the Bill the responsibility of the recipient of self-directed support to use the resources to meet outcomes mutually agreed with the local authority.

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

The Bill, as it is presented, is contradictory at Section 3. 3 (1) recognises that there are 4 options in how SDS is exercised. Section 3 (2) however defines "relevant amount" only as it pertains to one of those options, namely a Direct Payment. The financial value remains the "relevant amount" in an individual budget even if the person chooses not to take it in the form of a direct payment.

That is a core element of SDS i.e. that people can choose the extent to which they exercise direct control over an (initially indicative) identified budget; and that even if they choose not to manage it directly the knowledge of its value early in the process assists the person to make informed choices on what support may be obtained.

It is essential this is amended otherwise it misinterprets a central tenet of SDS. If people do not have early identification of an indicative budget, before any discussion about the form in which is deployed, it clearly inhibits their engagement in the necessary support planning as key information is omitted.

This needs to be clearly and consistently explained and used in the Bill.

4. Do you have any comment on the proposal that the self-directed support option should be made available to children and families, together with the proposal that the degree of control a child may have over the process should vary with age?

We agree in principle with this, but our member councils have raised a number of issues which highlight the need for further work in this area and clarification. Some examples are below:

- a. While there are some exciting opportunities which the provision in the Bill could provide, to attach it to section 22 could cause significant difficulties. Section 22 covers a wide multitude of childcare situations, from straightforward welfare advice and assistance (where we could be very innovative) through to high profile cases where the child is on the child protection register but we do not have sufficient evidence to pursue compulsory measures of care. The reality is that in some of these situations children can come to serious harm.
- b. In relation to the age of the child, currently children over 12 are considered to have capacity, and be able to express a view, but local authorities are expected, rightly to take their views into account at every stage. This is a reasonable standard, but there should be some guidance for situations where the child wants a different option from the parent/s.
- c. If young people aged 16/17 years lack the capacity to make decisions we hope the current situation, where parents are able to make those decisions until the young person reaches 18 years, would continue.

5. Are you satisfied with the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?

Yes. Section 5(4) is helpful and appropriate.

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

The emphasis should more properly be on the role of Direct Payments as one method of achieving self directed support.

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

There is a major debate that requires to take place across Scotland about the role of the state and the role of carers, recognising that most care and support is provided by unpaid carers but also that resources to meet eligible need are both severely constrained and diminishing. There are circumstances where it is appropriate to make payments to carers and others where it is not. At present there are some restrictions on local authorities that are there for good reason. It is essential that this is articulated whether as part of the Bill or the associated statutory guidance and regulations.

8. Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?

When an individual chooses to employ their own support, they should be able to do so without interference unless there are capacity issues/ other particular concerns that require the local authority to exercise a duty of care.

The current restrictions on the employment of close family members are important to preserve with existing discretion appropriate in exceptional circumstances.

ADSW would also like to see the principle of reciprocity included in the legislation and emphasised in this area of the Bill.

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

There is an increasing gap between assessed need and available resources. Local authorities will still require to set thresholds of eligibility. This should be made explicit in the legislation in order to manage expectation.

10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?

Yes.

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

Not at this stage.

**ADSW
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