

SPICe Briefing

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

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The [Social Care \(Self-Directed Support\) \(Scotland\) Bill](#) was introduced in the Scottish Parliament on 29 February 2012. It is accompanied by a Policy Memorandum and Explanatory Notes, which includes the Financial Memorandum. These are available to view through the Bill's [web page](#).

The Bill makes provision for adults and children to be given choices and control in how they are provided with community care services and support. This follows on from the experience of the use of Direct Payments and a range of policy developments, including the Scottish Government's '[Self-Directed Support: A National Strategy for Scotland](#)', which was published in November 2010. This briefing discusses the policy context to the Bill, current legislative provisions for self-directed support and the provisions in the Bill itself.



CONTENTS

| | |
|--|-----------|
| EXECUTIVE SUMMARY | 4 |
| <i>Introduction</i> | 4 |
| <i>What is Self-Directed Support?</i> | 4 |
| <i>Direct Payments and the Development of SDS in Scotland</i> | 5 |
| INTRODUCTION | 9 |
| PART 1: WHAT IS SELF-DIRECTED SUPPORT? | 9 |
| DEFINING PERSONALISATION AND SDS | 10 |
| BACKGROUND TO THE DEVELOPMENT OF SDS | 10 |
| <i>The development of Direct Payments</i> | 11 |
| <i>The development of Self Directed Support and Individual Budgets</i> | 11 |
| DIRECT PAYMENTS AND THE DEVELOPMENT OF SDS IN SCOTLAND | 12 |
| <i>Direct Payments in Scotland</i> | 12 |
| <i>Taking Self Directed Support beyond Direct Payments</i> | 16 |
| PART 2: THE SOCIAL CARE (SELF-DIRECTED SUPPORT) SCOTLAND BILL | 18 |
| GENERAL PRINCIPLES | 19 |
| <i>Proposals in the Bill</i> | 19 |
| <i>Discussion</i> | 20 |
| SUPPORT FOR ADULT CARERS | 20 |
| <i>Proposal in the Bill</i> | 20 |
| <i>Discussion</i> | 21 |
| SELF-DIRECTED SUPPORT 'FRAMEWORK' PROVISIONS | 21 |
| <i>Options for self-directed support</i> | 22 |
| <i>Choice of option</i> | 24 |
| <i>Specific choice provisions related to children and their families</i> | 26 |
| <i>Provision of information about self-directed support</i> | 27 |
| <i>Review</i> | 28 |
| ASSISTANCE | 28 |
| <i>Proposals in the Bill</i> | 28 |
| FURTHER PROVISIONS ON DIRECT PAYMENTS | 29 |
| <i>Proposals in the Bill</i> | 29 |
| <i>Discussion</i> | 30 |
| DELEGATION | 30 |
| <i>Proposal in the Bill</i> | 30 |
| <i>Discussion</i> | 31 |
| FINANCIAL MEMORANDUM | 31 |
| <i>Summary of the Financial Memorandum</i> | 31 |
| <i>Findings of the University of Stirling study</i> | 33 |
| <i>Responses to the BRIA</i> | 35 |
| SOURCES | 37 |
| APPENDIX 1: CURRENT ADULT SOCIAL CARE AND SUPPORT PATHWAY | 39 |
| APPENDIX 2: KEY DIRECT PAYMENTS STATISTICS | 40 |
| <i>The take-up of Direct Payments</i> | 40 |
| <i>Take-up by different service user groups</i> | 40 |
| <i>Age and ethnicity characteristics of Direct Payment recipients</i> | 41 |
| <i>Personal Assistant or Service provider?</i> | 42 |
| <i>Services provided through DPs</i> | 42 |
| <i>Take-up of DPs by local authority</i> | 43 |
| <i>Value and length of packages</i> | 44 |
| APPENDIX 3: SERVICES THAT CAN BE BOUGHT THROUGH DIRECT PAYMENTS | 45 |
| APPENDIX 4: KEY FEATURES OF THE SDS TEST SITES | 47 |

APPENDIX 5: EXAMPLES OF AREAS THAT MAY BE COVERED BY DIRECT PAYMENT REGULATIONS48

Employment of close relatives as personal assistants48
Gross and net payment of direct payments48
Direct payments for residential accommodation48
Eligibility of those on Community Treatment Orders to receive DPs49

EXECUTIVE SUMMARY

Introduction

Supporting adults and children with community care needs has traditionally been delivered on the basis of an assessment of need, with the local authority arranging, providing and managing the services required. Recent decades have seen the emergence of policies aimed at giving those with support needs greater choice and control over this process and the services they receive, not only from local authorities but also from the private and voluntary sectors.

The Social Care (Self-Directed Support) (Scotland) Bill ('the Bill'), seeks to ensure adults and children (including carers and young carers) are given more choice and control over how their social care needs are met. It would enshrine "self-directed support" (SDS) into legislation, and stipulate the forms of SDS that must be offered by local authorities to those assessed as requiring community care services, namely: Direct Payments; directing the available resource; local authority arranged support; or a mix of the first three options.

Whilst current legislation does not prevent these options from being offered already, and indeed they are being in some areas, the Bill would place a specific duty on local authorities to offer the different options together with other obligations, such as in providing advice and support to service users in order to be able to make the best choice for them.

What is Self-Directed Support?

The term 'self-directed support' has become synonymous with a number of concepts and principles such as 'personalisation', or used interchangeably with a number of service delivery structures including 'direct payments' and 'individual budgets'.

SDS can be seen as a method of pursuing the agenda of increased 'personalisation' in service delivery. Personalisation envisages a shift in the culture of public bodies and professionals from viewing service users as passive recipients of care to genuine partners in making decisions over the services they need. SDS is the means which individuals and families can have informed choice and greater control about the way support is provided to them. The type and level of support should then be decided upon through a process of 'co-production' i.e. "support that is designed and delivered in equal partnership between people and professionals".

The typical mechanism for getting the support required is an 'individual budget', where an allocation of funding is given to an individual after an assessment for support. With this, the individual can then choose to take it as a 'direct payment' (DP) or can use it to choose services which the local authority arranges on their behalf. Alternatively an individual may decide they wish the local authority to manage their support in the traditional way. Local authorities may use these mechanisms in slightly different ways to achieve the same goal.

The briefing presents a short history of the development of direct payments and the development of SDS and individual budgets. In Scotland, SDS has become synonymous with DPs. Whilst there have been a number of developments seeking to widen the concept of SDS beyond that, much of the research and analysis concerning SDS actually relates to DPs, and

there is very little evidence about other forms of deployment. Therefore, the briefing considers the framework for DPs, the process that individuals must enter into to obtain a DP package and the research evidence on their implementation and use.

Direct Payments and the Development of SDS in Scotland

DPs have been available in Scotland, as in England and Wales, since 1996. Following several pieces of legislation, any adult who has been assessed as in need of community care services is eligible to receive a DP, together with the parents of disabled children. Carers are entitled to have their needs assessed by local authorities but are currently unable to receive a DP themselves. Currently, DPs may not be offered to certain people who are restricted by certain mental health or criminal justice legislation (for example those on Compulsory Treatment Orders).

The briefing outlines the process for obtaining a DP, utilising the current National Guidance on SDS, from initial assessment to the receipt of the payment.

Recent statistics on DPs have shown that number of people in receipt of DPs has increased each year from 207 in 2001 to 4,392 in the year to 31st March 2011, representing 8.4 per 10,000 population. The equivalent rate in England is 23.9. The value of DPs has increased each year from £2.1 million in 2001 to £39.8m in 2010 and £50.2m in 2011. But this represents only 1.4% of Scottish local authorities' total net expenditure on social work services in 2009-10. People with physical disabilities are more likely to be in receipt of a DP, though the age profile of DP clients has changed over the past ten years, with a greater proportion now aged 65 and over. In the year to 31 March 2011, 98% of the people who received payments, and their ethnicity was known, were of White ethnicity.

Recent research into the take-up of DPs has shown that those receiving them were generally positive towards them, and that the benefits outweighed any disadvantages. However, the take-up is still low, and there have been differences in the use, management and flexibility of direct payments in different local authorities and for different user groups. The briefing describes additional findings from the research.

In Scotland, impetus to develop SDS beyond DPs followed the then Scottish Parliament Health Committee 'Care Inquiry' report, published in June 2006. This was followed by National Guidance on SDS in July 2007. Whilst this introduced the concept of SDS and the use of IBs, SDS was still largely tied to the delivery of DPs. It did not articulate other forms of SDS. A range of work was undertaken to address this, including the establishment of three test sites to inform the development of SDS, and the publication of a new national strategy for SDS

In 2008, the Scottish Government selected three SDS test sites – Dumfries & Galloway, Glasgow and Highland - with the aim of putting in place mechanisms to facilitate a shift towards SDS. Each site was tasked, primarily, with assessing the impacts of three types of intervention to increase the uptake of SDS - bridging finance, cutting red tape, and leadership and training. An evaluation of the test sites was published in September 2011. It found that those who accessed SDS packages through the test sites were positive about their support and satisfied with the flexibility and choice that SDS had provided. However, it identified a series of challenges, including that in spite of considerable Scottish Government investment in the sites, fewer than 150 new individual SDS arrangements were set up. This suggested that significant time and investment in infrastructure are needed to implement such major policy initiatives. In addition, the paradox at the heart of SDS was a (mis)perception by staff, service users, and carers of SDS as an alternative to, direct services and even, DPs.

The Scottish Government published [‘Self-Directed Support: A National Strategy for Scotland’](#) in November 2010. It was developed jointly with COSLA. It is a ten year strategy aimed at increasing the numbers of people actively directing their support. It was published whilst the SDS Test Sites were still under way and being evaluated.

The Social Care (Self-Directed Support) (Scotland) Bill

The Scottish Government views the Bill as an “enabling Bill” in that it sets down core duties intended to provide a right to individuals to access a range of choices on their care and support. The briefing describes the development of the legislation. It then describes the key provisions in the Bill, with reference to the recent consultation on the draft Bill.

General Principles

Section 1 of the Bill places a duty on local authorities to have regard to three principles – involvement, informed choice and collaboration - when undertaking their functions in relation to community care assessments and the provision of community care services. These principles are to underpin decisions made under the Bill by professionals and individual service users, and to influence how the legislation is implemented. Respondents to the draft Bill consultation were largely supportive of the principles. Local authorities tended to comment that the principles were already applied by them as part of a modern social work service, whilst user-led and support organisations tended to argue that the principles were not a reflection of current social work practice.

Support for adult carers

Under the 1968 Act (in relation to adults) and the 1995 Act (in relation to children) adult carers are able to request an assessment of their own needs in relation to their caring responsibilities. However, section 2 of the Bill would provide local authorities with a discretionary power to provide these services following the assessment. The majority of respondents to the draft Bill consultation supported the provision, though several wanted the Bill to place a duty on local authorities to provide services to carers rather than a discretionary power. Concerns raised surrounded the potential cost of the provisions and the current availability of carer’s assessments.

Self Directed Support ‘Framework’ provisions

Section 3 of the Bill provides for the four options for SDS: Direct Payments; directing the available resource; local authority arranged support; or a mix of the first three options. The majority of responses to the draft Bill consultation were in favour of the options and supported the idea of a menu of options, with no single option being a default. A minority were against the list of options because they were against the SDS policy as a whole. The briefing provides more analysis of this and on comments on DPs in particular.

Sections 4, 6 and 7 of the Bill apply to the three groups of supported people who can receive SDS in the Bill – adults, adult carers and children (and/or their families), including young carers. All three sections require the authority to give the supported person the opportunity to choose one of the options for SDS, but provide a process for dealing with situations where the individual may not be eligible for a DP. Whilst these provisions were generally welcomed by respondents to the draft Bill, some were concerned there was room for local authorities to ignore their responsibilities to act on the choice of the individual. They sought a more transparent decision-making process, appropriate scrutiny and an appeals system, or, ideally, a process independent

of the local authority. The Scottish Government has said it does not plan to do so, but said it will address such matters in guidance.

Section 9 of the Bill would place a duty on the local authority to give effect to the option for SDS chosen by the service user. However, the Scottish Government has also stated that the Bill will not “replace or overrule legislation to protect people at risk of harm, nor does it affect the duty on local authorities to arrange suitable and adequate support”.

There are specific choice provisions concerning children and their families. Section 7 of the Bill stipulates that:

- children aged 16 and 17 will be able to choose and manage all the available SDS options
- where a child is under 16 the parent or the person with parental responsibilities will be able to choose the relevant SDS option, and they will have full powers to manage the available resource or DP where that is their preference
- children aged 12 or over will be presumed to be of sufficient age and maturity to form a view as to how they wish to receive their support

The analysis of the consultation on the draft Bill found that of those that commented on the provisions relating to children, there was overwhelming support for the provisions. However, in practical terms calls were made for better support for children and young people and information for children and parents, and a request from local authorities for guidance to support them in dealing with some difficult practical issues e.g. when the child and parent disagree.

Section 8 places duties on the local authority to provide information and advice to those where a person is given the opportunity to choose from the four SDS options. The duty includes signposting the individual to independent sources of such information. Comments on similar provisions in the draft Bill concerned the potential costs of this, together with a number of practical issues.

Review

Section 11 would place 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. The duty would apply after an individual has made a choice and where the local authority becomes aware of a material change in the person's circumstances after the choice has been made. Overall, the analysis found that respondents considered the review process to be reasonable, and that it reflected good practice. However, the analysis reported a minority concern about small numbers of people regularly changing their minds and incurring costs to local authorities.

Assistance

Section 15 would place a new section into the 1968 Act. When a person's needs are being assessed it would place a duty on a local authority to take reasonable steps to identify and involve people (usually relatives and friends) to assist the individual. However, this would only apply for those where it appears there would be a benefit to doing so because of a mental disorder or difficulties in communicating due to physical disability. The same provision is made in section 5, but this relates to supporting the individual making a choice of the four SDS options. These 'assistance' provisions were significantly different in the draft Bill, and there was a significant amount of comment on them. It appears that the Scottish Government has reflected on these and developed a different solution to the issue.

Further provisions on Direct Payments

The Bill would consolidate existing legislative provisions related to DPs. Certain aspects of the provisions relate to DPs are on the face of the Bill, including on what a local authority should do in relation to the choices if a person is ineligible. In addition, section 14 of the Bill makes provision for a local authority to require repayment, in whole or in part, of a DP if it has been used on things other than the assessed services or support required, or if the person has contravened any regulations made under section 13 of the Bill. Section 13 of the Bill, as intimated, provides for a number of circumstances where Ministers may make regulations on the mechanics of DPs and their management, including. Further detail on what the Scottish Government intends is contained in the briefing. Many of the comments that respondents to the Scottish Government consultation made were in relation to specific aspects of how DPs operate currently, and a desire that the problems of the past are not replicated. As these are matters that would be taken forward through regulations, and thus would be debated by Parliament separately, this is not a matter directly for this briefing. However, four of the key areas of possible regulation are outlined in Appendix 5.

Delegation

Section 18 of the Bill would amend the Community Care and Health (Scotland) Act 2002, which would allow Ministers to amend the regulations made under section 15 of that Act. These regulations dictate which functions may be delegated between NHS bodies and local authorities. The Scottish Government intends to use this so that where 1968 Act social care functions are being delegated to NHS bodies by local authorities, the SDS Bill's duties will automatically follow alongside the 1968 Act duties. This will have the effect of requiring health authorities to implement the Bill's duties and will have the full range of SDS powers where they are assuming social care functions. The delegation provision in the Bill is stronger in its effect than that consulted on in the draft Bill, as the draft provision did not have the effect of placing the full range of SDS duties on the NHS. This had been called for by local authorities in particular. However, a wider point was made by a number of respondents, that for SDS to be successful would require cooperation beyond health but to housing and education as well.

The Financial Memorandum

The Scottish Government considers it to have a relatively narrow focus, but notes the cost implications for transforming culture, systems and approaches to social care provision as a result of the Bill and the strategy. As a result the Financial Memorandum seeks to draw a distinction between the funding it is putting in place for the implementation of the Bill, should it be passed, and those that are related to the wider strategy.

The costs directly associated with the Bill (amounting to £1.412m over the years 2012-13 and 2013-14) are limited to specific training on the duties contained in the Bill (to include both local authority and NHS staff), and joint working with NHS staff. The costs indirectly associated with the Bill (amounting to £41.308m over the years 2011-12 to 2014-15) are those associated with the wider strategy, but which would have an impact on the implementation of the Bill.

The Scottish Government has identified a number of potential areas for recurring costs associated with the Bill's 'framework' provisions, but believes these will be offset by a number of potential recurring savings. These are further discussed in the briefing, but overall, the Scottish Government believes that the long term impact of the Bill will be cost neutral.

The briefing also summarises the views of respondents to the draft Bill on the financial implication of the provisions and also the University of Stirling study which looked into the costs associated with the development of SDS.

INTRODUCTION

The support of adults and children with community care needs has traditionally been delivered on the basis of an assessment of need, with the local authority arranging, providing and managing the services required. Recent decades have seen the emergence of policies aimed at giving those with support needs greater choice and control over this process and the services they receive, not only from local authorities but also from the private and voluntary sectors.

The Social Care (Self-Directed Support) (Scotland) Bill ('the Bill'), seeks to ensure adults and children (including carers and young carers) are given more choice and control over how their social care needs are met. It would enshrine "self-directed support" (SDS) into legislation, and stipulate the forms of SDS that must be offered by local authorities to those assessed as requiring community care services, namely:

1. *Direct Payments (DPs)* - a payment in lieu of services provided directly to individuals, assessed as being in need of community care services, to arrange their own support. These have been available through legislation since 1996.
2. *Directing the available resource* - where the user selects the support that they wish, using the budget available to them¹, though where the local authority arranges matters on the individual's behalf but under their direction. This may include a service provider managing the resource on the service user's behalf. The principle here is that the resource should follow the individual and their wishes.
3. *Local Authority 'arranged' support* - where the authority arranges support on the user's behalf to meet their needs (this is the traditional method of service delivery).
4. *A mix of the above options for distinct aspects of the user's support.*

Whilst current legislation does not prevent these options from being offered at present, and indeed they are being offered in some areas, the Bill would place a specific duty on local authorities to offer the different options, together with other obligations, such as providing advice to service users in order to support them in making that choice. The Bill aims to support efforts to promote greater personalisation in service delivery, where the individual has more control over the service provided to meet their needs, moving away from the traditional model of provision where the service user is often seen as a passive recipient of care. The efforts in this area are closely linked to other Scottish Government policies and priorities, including the integration of health and social care, the NHS Quality Strategy², the strategies for carers and young carers, the dementia strategy and 'Getting it right for every child' (GIRFEC)³.

The first part of this briefing will consider what is meant by SDS, and how it relates to various concepts and service delivery mechanisms. This will be followed by a discussion of recent policy and legislation in this area with a focus on Direct Payments. Finally, the provisions in the Bill will be outlined, with reference to the recent consultation on the draft Bill.

PART 1: WHAT IS SELF-DIRECTED SUPPORT?

The term 'self-directed support' (SDS) has become synonymous with a number of concepts and principles such as 'personalisation', or used interchangeably with a number of service delivery structures including 'direct payments' and 'individual budgets'. This is discussed in greater

¹ Also referred to as Individual Budgets, Individual Service Funds and Personal Budgets.

² Aims to put people at the centre of the NHS. Its policies on self-management and person-centred care are to work to the same outcomes as is expected from self-directed support.

³ This aims to improve outcomes for children and ensure that all agencies respond appropriately to needs and risks.

detail by Manthorpe et al (2011, p 10-19), who, in a recent [literature review](#) commissioned by the Scottish Government, found that many definitions and descriptions of SDS are “unclear and rely on imprecise terms”. Such wide, or “elastic”, definitions can be advantageous as they can then take account of local and cultural circumstances. However, they also have disadvantages, as they can lead to confusion and to difficulties in comparing different systems of SDS. Therefore, it is important to clarify what the term means in the context of the Bill and the Scottish Government’s wider strategy for developing SDS.

DEFINING PERSONALISATION AND SDS

SDS can be seen as a method of pursuing the agenda of increased ‘personalisation’ in service delivery. Manthorpe et al (para 2.9-2.14) discuss how ‘personalisation’ has been defined and used. However, the Scottish Government (2010, p 9) applies the definition presented by its Changing Lives Service Development Group (2009), namely:

“It enables the individual alone, or in groups, to find the right solutions for them and to participate in the delivery of a service. From being a recipient of services, citizens can become actively involved in selecting and shaping the services they receive.” (p 10).

Thus, ‘personalisation’ envisages a shift in the culture of public bodies and professionals from viewing service users as passive recipients of care to genuine partners in making decisions over the services they need. SDS is the means which individuals and families can have informed choice and greater control about the way support is provided to them. This is reflected in the Scottish Government’s definition of SDS, which itself is articulated in its SDS [national strategy](#). It describes SDS as:

“...the support individuals and families have after making an informed choice on how the individual budget is used to meet the outcomes they have agreed. SDS means giving people choice and control.” (Scottish Government, 2010, p 7).

The type and level of support should then be decided upon through a process of ‘co-production’ i.e. “support that is designed and delivered in equal partnership between people and professionals” (2010, p 7). Again, this mirrors the wider goal of personalisation.

The typical mechanism for getting the support required is an ‘individual budget’, which is defined as “the allocation of funding given to [service] users after an assessment for support” (2010, p 65). With this, the individual can then choose to take it as a ‘direct payment’ (see [‘Introduction’](#)) or can use it to choose services which the local authority arranges on their behalf. Alternatively an individual may decide they wish the local authority to manage their support in the traditional way. Local authorities may use these mechanisms in slightly different ways to achieve the same goal.

BACKGROUND TO THE DEVELOPMENT OF SDS

In the recent past, SDS in Scotland has become synonymous with Direct Payments (DPs), but current Scottish Government policy and the proposals in the Bill consider it to have the broader meaning outlined above. It is interesting, therefore, to reflect on the background to both DPs and Individual Budgets (IBs).

The development of Direct Payments

As noted above SDS has developed along with the agenda of personalisation. Rummery et al (2012, para 1.5) notes that SDS is not a particularly new policy development:

“It can be usefully set against an international background, in which there are designs across many developed welfare states to move away from state-provided services for disabled people towards more individualised, personalised, and user-centred services. The benefits of such schemes include improved health and social wellbeing, greater independence, improved control over service delivery, improved ability to combine health and social care support, improved ability to combine formal and informal support, and more cost-effective provision of services and support.”

DPs have been described as the first step on the road to personalisation (Scottish Government, 2010), as they seek to give service users more control through being able to purchase their own support.

There is a strong link between the development of DPs and the disability movement. The Scottish Government (2010, p 11) notes that the origins of DPs can be found in the Independent Living movement in the United States, and taken forward in a UK context through a group of disabled activists in Hampshire. Riddell et al (2006a, p 1) notes that DPs began in the UK as pilots, where service users negotiated with their local authorities to take control of financial resources. In England this tended to be done through indirect, third party or brokerage arrangements as there was no legal provision for making direct payments. In Scotland the situation was slightly different as under the Social Work 1968 Act, local authorities are able to make cash payments to those in need. The movement towards DPs in the UK coincided with a range of other policy developments, including that behind the National Health Service and Community Care Act 1990. One of the aims behind this was the promotion of a mixed economy of welfare where social services would be delivered through public, private and voluntary providers.

DPs themselves were eventually enshrined in legislation in England, Wales and Scotland in 1996. Over the following years attempts were made to encourage take up, following a sluggish start. The eligibility criteria were also widened to encompass more service user groups. Despite such efforts the take-up in Scotland has lagged behind that of England. (See [‘The take-up of Direct Payments’](#), below).

The development of Self Directed Support and Individual Budgets

Despite steps taken to encourage the take-up of DPs, it has been accepted that their success has been limited in practical terms. The Scottish Government notes:

“Experience has ranged from good practice – giving people freedom to meet outcomes flexibly – to quite rigid “time and task” approaches which in reality offer little more than arranged services.”⁴ (Policy Memorandum, para 46).

In addition, given the responsibilities that came with them, DPs did not suit all those who were eligible. In addition, evidence suggested that the system for DPs varied from area to area, with local authorities still holding the reins on implementation and funding. One of the key organisations that sought greater influence for service users was *In Control*. It was formed in 2003 in Wigan by a small number of families seeking better support for them and their disabled family members. Its aim is “to create a fairer society where everyone needing additional support

⁴ “Time and task” is used to describe approaches whereby a certain number of hours of care are provided to assist a person with a certain list of prescribed task.

has the right, responsibility and freedom to control that support”, and it was pivotal in the development of SDS in England.

In Control piloted the use of IBs amongst people with learning disabilities in 2005. As noted above, under this system an allocation of funding is given to users after an assessment which should be sufficient to meet their assessed needs. Another key feature of IBs is that this sum can be brought together with other sources of funding, such as benefits and other social services funds to give a final IB. The pilots were expanded in 2006 to include older people and those with physical disabilities. In January 2006, the UK Department of Health (the DoH) published [‘Our health, our care, our say’](#). It announced plans to expand the eligibility for DPs but acknowledged they were not appropriate in every case. It announced the intention of rolling out IBs if the pilots were successful. In England, the terminology changed from IB to ‘personalised budget’ (PB). PBs were rolled out across England from 2008, with a target of providing every service user with one by 2013. (Community Care, 2011) Thus IBs became the mechanism for accessing all forms of SDS, and in developing them many schemes in England and latterly in Scotland have used the [seven step plan](#) developed by *In Control* (2011) to support service users in taking advantage of SDS. The key developments in Scotland are discussed below.

DIRECT PAYMENTS AND THE DEVELOPMENT OF SDS IN SCOTLAND

As noted above, the term self-directed support has become synonymous with DPs in Scotland. Whilst there have been a number of developments seeking to widen the concept of SDS beyond that, much of the research and analysis concerning SDS actually relates to DPs, and there is very little evidence about other forms of deployment (Manthorpe et al (2011, para 1.5). Therefore, it is useful to consider the framework for DPs in Scotland, the process that individuals must enter into to obtain a DP package and the research evidence on their implementation and use.

Direct Payments in Scotland

The statutory basis for Direct Payments

The effect of the Community Care (Direct Payments) Act 1996 was to amend the Social Work (Scotland) Act 1968 (the 1968 Act), which is the basis of social work legislation in Scotland. The legislation came into force in 1997, and introduced DPs as an alternative to local authority arranged community care services. Initially DPs were made available to 18-65 year olds who had been assessed as requiring community care services. The Community Care and Health (Scotland) Act 2002 and related Regulations further amended the provisions and made it mandatory for all community care service users to be offered a DP by April 2003. Thus those aged 65 and over, 16-17 year olds and parents of disabled children all became eligible. Children have been able to access DPs since 1996, through section 22 of the Children (Scotland) Act 1995 (the 1995 Act). Unlike in England carers themselves are not eligible for direct payments, though are provided for in the Bill currently before Parliament. The full legislative framework is outlined in [Annex B](#) of the Scottish Government’s national guidance on SDS (2007).

It should be noted that through this and other legislation, local authorities have the powers they require to arrange IBs and allow service users more choice and control in how these are spent, either directly or through the auspices of the local authority.

Eligibility for Direct Payments

The following service user groups are eligible for DPs in Scotland:

- Disabled adults to purchase community care services
- Disabled people aged 16 and 17 to purchase children's services
- Disabled people with parental responsibility to purchase the children's services their children have been assessed as needing
- Parents and people with parental responsibility for a disabled child to purchase the services the disabled child has been assessed as needing
- Disabled adults and 16 and 17 year olds to purchase housing support services
- Older people aged 65 years and over who are assessed as needing community care services due to infirmity or age (those aged over 65 or over who are receiving free personal and nursing care can arrange for the personal care element of the package to be made as a DP)
- Attorneys and guardians, with the relevant powers can receive direct payments on behalf of people who are unable to give consent to arranging their own services
- Parents and people with parental responsibility of children in need (including young carers)

Carers are entitled to have their needs assessed by local authorities but are currently unable to receive a DP themselves. In some circumstance, however, they may be managing them on behalf of the person they care for, or may be the beneficiary of a DP through an individual using it to purchase respite.

Currently, DPs may not be offered to certain people who are restricted by certain mental health or criminal justice legislation (for example those on Compulsory Treatment Orders). People in these groups are required to receive specific community care services. However, it is deemed that offering them DPs in lieu of those services would not give a sufficient guarantee that the person would receive the services required⁵.

The process for obtaining Direct Payments

This section takes account of the [national guidance on SDS](#) (Scottish Government, 2007) to explain the process for obtaining a DP. This guidance introduced the concept of SDS and encouraged the use of IBs in ascertaining the value of a DP. The following description discusses the use of IBs, but it is important to note that this varies across local authorities who may use other mechanisms in this process. The pathway described below is shown diagrammatically, in the case of adult care and support, in [Appendix 1](#), below.

Those eligible for DPs must have been assessed as requiring services, must be capable of managing the DP, with or without assistance, and must give their consent to receiving them. Where an individual is under 18 then those with parental responsibility are able to consent to the DP. Where the individual is over 18 and unable to give their consent attorneys and guardians can give consent on the individual's behalf. The national guidance is also clear that as part of the assessment process service users should be given support (including from local support groups and advocates) in making their way through the process. All local authorities have DP units (also known as SDS units) to offer such support.

⁵ More detail on those ineligible to receive DPs is contained in [Annex B](#) of the Scottish Government's national guidance on SDS (2007).

In terms of assessments, the 1968 Act recognises the role of the local authority in determining where there is a need for the provision of community care services and how that need should be met. There is a two-stage process. First, the assessment of needs and secondly, taking into account the results of that assessment, the local authority decides whether the individual's needs require the provision of services. Eligibility criteria are used during the second stage. The local authority determined where the person's needs are critical, moderate, substantial or low⁶. They then used by local authorities to determine whether the individual requires a service to be put in place in order to meet their needs.

In ascertaining the value of the IB, local authorities must satisfy themselves that the resource is sufficient to enable the recipient to secure support of a standard that will satisfy the local authority that the person's needs are being met. It should also meet the cost of providing a service which is of an equivalent standard to that which the local authority would provide. In making the calculation local authorities use systems such as the Indicator of Relative Need in achieving an equitable use of budgets according to assessed needs. However, in constructing the overall value, the case manager can look at other funding streams, including Disability Living Allowance, Carers Allowance and NHS funds to meet continuing care needs. Local authorities can also seek a financial contribution from those receiving DPs to meet the cost of any services in the same way as those accessing services through the more traditional route can be asked to contribute. There is also discretion for local authorities to charge for services for children based on the financial means of the parents. Such elements should also be taken into account of in the IB calculation.

With the value of the IB decided the service user can then take that as a DP and purchase services through a service provider or by employing a Personal Assistant (PA). Alternatively, they may choose to have some or all of their services delivered through the traditional way. Should the individual choose to employ one or more PAs then it would be expected that the local authority will ensure that the package is costed to take account of all necessary employment costs to ensure the smooth running of the package. As regards who can be a PA, family members are not normally eligible to take on this role, unless there are exceptional circumstances (e.g. the recipient is receiving palliative care), and the local authority considers it to be appropriate (see Scottish Government, 2010, p 57).

A personal plan describing how an individual's assessed needs will be met should be agreed between the individual and the assessor. A separate contract spelling out which of these will be met through DPs will be agreed.

The [national guidance on SDS](#) is wide ranging and provides more information concerning the above process not only for professionals but also service users. It also considers the types of [monitoring](#) that should take place by local authorities both in a service and financial sense, and the responsibilities of service users therein. It emphasises the importance of assessment and review and also what should happen [in the event things go wrong](#), either from a local authority perspective (e.g. the individual is not receiving the support they need) or from the standpoint of the service user (e.g. the quality of the service they have received from the local authority).

Under the model outlined above, extending SDS options to provide more flexibility, such as the service user directing how they wish their IB to be spent but with this being arranged by the local authority, can be inserted into the choices the service user has once the IB has been established.

⁶ The eligibility criteria are defined in the [SDS National Strategy](#) (p 19-20)

The take-up of Direct Payments

Statistics on DPs have been collected since 2001 by means of an annual census sent to local authorities. These statistics relate to everyone who received a DP during the relevant financial year and from 2010 onwards have been collected at the individual level, having previously been collected through an aggregate data return.

The latest [statistical bulletin](#) was published in September 2011. [Appendix 2](#) contains a discussion of some of this data, together with findings of recent research, in the following areas: overall take-up; take-up by different service user groups; age and ethnicity; Personal Assistants; the services provided through DPs; and, the value and length of these packages. However, some key points from this are below:

- The number of people in receipt of DPs has increased each year from 207 in 2001 to 4,392 in the year to 31st March 2011.
- In England, there were a total of 125,000 services users with a DP in 2010-11. This represents a rate of 23.9 per 10,000 population⁷. The equivalent rate in Scotland is 8.4.
- The value of direct payments has increased each year from £2.1 million in 2001 to £39.8m in 2010 and £50.2m in 2011. However, Scottish local authorities' total net expenditure on social work services in 2009-10 was £2.8bn. Thus, the value of DPs in 2009-10 was the equivalent of 1.4% of total net expenditure on social work services.
- 40% of people receiving DPs had a physical disability and 26% had a learning disability. A further 3% had both a physical and a learning disability.
- The age profile of DP clients has changed since 2001, with a greater proportion of recipients now aged 65 or over. In 2001 only 7% of recipients were in this age group, compared to 33% of clients in 2011.
- In the year to 31 March 2011, 98% of the people who received payments and their ethnicity was known, were of White ethnicity (3,588 people).
- 52% of all packages of DPs were for personal care, whilst 1 per cent was for equipment and temporary adaptations).
- 39% of all packages of DPs involved a personal assistant, whilst 34% involve commissioning services from a service provider (See [Appendix 3](#) for a list of services that can be bought through DPs).

This data collection is currently being reviewed and it is anticipated that, from 2013 data on, the four SDS options outlined in the Bill will be collected as part of a wider Social Care survey. This will allow changes in SDS uptake following the bill to be monitored, and will allow for comparisons between Local Authorities to see which types of SDS are emerging in different areas. (Scottish Government, 2012).

Recent research findings into the operation of Direct Payments

Evidence has shown that those in receipt of DPs were generally positive towards them, and that the benefits outweighed any disadvantages (Homer and Gilder, 2008 and Ridley et al, 2011). Reviewing the research base, Rummery et al (2012, para 1.6) found that DPs were associated with: improved health and social wellbeing; the ability to combine health and social care support; combining formal and informal care more effectively; greater independence and control over services; and, more cost-effective delivery of services.

⁷ Using mid-year population estimates for 2009-10 (Office of National Statistics, 2011)

However, in research commissioned by the then Scottish Parliament Health Committee⁸, Riddell et al (2006b) identified a number of issues with the implementation of DPs, including:

- the low take up in Scotland, particularly when compared to England, and the differences in use of direct payments in different local authorities and for different user groups
- local authorities not shifting funds from traditional services into direct payments
- training for front-line staff was patchy and social workers report a lack of knowledge and confidence
- local authorities had major anxieties about financial accountability issues
- social work staff had concerns about how the local authority can guarantee a high quality of care since they have no control over PAs
- local authority case studies illustrate the micro-cultures within particular settings which either inhibit or support the development of direct payments

Rummery et al (2012, para 1.7-1.8), following a literature review, found a number of ideological and practical concerns about the way they have been implemented, including:

- objections to the marketisation of support services
- concerns about the destabilisation of statutory services, including those aimed at adults for whom DPs are unsuitable
- mixed evidence for improved outcomes when compared with statutory services
- inequitable take up amongst different groups, particularly those with learning disabilities, older people and those from BME communities
- the lack of awareness from front line workers and managers of DPs

From the analysis of DPs above it is also clear that there have been issues in bringing together different funding streams as part of an IB, together with the possibility that local authorities were using different processes for DPs compared to other social service provision.

Research has also shown that there are a number of factors that can help increase the take-up of DPs. In research for the Scottish Government, Homer and Gilder (2008) carried out interviews with service users and local authority staff, and reviewed developments in three local authority areas. It found that the key strategic enablers included effective local authority leadership, a dedicated SDS team to support SDS clients and the extent of social work training on SDS was widely recognised as a significant factor in the take up of SDS. At a service user level, Manthorpe et al (2011) identified a number of enablers from the available literature, including:

- information on self-directed support needs to be accessible and widely available
- comprehensive support for users and carers can help when they are thinking about change and what might be needed over time
- brokers and advocates who are independent of the local authority can help with the details and also in challenging the local authority

Taking Self Directed Support beyond Direct Payments

In Scotland, impetus to develop SDS beyond DPs followed the then Scottish Parliament Health Committee '[Care Inquiry](#)' report, published in June 2006. Taking account of the research undertaken by Riddell et al (2006b) and the evidence received, the Committee recommended a more proactive promotion of DPs overall and that the then Scottish Executive encourage a better take-up, particularly in the areas where DPs were not as prevalent. The Committee also

⁸ As part of the then Committee's Care Inquiry. See p 17, below.

called for the guidance to, amongst other matters, stress the importance of service user led involvement in the management of packages.

As noted above, the Scottish Government published [national guidance on SDS](#) in July 2007. This replaced previous guidance on DPs and introduced the concept of SDS and the use of IBs. However, the creation of the IB was focussed on the individual contracting with a PA or another service provider. It did not articulate other forms of SDS such as service users using the IB to direct what services they wanted but through the auspices of the local authority. Thus SDS was still largely tied to the delivery of DPs at this stage. However, a range of work was undertaken to address this, including the establishment of three test sites to inform the development of SDS, and the publication of a new national strategy for SDS. It also set up a Self-Directed Support National Reference Group in 2009, which considered legislation in order to fill in any gaps identified concerning eligibility for DPs and to enshrine SDS in statute.

The SDS Test Sites

In 2008, the Scottish Government selected three SDS test sites – Dumfries & Galloway, Glasgow and Highland. As Ridley et al (2011) describe, each of the sites was funded over 2 years and 3 months (January 2009 to 31 March 2011) with the aim of putting in place mechanisms to facilitate a shift towards SDS. Each site was tasked with assessing the impacts of three types of intervention to increase the uptake of SDS - bridging finance, cutting red tape, and leadership and training. In addition a number of other considerations were identified, including: how SDS can be used by all client groups and how it relates to carers and respite; how SDS relates to other funding streams; and the role of advocacy and support services. Each site was asked to produce action plans to specify how they would implement the brief set by the Scottish Government, though they were given some freedom to interpret it. The funding allocated to each site was £170k/£510k/£510k from 2008-09 to 2010-11. A brief description of the features of each test site is provided in [Appendix 4](#).

The Scottish Government commissioned an evaluation (Ridley et al, 2011) to assess the impact of the interventions used in the test sites. The evaluation lasted two years and used a mixture of methods to obtain the views of service users, carers, professionals and various national organisations. The evaluation had three stages:

1. Baseline – gathering data to provide a better picture of events prior to implementing the sites
2. Process and impact assessment - gathering data about the processes and impact of implementing SDS within each site
3. Reflection on policy and practice implications – consideration of the findings from each test site at an aggregate level to make conclusions that are supported by information and evidence from other studies

The key findings from each stage are reported in the [evaluation report](#) (Ridley et al, 2011). However, the main findings from the evaluation were:

- Those who accessed SDS packages during the test sites, were positive about their support and satisfied with the flexibility and choice that SDS had provided.
- The test sites improved access to SDS especially for people with learning disabilities, but did little to promote SDS to other groups, for example, those with mental health problems, from Black or Minority Ethnic groups, older people, those who have addictions or homeless people.
- In spite of considerable Scottish Government investment in SDS test sites, fewer than 150 new individual SDS arrangements were set up. This suggests that significant time and investment in infrastructure are needed to implement major policy initiatives.

- None of the test sites had directly addressed issues around mixed funding packages, so the potential to integrate or join up funding streams e.g. with the NHS, could not be assessed.
- The paradox at the heart of SDS was a (mis)perception by staff, service users, and carers of SDS as an alternative to, direct services and even, Direct Payments (DPs). New and parallel SDS systems to those delivering DPs were created by the test sites.
- Active promotion of SDS, including DPs, increased the numbers of people opting for payments instead of direct services to pay for more flexible, individualised care and support.
- All test sites invested in specialist SDS teams and project managers to support development of new systems and administrative processes, as well as generating a body of practice expertise. Consequently, some service users, carers and professionals perceived SDS as separate to both Social Work support and DPs.
- None of the test sites was able to cut 'red tape' or reduce bureaucratic or administrative requirements. Instead, by designing new support systems for SDS, they experienced a (possibly temporary) increase in bureaucracy associated with assessment and resource allocation.
- Only one of the test sites used test site funding to invest in strategic service development.
- By the end of the test site period the 3 local authorities had resolved to move towards mainstreaming SDS with support from their senior management and Councillors.

The evaluation report then proceeded to make [24 recommendations](#) about taking SDS forward which covered the three areas identified by the Scottish Government, but also a range of other areas, including: better integration of SDS and DPs; the allocation of resources within local authorities to take SDS forward; increasing the awareness of services users and staff about the range of options available; a deliberate focus on ensuring that all service users are able to consider SDS as an option; and creating monitoring and reporting systems taking in the full range of SDS options.

The National Strategy for Self Directed Support

The Scottish Government published '[Self-Directed Support: A National Strategy for Scotland](#)' in November 2010. It was developed jointly with COSLA. It is a ten year strategy aimed at increasing the numbers of people actively directing their support. It was published whilst the SDS Test Sites were still under way and being evaluated. A draft strategy was put out to consultation

The strategy defines SDS in the terms outlined at the start of this briefing, and seeks to create a cultural shift in how local authorities and others view SDS, giving service users more control, choice and flexibility in directing their own care. It considers the processes (e.g. how to agree outcomes and allocate resources), the mechanisms (e.g. clarifying IBs and DPs, and developing the PA workforce) and creating the shift (e.g. changing the relationship between service users, commissioners and providers, and how SDS will affect specific groups). It contains [24 recommendations](#) to be taken forward by stakeholders.

PART 2: THE SOCIAL CARE (SELF-DIRECTED SUPPORT) SCOTLAND BILL

The Scottish Government views the Bill as an “enabling Bill” in that it sets down core duties intended to provide a right to individuals to access a range of choices on their care and support. Within this overall aim, the Policy Memorandum (PM) (para 16) lays out the key policy objectives of the Bill, to:

- ensure that services and support become more flexible and responsive to people’s needs
- drive a cultural shift around the delivery of support that views people as equal citizens with rights and responsibilities rather than people who receive services
- require local authorities and the NHS (where social care functions are delegated to them) to ensure that the options for SDS and associated duties are part of the assessment and review process for every service user

In developing its proposals, the Scottish Government set up a SDS National Reference Group in 2009. There was then an initial consultation on outline proposals for legislation between March and June 2010. This was then followed by a further consultation on a draft Bill between December 2010 and March 2011. During this period the Scottish Government held a number of events with a range of stakeholders. In addition it also set up a Bill Steering Group with the remit of: advising on the opportunities and challenges of the Bill; guiding the Bill’s development; commenting on the potential impact on practice; and to comment on any work investigating the financial costs and benefits of the Bill. (See Policy Memorandum, para 9-15 for further information).

This part of the briefing describes the key provisions in the Bill, using the [analysis](#) (Scottish Government, 2011b) of the consultation responses on the draft Bill (Scottish Government, 2011c) and the Scottish Government’s [response](#) to these (2011d) to outline the main themes and areas of debate that arose.

GENERAL PRINCIPLES

Proposals in the Bill

Section 1 of the Bill places a duty on local authorities to have regard to three principles – involvement, informed choice and collaboration - when undertaking their functions in relation to community care assessments and the provision of community care services, under the Social Work (Scotland) Act 1968, the Children (Scotland) Act 1995 (the 1995 Act) and the Bill itself. Table 1 outlines the principles and the intention behind them:

Table 1: General principles of the Bill

| Principle | Provision in the Bill | Intention |
|------------------------|--|--|
| Involvement | A person must have as much involvement as the person wishes in relation to: a) the assessment of the person’s needs for support and services, and; b) the provision of support or services for the person. | To back up current best practice in assessment and support the determination and meeting of agreed outcomes. |
| Informed Choice | A person must be provided with any assistance that is reasonably required to enable the person: a) to express any views the person may have about the options for self-directed support, and; b) to make an informed choice when choosing an option for self-directed support. | This is to facilitate genuine and informed choice for the individual. Intrinsic to this is the provision of good quality support and information. |
| Collaboration | A local authority must collaborate with a person in relation to: a) the assessment of the person’s needs for support or services, and b) the provision of support or services for the person. | There should be a mutual, inclusive relationship between the professional and service user in developing and agreeing a care and support plan together with a set of goals and outcomes services users and carers wish to achieve. |

Source: Policy Memorandum (2012, para 18-20)

The Scottish Government expects these principles to underpin decisions made under the Bill by professionals and individual service users, and to influence how the legislation is implemented. If ever issues arise in implementing provisions in the Bill, then it will be assumed that the parties involved will have regard to the principles when resolving them.

Discussion

The principles in the Bill are very similar to those the Scottish Government consulted on in the draft Bill. This reflects the fact that the vast majority of respondents were supportive of the principles. (Scottish Government, 2011b, para 4.1). There were a number of differences in the draft Bill, concerning the wording of the principles and level of detail, which it would appear have been taken account of in drafting the Bill as introduced.

An interesting finding from the draft Bill consultation analysis was that whilst local authorities would tend to comment that the principles were already applied by them as part of a modern social work service, user-led and support organisations tended to argue that the principles were not a reflection of current social work practice. (Scottish Government, 2011b, para 4.2). Other comments that have not been taken forward included:

- the principles should focus on a rights-based approach and not on the discharging of duties by local authorities
- the principle of informed choice should make specific reference to advocacy
- there should be mention of the five principles⁹ of the Adults with Incapacity (Scotland) Act 2000
- there should be a principle related to enabling the service user to “be *In Control*”
- there should be a principle that local authorities avert any conflict of interest as commissioners and providers

SUPPORT FOR ADULT CARERS

Proposal in the Bill

Under the 1968 Act (in relation to adults) and the 1995 Act (in relation to children) adult carers are able to request an assessment of their own needs in relation to their caring responsibilities. However, section 2 of the Bill would provide local authorities with a discretionary power to provide these services following the assessment.

Under the provision, following the assessment, the local authority would be required to consider its outcome and decide if the carer has needs in their own right as regards their ability to care. If the local authority does consider this, it would then consider whether those needs could be met in whole or in part by support. If the authority decides that support would assist the carer in their responsibilities, then it could provide support to them. If the local authority chooses to provide support then the carer would be given the choice of the four SDS options (see below). It is important to note that this only relates to the carer’s ability to care and not whether they themselves have community care needs, which would need to be assessed separately. In addition the provision does not apply to carers who are employed to provide care or who volunteer with a voluntary organisation to provide the care.

⁹ The five principles are: benefit; minimum necessary intervention; take account of the wishes of the adult; consultation with relevant others; and, encourage the adult to exercise residual capacity.

For the Scottish Government, the provision supports its efforts outlined in the [Carers Strategy](#) (Scottish Government and COSLA, 2010). The Scottish Government does not envisage any additional costs from the measure for itself, as the intention is to unlock more creative ways to support carers beyond what might be viewed as the “traditional” response of a period of respite for the supported person. Neither is it expected there would be any significant increases in the cost for local authorities, though it is envisaged there will be a transfer of resources between service types, mainly from local authority delivery to a Direct Payment (DP). Using the experience in England as a basis for calculation, the Scottish Government estimates that around 0.5% or 3,000 carers in Scotland may choose to take a DP, the possible value of which is very difficult to assess but is thought to be in the range of between £2.1m and £5.8m. (Financial Memorandum, Explanatory Notes (EN), para 122). The Scottish Government does accept there may be an increase in costs due to the potential for an increase in carer’s assessments, arising from an increase in people presenting for assessments in the hope of receiving support. However, it believes this will happen as a result of the implementation of the carer’s strategy and not the Bill itself. Finally, the Scottish Government accepts that this may lead to more calls on the advice and support from independent sources, and notes that those bodies will be able to access funding in this regard (see [‘Provision of information about self-directed support’](#), below). (See Financial Memorandum, EN, para 115-128).

Discussion

Whilst section 2 has been re-drafted since the matter was consulted on in the draft Bill, the general effect of it is the same. The consultation analysis (Scottish Government, 2011b, p 27-29) found the majority of respondents agreed with the proposal, seeing it as a way of better recognising the contribution of carers. Mention was made about how this measure could help prevent the deterioration in the health of carers, and encourage local authorities to release resources for flexible support, training and respite. However, there were a small minority of respondents, including several local authorities, who were broadly against the provision. Others, including Carers Scotland, wanted the Bill to place a duty on local authorities to provide services to carers rather than a discretionary power.

There was some concern raised about the financial implications of the provisions, particularly by local authorities who wanted the measure costed. Others from the service user perspective, including Age Scotland, were concerned to ensure that any financial outlay in meeting the needs of carers should not have an impact on the budget for social care recipients, which in turn could put more of a burden on the carers themselves. However, the analysis notes that in the main these were not arguments against provision but raised as matters for further consideration.

Others comments included, that carers assessments were not common practice in all local authorities, together with calls to ensure the assessments were better publicised (e.g. Richmond Fellowship Scotland). In addition Carers Scotland noted that the assessment process could be long which was not helpful when a short or small intervention was required.

SELF-DIRECTED SUPPORT ‘FRAMEWORK’ PROVISIONS

The Scottish Government refers to the following provisions as “the core” of the Bill, as it is these that provide the framework for service users to choose how they wish their care and support to be delivered. The Policy Memorandum (2012, para 21) states that these provisions will “help to modernise and underpin a new approach to social care assessment and planning”. [Appendix 1](#) outlined the current adult care and support pathway. It Annex A in the [Policy Memorandum](#) (p 18), shows this pathway as it would be if the Bill is passed. As can be seen from this, local authorities will still use eligibility criteria to determine whether the individual requires services to meet their assessed needs (see [‘The process for obtaining Direct Payments’](#), above). The

Scottish Government and COSLA (2010, p 20) accept that local authorities value being able to use thresholds in line with local priorities, but note the concern that provision can vary in different council areas. Therefore further work is being undertaken to ascertain whether there should be national thresholds for access to formal support across all client groups. This work is on-going.

Options for self-directed support

Proposal in the Bill

Section 3 of the Bill provides four options for self directed support, which are described in Table 2, below, which would be available to individuals when they are assessed as needing care and support or support as an adult carer.

Table 2: The four options for self-directed support

| | Provision | Intention |
|-----------------|---|--|
| 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. | Already provided for in legislation. The local authority defines a monetary resource in order to meet agreed outcomes. The individual then receives the money direct into a bank account and uses it to purchase and commission support. This option has the most flexibility but also places the greatest responsibility on the service user in terms of physically handling the money and, where they choose to do so, using the resource to employ a personal assistant. |
| Option 2 | The supported person chooses their support and the local authority makes arrangements for the support on behalf of the supported person. (Also referred to as “Directing the available resource”) | Whilst there is currently no specific restriction preventing local authorities from providing this option, there is also no clear duty on them to offer it nor is it the right of an individual to request it. Typically, individuals will be allocated a single amount of money or resource, which can be spent by the local authority or be delegated to a provider to hold or distribute under the local authorities’ direction. It allows the individual to have on-going control about how the resource is used but without the responsibility for managing it. Importantly, and in contrast to the direct payment option (where the contracting parties are the individual and provider), the relationship is between the local authority and the provider or between local authority, provider and individual. There are a number of mechanisms which can be used to facilitate this option, most notably that of ‘Individual Budget’ or ‘Individual Service Fund’ (see Part 1 of the briefing, above). |
| Option 3 | The local authority selects the appropriate support and makes arrangements for its provision by the local authority. | This may be viewed as the traditional model of social service delivery. While the support should be based on meeting agreed outcomes the individual is not seeking direct and on-going involvement in deciding how the available resource is used. It is still expected that the local authority will provide as much choice and control as the individual wishes within that, as per the guiding principles of the Bill. However, there will always be limits to the degree to which arranged services can be flexible and responsive to individual desires. |
| Option 4 | 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. |

Source: Explanatory Notes (2010, para 13-14) and Policy Memorandum (2010, para 22-23)

The Scottish Government has stated that in making these choices, individuals and those close to them must understand the responsibilities that come to them in doing so, such as in managing any risk. It discusses this point particularly in relation to option 1 on DPs. It states that it does not wish to place any restrictions on the categories of people that may be employed by an individual. However, it adds:

“...the statutory guidance under the Bill will recommend robust approaches to ensure that individuals understand their duties as an employer and the risks in failing to adopt safe recruitment practice.”

As regards DPs specifically, the Bill (section 3(2)) defines it as “a payment of the relevant amount by a local authority to a supported person to arrange for the provision of support by any person...”. It then defines “relevant amount” as:

“...the amount that the local authority considers as a reasonable estimate of the cost of securing the provision of the support to which a direct payment relates during the period to which the payment relates.”

Finally, Section 17 of the Bill states: “A local authority must take steps to promote the availability of the options for self-directed support”. Together with section 8 (concerning the provision of information) this is concerned with empowering “people to make an informed choice” (PM, para 24).

Discussion - General

As there were a number of strands to the discussion on provisions concerning Direct Payments (DPs), these will be covered in the following section.

Apart from the order in which they appear, the four options are basically the same in the Bill as was the case in the draft Bill. The analysis (Scottish Government, 2011b, para 5.2 and 5.10) found that a majority of respondents were in favour of the options and supported the idea of a menu of options, with no single option being a default. A minority were against the list of options because they were against the SDS policy as a whole.

As regards the content of the options, the drafting between the Bill and the earlier form is particularly evident in option 2. In the draft, this made specific reference to the term ‘individual budget’, and the analysis found that a minority of respondents felt the use of the term could be confusing and suggested the wording be changed to better describe the option (Scottish Government, 2011b, para 5.5), which has happened. This perhaps illustrates the issue of terminology discussed at the start of this briefing. However, apart from option 1, there is no mention of a budget being first calculated and allocated. The Scottish Government does not wish to tie local authorities to particular mechanisms, as the key aim of the provision is to give service users more choice and control. However, there may be a view that much of the choice and control relies on the individual being able to see the allocation and be able to choose from services it may be argued that this would be hindered if there is no specific mention of a resource being allocated in the Bill.

As regards the duty on local authorities to promote the SDS options, the draft Bill included a similar provision but referred to “all reasonable steps”. The analysis of the consultation found this provision to have been broadly welcomed. However, there were concerns that “all reasonable steps” was not strong enough terminology, and that it be defined, otherwise local authorities may ignore the entire provision. It was suggested that the phrase be removed, and, as can be seen the Scottish Government has done this. (Scottish Government, 2011b, para 5.8-5.9). Additional comments noted in the analysis included:

- user-led groups felt that the options needed to be promoted clearly and consistently across local authorities
- several respondents looked for clarification as to how such a provision would be monitored
- a number of respondents asked for formal, co-produced communication and information strategies at local authority level

Discussion – Direct Payments

The definition of “relevant amount” in the Bill is very similar to that in the draft Bill, and there was some comment on this. Within the definition, there was a call for the "reasonable estimate of cost” to relate to the needs of the service user and not the "cost to which the payment relates'. The analysis notes that Alzheimer Scotland was one of those making this point, arguing that the payment should be equivalent to meeting the assessed needs of the individual. This related to concerns of a significant minority of providers and users, that there were a number of assumptions currently made about DPs, namely that they can only be provided in place of a "per hours" service. There was a call for the Bill not to perpetuate this so that DPs become a means to truly empower individuals following an outcome-based assessment. (Scottish Government, 2011b, para 10.2 and 10.6-10.7). Other respondents argued that many local authorities continue to offer DPs at a less favourable rate than arranged services, thus discouraging people from using them. A minority of respondents felt that the responsibility for setting the value of the DP should rest with an independent party and that there should be a right to appeal the amount. This was allied to a concern that some local authorities were using SDS as a way to reduce social care costs. (Scottish Government, 2011b, para 10.12).

In other matters though there were some comments in favour of a 3rd party or indirect payment to be referred to on the face of the Bill. A couple of respondents sought an option that allowed a group of people to come together to manage their service jointly. (Scottish Government, 2011b, para 5.6). A number of other practical issues were raised, including

- how to make the DP option a truly viable option for many more social care users
- concerns about a lack of available services, or reductions in existing services, which could force people to choose options they would not otherwise choose (two respondents thought that the costs associated with various choices merits a specific reference in legislation)
- challenges involved in developing resource allocation systems and alternative models of provision, redistributing resources, and future-proofing systems
- a need for greater clarity about how existing service users will be able to access these options
- that options should be reviewed at intervals

Choice of option

Proposal in the Bill

Sections 4, 6 and 7 of the Bill apply to the three groups of supported people who can receive SDS in the Bill - adults assessed as requiring support under the 1968 Act; adult carers (see ‘Support for adult carers’, above); and children (and/or their families) receiving support under the 1995 Act (this 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 SDS.

Section 9 of the Bill would place a duty on the local authority to give effect to the option for SDS chosen by the service user. However, the Scottish Government (PM, para 27) has also stated that the Bill will not “replace or overrule legislation to protect people at risk of harm, nor does it

affect the duty on local authorities to arrange suitable and adequate support”. Thus, in exceptional circumstances the local authority may have to deny the service user their preferred choice, such as:

- where it is clear that the option itself or the implementation of a particular option will fail to meet assessed needs and desired outcomes (this reflects the local authority’s on-going duty of care to meet assessed needs)
- where the individual or type of support selected is one of the people or circumstances defined in regulations as being ineligible for a DP

The Scottish Government recognises this is a sensitive area and “will require the input of skilled social care professionals and statutory guidance will elaborate on this question in greater detail” (PM, para 28).

Sections 4, 6 and 7, also clarify the authority’s duties where the person is deemed to be ineligible to receive direct payments. Within each section provision is made to give the individual a choice of one of the SDS options unless they are ineligible to receive DPs. Ineligibility is not defined itself in the Bill, rather this would be allowed for through Regulations under section 13. However, the Bill does stipulate the process that must be undertaken if the local authority believes the individual to be ineligible. Firstly, the local authority must notify the individual in writing (and in another form depending on the communication needs of the individual) as to the reason why the authority considers them to be ineligible, and also that they can seek a review of the decision, though there is no set timescale for the review taking place provided for in the Bill.

The right to a review is contained in section 10 of the Act, which also covers situations where there has been a material change in the person’s circumstances that would no longer make the ineligible to receive a DP. If, following the review, the local authority believes the individual is no longer ineligible then it must allow the person to select from all the SDS options.

Sections 4,6 and 7 also stipulate that if the person is ineligible to receive DPs then should be given the choice of Options 2 and 3, and 4 to the extent that it cannot include DPs.

Discussion

The provisions in section 4, 6 and 7 marry with the relevant sections in draft Bill. The analysis (Scottish Government, 2011b, para 5.2 and 5.7) found that these provisions, as with those related to the four choices, were generally welcomed. However, it also found that a number of user-led groups felt there was room for local authorities to ignore their responsibilities, and not implement the service user’s preference. Such respondents sought a more transparent decision-making process, appropriate scrutiny and an appeals system, or, ideally, a process independent of the local authority. In its response to the consultation, the Scottish Government stated that it had no plans to include provisions for an independent appeals system, but intended to make it clear that advice should be available throughout the assessment and support process. The Scottish Government (2012) has indicated that further advice will be provided in guidance.

As regards the provisions related to direct payments, the provision in the draft Bill had not included a duty to provide the notification in writing and other appropriate form, but the Scottish Government has addressed this. One respondent said that there should be specific legislative timescales to guide the local authority on the discharge of their duty. (Scottish Government, 2011b, para 5.6).

Specific choice provisions related to children and their families

Proposal in the Bill

As discussed in Part 1 of the briefing children, through their parents or guardians, have been able to access DPs since 1996 but made the point that all the SDS options have the capacity to offer a range of “innovative practical solutions amidst the logistical complexities of families’ daily lives” (PM, para 34). In this respect, the Bill consolidates current rights for children and their families to access DPs, but broadens this to apply across all four options in the Bill. It believes that this also supports its efforts to improve services for children through its ‘Getting it Right for Every Child’ (GIRFEC) framework. In pursuing this agenda, and in the context of social care, the Scottish Government is seeking to ensure that children are able to maximise their input into the decisions that affect them from the moment they are assessed as having support needs. This also helps it to meet its obligations under the UN Convention on the Rights of the Child. (PM, para 33 and 35). Thus, section 7 of the Bill stipulates that:

- children aged 16 and 17 will be able to choose and manage all the available SDS options
- where a child is under 16 the parent or the person with parental responsibilities will be able to choose the relevant SDS option, and they will have full powers to manage the available resource or DP where that is their preference
- children aged 12 or over will be presumed to be of sufficient age and maturity to form a view as to how they wish to receive their support

The Scottish Government notes that the Bill will have no effect on the child protection responsibilities and duties that local authorities have under the 1995 Act, and that statutory guidance under the Bill would “clarify what this should mean in practice and how local authorities should go about balancing their duties on protection with their duties on self-directed support”. (PM, para 37).

Discussion

The analysis of the consultation on the draft Bill found that of those that commented on the provisions relating to children, there was overwhelming support for the provisions. A number of respondents stressed the importance of the link to choice and control, emphasised through SDS and GIRFEC.

A significant minority of the respondents to the consultation felt that the success or otherwise of the provisions would depend on better support for children and young people and information for children and parents. On this point a key barrier for significant growth of SDS for children was the “embryonic” state of children’s service via the voluntary or private sectors. The need for advocacy was also stressed. (Scottish Government, 2011b, para 7.2-7.3)

The analysis found that local authorities were supportive of the measures, though there was a request for guidance to support them in dealing with some difficult practical issues, which included the implications on their role in child protection and welfare, but also on dealing with disputes between children and their parents. In addition, the analysis found that a small number of local authorities, whilst saying they would comply with the duties on choice and control noted “there is no universal right to support in the first instance, and that eligibility criteria can and should be applied”. (Scottish Government, 2011b, para 7.4).

Provision of information about self-directed support

Proposal in the Bill

Section 8 places duties on the local authority to provide information and advice to those where a person is given the opportunity to choose from the four SDS options, specifically:

- an explanation of the nature and effect of each option (this could include information on the opportunities and responsibilities under each section)
- information about how to manage support
- directing service users to other independent sources of information and advice

Finally, the section requires the local authority to provide this information and advice in writing and also, where appropriate, alternative formats appropriate to the service user's communication needs.

The Scottish Government considers that local authorities will create generic materials (if they do not already do so) in order to meet their duties under this section of the Bill, which will be met through short term transformation costs (see 'Financial Memorandum', below) (Financial Memorandum, EN, para 87).

In terms of the support for the independent sector, the Financial Memorandum notes that local authorities already provide funding to SDS advice organisations in their areas. The Scottish Government does not expect local authorities will need to set up or fund significant numbers of new organisations, but instead work with existing organisations to ensure more effective and efficient services. Nevertheless, it recognised that this will require some funding to ensure the build-up of capacity in independent advice services, particularly to ensure there is a geographical spread of such services, so that anyone who wishes can access them. In 2011-12 the Scottish Government provided £1m funding to the independent sector to identify areas for development in this regard. An additional £2m per annum is to be provided in the current financial year and in 2013-14 and 2014-15. (Financial Memorandum, EN, para 88, 98 and 99). In addition, the Scottish Government has stated that officials from the Scottish Government will work with national and local support organisations through the SDS National Implementation Group to come up with a "more efficient and sustainable approach" (Policy Memorandum, para 99).

Discussion

In the draft Bill the local authority duties were the same as those in section 8 of the Bill, except there was no provision regarding the direction of service users to independent information and advice. There was a call for such advice and the Scottish Government has responded to this in the Bill itself, though there were some comments about the potential costs this may bring on local authorities if they were to have such a duty. (Scottish Government, 2011b, para 5.11-5.12) Other comments included:

- that service users should have written evidence that they have been given this information
- that there should be clear timescales to guide the local authority on the discharge of this duty
- consideration should be given as to how this will be monitored
- the provision should include elements of employers responsibilities and obligations
- account needs to be taken of varying degrees of existing services that exist already between local authorities

Review

Proposal in the Bill

Section 11 would place 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. The duty would apply after an individual has made a choice and where the local authority becomes aware of a material change in the person's circumstances after the choice has been made. The example given in the EN (para 38) is in the situation where an individual has received a DP, has managed the DP with assistance from a family carer, but then the carer is no longer able to provide assistance. In such a case the individual must then be offered a choice once again by the local authority. There is also an option that both parties may agree additional circumstances under which the opportunity to review might apply (e.g. agreeing to an annual review or a trial period)¹⁰.

Discussion

Overall, the analysis found that respondents considered the review process to be reasonable, and that it reflected good practice. However, the analysis reported a minority concern about small numbers of people regularly changing their minds and incurring costs to local authorities. It was suggested that service users need to be aware of their responsibilities in this respect as well as their rights. Other recommendations on this topic included:

- a specified timescale for reviews to occur
- a requirement on the local authority to communicate with existing service providers about how and when reviews are carried out
- the Scottish Government monitor implementation for new service users before extending to existing users (Scottish Government, 2011b, para 5.13)

ASSISTANCE

Proposals in the Bill

Section 15 would place a new section into the 1968 Act. When a person's needs are being assessed it would place a duty on a local authority to take reasonable steps to identify and involve people (usually relatives and friends) to assist the individual. However, this would only apply for those where it appears there would be a benefit to doing so because of a mental disorder or difficulties in communicating due to physical disability. Provision is made for the duty not to 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. (EN, para 49-53)

The same provision is made in section 5, but this relates to supporting the individual making a choice of the four SDS options. The basic principle here is that the local authority would be obliged to allow someone to make a choice even if they have difficulties in doing so. (EN, para 20-23).

¹⁰ The Scottish Government (2012) has pointed out that this opportunity to "review the options" is a distinct from the annual care needs review which should be established best practice for social work. In practice the review discussion about how support is provided, under the SDS options in the Bill may well take place at the same time as a care needs review; however the two reviews need not take place at the same time.

The purpose of these provisions is to address the fact that some social care clients will encounter difficulties in expressing informed decisions, whether or not they lack capacity in terms of the definition provided in the Adults with Incapacity (Scotland) Act 2000 (AWI Act). The Scottish Government accepts this presents a challenge in a Bill which involves giving greater choice and control to the individual. However, it wants to see people with mental health problems, people with dementia and people with severe learning difficulties and any other individual who has difficulty making decisions on their own having the opportunity to choose options 1 or 2. (PM, para 31). In doing this:

“The emphasis throughout should be on finding ways to support people to direct their support and to facilitate a wide range of assistance mechanisms to help both individuals and their circles of support.” (PM, para 31).

Where a person has a guardian or attorney with relevant powers, then the guardian or attorney would be invited to decide on the preferred option and would have the power to arrange support thereafter. However, in circumstances where the authority assesses that a person lacks capacity under the AWI Act but the individual does not have a guardian or attorney, then the Scottish Government notes that that the Bill makes no change in their duties to make decisions and arrange support, utilising powers under the 1968 Act or, where required, by seeking an appropriate order under the AWI legislation.

Discussion

The assistance provisions in the draft Bill were significantly different to those in the Bill as introduced, and there was a significant amount of comment on them (see Scottish Government, 2011c, p 21-24) and 2011b, p 22-26). It appears that the Scottish Government has reflected on these and developed a different solution to the issue.

FURTHER PROVISIONS ON DIRECT PAYMENTS

Proposals in the Bill

The Bill would consolidate existing legislative provisions related to DPs. Certain aspects of the provisions relate to DPs are on the face of the Bill, including on what a local authority should do in relation to the choices if a person is ineligible (see [‘Choice of option’](#), above). In addition, section 14 of the Bill makes provision for a local authority to require repayment, in whole or in part, of a DP if it has been used on things other than the assessed services or support required, or if the person has contravened any regulations made under section 13 of the Bill.

Section 13 of the Bill, as intimated, provides for a number of circumstances where Ministers may make regulations on the mechanics of DPs and their management, including:

- the criteria that would make someone ineligible for DPs
- powers to stop DPs or to require repayment of some or all of the DP
- prescribing how DPs are paid, circumstances in which a contribution to the cost of support may be required and how individuals are assessed in this regard, and how the repayment of a DP may be made
- setting out where a local authority may, must, or must not terminate a DP
- setting out circumstances where a local authority would be able to make a DP to someone other than the supported person, and to specify persons that such DPs cannot be paid to
- setting out the descriptions of people who would be prohibited from providing support to which a DP relates

The Scottish Government is keen to improve the uptake of DPs, noting the varied experience of their use up to now (see [‘Direct Payments in Scotland’](#), above). While local authorities will continue to retain their duties over DPs, the Scottish Government also wants to ensure that they do not use any discretion to the point of “impinging in an excessive or unfair way on people’s rights to determine their own support”. (PM, para 46-47). The PM (para 47) goes on to explain the Scottish Government’s intentions on the principles it wishes to adopt when Ministers use their regulation making powers:

- Local authorities’ discretion will be limited to instances of gross misuse or instances where a person’s assessed needs or agreed outcomes are not being met, thus preventing changes because of administrative or other convenience.
- Restriction of access to direct payments should only happen where there is a clear policy justification, and where it would be an inappropriate method for particular circumstances or for particular groups of people. Any such group should be as narrow as possible and should not be based on general assumptions about particular client groups and their competence to manage the money.
- In general, regulations should not place a restriction on access to DPs simply because a person wishes to choose a particular form of social care service.
- Local authorities should be empowered to allow the employment of close family members where this is the supported person’s and carer’s informed choice and where it is appropriate to do so.
- Local authorities will continue to use criteria to determine someone’s eligibility for support, and to charge for services, with the exception of free personal and nursing care. However, there should be no differential treatment for those who choose to direct their own resource.

In terms of cost, the Scottish Government does not envisage there being any costs arising from the regulations laid under the Bill in respect of DPs, including those discussed below.

Discussion

Given the Scottish Government intends to introduce regulations to cover a significant number of matters in relation to DPs, many of the comments that respondents to the Scottish Government consultation made were in relation to specific aspects of how they operate currently, and a desire that the problems of the past are not replicated. Some of this has been already discussed in [‘Choice of option’](#) section above.

As these are matters that would be taken forward through regulations, and thus would be debated by Parliament separately, this is not a matter directly for this briefing. However, four of the key areas of possible regulation are outlined in [Appendix 5](#). Other matters raised can be seen in chapters [10](#) and [11](#) of the consultation analysis (Scottish Government, 2011b).

DELEGATION

Proposal in the Bill

Section 18 of the Bill would amend the Community Care and Health (Scotland) Act 2002, which would allow Ministers to amend the Regulations made under section 15 of the 2002 Act which dictate which functions may be delegated between NHS bodies and local authorities.

The Scottish Government intends to use this so that where 1968 Act social care functions are being delegated to NHS bodies by local authorities, the SDS Bill's duties will automatically follow alongside the 1968 Act duties. This will have the effect of requiring health authorities to implement the Bill's duties and will have the full range of SDS powers where they are assuming social care functions, for instance a health professional undertaking a social care assessment. The Scottish Government does not intend, for example, that DPs will be obligatory for all clinical NHS care, but it would require better "partnership working across services to develop a system for enshrining choice and control for those who require both health and social care". (Scottish Government, 2011b, para 45).

This provision is obviously linked to the Scottish Government's wider agenda to more closely integrate health and social care. The Scottish Government notes that, at present, there are only a small number of people who use DPs to jointly fund health and social care budgets. The Scottish Government wishes to encourage more of this as it allows individuals to tailor the service they receive more holistically according to both their health and social care needs. It describes the work it has undertaken through pilots in NHS Lothian and NHS Fife which are looking at how to promote SDS for such individuals and address the barriers they face. An evaluation report on these is due at the end of 2012. (Scottish Government, 2011b, para 43).

The Scottish Government accepts that there will be funding implications for SDS training and awareness raising in the NHS. Some of this is to be covered by funding of £3.088m (over three years) for general workforce awareness training under the Bill. However, it also notes the training identified through the NHS Lothian pilot. Extrapolating the cost of this for all likely staff who would be involved in SDS (i.e. occupational therapists, physiotherapists, community nurses, mental health nurses and community psychiatric nurses) results in a figure of £0.73m. The Scottish Government believes this may be an overestimate, but is included in Scottish Government funding for the Bill. (Financial Memorandum, EN, para 68, 132-133).

Discussion

The delegation provision in the Bill is stronger in its effect than that consulted on in the draft Bill, as the draft provision did not have the effect of placing the full range of SDS duties on the NHS. This had been called for by local authorities in particular. However, a wider point was made by a number of respondents, which was that for SDS to be successful would require cooperation beyond health to housing and education as well.

FINANCIAL MEMORANDUM

In developing the Financial Memorandum, the Scottish Government states that it took account of responses to the [Business Regulatory Impact Assessment](#) (BRIA) that was distributed with the draft Bill (Scottish Government, 2011b and 2011c) and a [study](#) commissioned from the University of Stirling (Rummery et al, 2012). In addition there was information amassed through discussions with COSLA, local authorities, care and support providers and the Bill's Steering Group. The Financial Memorandum describes the Scottish Government's estimates and calculations for where it considers there will and will not be a cost implication. This part of the briefing will consider the key themes of the Financial Memorandum and will outline the key findings from the responses to the BRIA and of the Stirling University study.

Summary of the Financial Memorandum

As discussed above, the Bill is part of a wider strategy on SDS. The Scottish Government considers it to have a relatively narrow focus, but notes the cost implications for transforming

culture, systems and approaches to social care provision as a result of the Bill and the strategy. As a result the Financial Memorandum seeks to draw a distinction between the funding it is putting in place for the implementation of the Bill, should it be passed, and those that are related to the wider strategy. These are summarised in Table 3, below.

This Table refers only to short-term implementation costs identified by the Scottish Government. The costs directly associated with the Bill (amounting to £1.412m from 2012-13 and 2013-14) are limited to specific training on the duties contained in the Bill (to include both local authority and NHS staff), and joint working with NHS staff. Signposting to relevant information and advice services, support to carers and duties in relation to direct payments are also included in the Table and are costed as zero, though these are all discussed in more detail above. (Financial Memorandum, EN, para 69).

Table 3: Summary of Scottish Government investment in SDS (£m)

| | 2011-12 | 2012-13 | 2013-14* | 2014-15 | Total |
|--|-------------|-------------|---------------|-----------|---------------|
| Costs directly associated with Bill implementation | | | | | |
| Framework: | | | | | |
| i) Workforce development (specifically training on Bill duties for relevant staff numbers) | 0 | 0.3 | 0.382 | 0 | 0.682 |
| ii) Information and advice (signposting to relevant services) | 0 | 0 | 0 | 0 | 0 |
| Duties in relation to direct payments | 0 | 0 | 0 | 0 | 0 |
| Support to carers | 0 | 0 | 0 | 0 | 0 |
| Joint working with the NHS | 0 | 0 | 0.73 | 0 | 0.73 |
| Subtotal | 0 | 0.3 | 1.112 | 0 | 1.412 |
| Costs indirectly associated with Bill implementation (associated with the wider SDS strategy) | | | | | |
| Framework: | | | | | |
| i) Transformation (local authorities) | 1.12 | 6 | 11 | 6 | 24.12 |
| ii) Transformation (care and support providers) | 1.1 | 2 | 2 | 2 | 7.1 |
| iii) Workforce development (awareness raising amongst the wider workforce) | 0 | 0.2 | 0.888 | 2 | 3.088 |
| iv) Information and advice (capacity building) | 1 | 2 | 2 | 2 | 7 |
| Subtotal | 3.22 | 10.2 | 15.888 | 12 | 41.308 |
| Total | 3.22 | 10.5 | 17 | 12 | 42.72 |

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

Source: Financial Memorandum, Explanatory Notes, para 68

The costs indirectly associated with the Bill (amounting to £41.308m over the years 2011-12 to 2014-15) are those associated with the wider strategy, but which would have an impact on the implementation of the Bill. Transformation costs include areas such as: bridging finance; leadership; commissioning and contracting; IT and accounting systems; administration and reporting mechanisms. These are all discussed in greater detail in the Financial Memorandum (Para 101-106). It is worth noting that the two of these deemed most relevant to independent care and support providers are systems and administration, though the Scottish Government accepts there has been no estimate of the transformation finance that will be required in the sector. The funding in Table 3 for this sector relates to that provided to Care and Support Providers in Scotland (CCPS) to oversee transformational work amongst providers. However,

the Scottish Government contends that much of these costs can be absorbed by the sector through changes in systems and practice to become more in tune with SDS options.

Overall, the Scottish Government believes that without investment in areas related to the wider strategy, the Bill would be weaker, and would make the difference between basic compliance and genuine cultural change. (Financial Memorandum, EN, para 69 and 106-113). However, it does not believe that any significant short-term costs will extend beyond 2014-15.

Longer term costs and savings

The Scottish Government (Financial Memorandum, EN, para 77-78) has identified a number of potential areas for recurring costs associated with the Bill's 'framework' provisions:

- changes in assessment practice in order to embed choice and control, including in the agreeing of outcomes and a support plan
- increased demand for support and advice services
- the range of SDS options could lead to increased numbers of contracts as there is a shift from block contracting to individualised purchasing of support
- the desirability of tailored support could result in more individuals presenting for assessment, though this is difficult to estimate as they will vary by local authority and in relation to individual choice (eg, the number of people choosing to leave block contracting arrangements)

However, it believes that these will be offset by potential recurring savings due to:

- more people electing to arrange support at home as opposed to in residential accommodation
- 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 (particular reference is made to the Alzheimer Scotland pilot in Ayrshire¹¹)
- a possible reduction in the "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 reducing bureaucracy with some administration costs transferring to individual citizens (for instance, costs of liaising with providers)

All these matters are further discussed in the Financial Memorandum. However, overall, the Scottish Government believes that the long term impact of the Bill will be cost neutral. This was the finding of the University of Stirling study. However, this study also noted that predictions on the costs of SDS can be affected by the rate of expansion, for example the costs of employing PAs directly, compared to public, private or voluntary sector carer provision. If such costs change or the types of choices SDS users make diverge from their use of DPs in the past, then these "conclusions are likely to be less robust". (Rummery et al, 2012, para 28).

Findings of the University of Stirling study

The aim of this study was to provide macro-level financial and economic evidence on the potential costs, benefits and impacts of an increase in the uptake of SDS in Scotland. A range

¹¹ 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. (Financial Memorandum, EN, para 83).

of methods were used to gather information from local authorities, service users and providers. The report, '[Counting the Cost of Choice and Control: Evidence for the costs of self-directed support in Scotland](#)', was published in February 2012. Its main findings were as follows:

Main issues for Local Authorities

The research found that the full costs of providing SDS were difficult to measure and predict. However, the experience of DPs showed that it was possible to develop transparent costings systems for individual users.

There were significant variations in costs, and the way these were calculated, across different user groups and different Local Authorities. More transparency about service costs may make things fairer: however, they may also expose inequities across different groups and locations that are not easy to address.

Evidence suggests that Commissioners, such as Local Authorities, are likely to continue to play an important role in safeguarding the quality and cost of care services. However, individual SDS users will be able to exercise their choice about service provision, and move contracts more quickly than Local Authorities.

Initially, the research indicated that the resources needed for SDS assessments and monitoring may increase, but these costs were considered likely to decrease over time as SDS becomes more mainstream and systems develop. There was no evidence to suggest that the resources and costs associated with SDS will be significantly greater than those associated with managing the provision of social care generally.

Main issues for service providers

There was broad support for the aims of SDS, particularly around the increased empowerment, choice and control offered to users. However, there were also concerns about the costs of providing flexible services, particularly the risk of investing in staff training and infrastructure if services are destabilised (e.g. by SDS users changing contracts at short notice).

Variations in pricing and the demand for services may make it difficult for some providers to effectively plan and deliver services.

There was a perceived danger of a 'two tier' care workforce emerging, with (relatively unregulated, relatively unprotected and therefore cheaper) PAs on the one hand, and (more regulated, more protected and therefore more expensive) workers for care agencies and Local Authorities on the other.

New possibilities and new markets may open up for providers with the expansion of SDS, particularly those able to provide high quality, responsive and flexible services, and additional support for training, advocacy and advice.

Main issues for SDS users and family carers

Although it is difficult to predict what these will be, the research indicated that some of the costs of the increased flexibility of SDS will fall on users and family carers. Some of these risks may be offset if Local Authorities invest in independent advocacy and support organisations, to give users and family carers support in managing SDS.

DP users were overwhelmingly positive about the increased choice and control offered by DPs and SDS. The benefits of increased empowerment and flexibility were also felt by family carers.

There was concern expressed that users and carers may find the complexity of SDS difficult to manage without sufficient support.

Source: Rummery et al, para 13-23

Finally, the study (para 24-28) considered what its findings meant for the future of SDS. Its main conclusions were:

- “the relationship between an individual user's needs and the costs of the support they receive is not clear: higher needs do not necessarily mean costlier services. DP users are most likely to purchase services from a PA, and least likely to purchase Local Authority services. We predict that this pattern will continue under SDS.
- there were no significant difference in the hours of care between DP users and those who received Local Authority social care services. This suggests that a move to SDS will not result in a reduction in services, and that costs do not differ significantly between DPs and Local Authority social services. We conclude that fears about reduced services and increased costs associated with SDS are therefore unfounded: personalisation and SDS do not, per se, lead to reduced services and support.
- as SDS becomes mainstream, there are likely to be concerns about the market for care services if costs are driven up by new contractual forms, or by more SDS users opting to employ PAs rather than use services
- the costs of care will increase in the next 10 years: however, these rising costs are due to rising levels of need for social care services in the population and are not specific to SDS
- predictions on the costs of SDS are sensitive to the rate of expansion - e.g. the costs of employing PAs compared to 'in-house' (public, private or voluntary sector) carers. If these costs change, or if the types of choices SDS users make deviate significantly from the way they have used DPs in the past, these conclusions are likely to be less robust.”

Responses to the BRIA

Obviously, the findings from the consultation analysis in relation to the BRIA are limited in respects to the Financial Memorandum. Nevertheless, it is perhaps useful to ascertain the themes that were raised, some of which are still pertinent given what the Scottish Government has announced in terms of funding.

In general, the analysis found there was a recognition of the financial and demographic imperatives to reform social care, but this went in hand with concern that SDS not be used to reduce spend and become associated with a cuts agenda. As regards the identification of potential costs, it was accepted that there are difficulties in quantifying detailed costs and benefits, but there were also those who wished more clarity over real costs. (Scottish Government, 2011b, para 13.4-13.9).

Impact on local authorities

The analysis found that respondents listed a variety of potential costs to local authorities, based on there being a significant increase in individualised budgets, though these were associated with implementing the ten year strategy rather than the Bill itself. The costs identified by respondents mirror the transitional costs that are discussed in the Financial Memorandum and the Scottish Government's assessment of them, with the addition of other costs such as putting in place short-term specialist implementation teams, and changes to commissioning policy and practice.

However, there were also concerns that the move to SDS could have an impact on existing services and potentially reduce local authority services in some areas. Some benefits to local authorities from the new system were also identified, and these fell into two main areas: that it would be easier to monitor the relationship between funding and volume of support for each person; and, wider economic and labour market benefits of supporting carers and young carers. (Scottish Government, 2011b, para 13.10-13.13).

The Scottish Government (2012) has stated that one important proviso placed on all estimates or projections in this area is the demand-driven nature of the sector. This relates to the number and range of individuals presenting to social work departments. It also relates to the choices that individuals may make when presented with the four options and when they are presented with sufficient advice and support to help them to make their preferred choice.

Impact on providers, third sector and voluntary organisations

The key issues raised in connection with this sector again mirror the Financial Memorandum, but included the increased cost of provision, associated with a move from block to spot contracts. There was also some concern expressed about the future sustainability of services, together with a concern that service providers are assumed to be able to absorb additional costs. It was felt by some that any negative impact on providers could have a corresponding effect on the wider care market and on service users, through increases in price or reductions in quality, volume, choice or availability of service. However, a potential benefit was identified through the analysis, namely that the speeding up of referral processes could lead to less unoccupied places for providers and thus less time waiting for service users. (Scottish Government, 2011b, para 13.14-13.16).

Impact on individuals and carers

Overall, the analysis found that the potential costs for individuals included:

- greater responsibilities, including personnel management, tax and welfare responsibilities where they become employers
- potential cuts in quality or volume of service, or higher prices
- less protection versus those using registered care and support services

In terms of carers, there were mixed views. Some thought that providing services to carers would lead to increased demand for assessments and, would have resource implications for local authorities. On the other hand, there was support for the Scottish Government's assessment that there would be a potential cost to carers of managing direct payments for the individuals they support and thus challenged the view that the proposals for carers would lead to a significant increase in assessments. (Scottish Government, 2011b, para 13.17-13.19).

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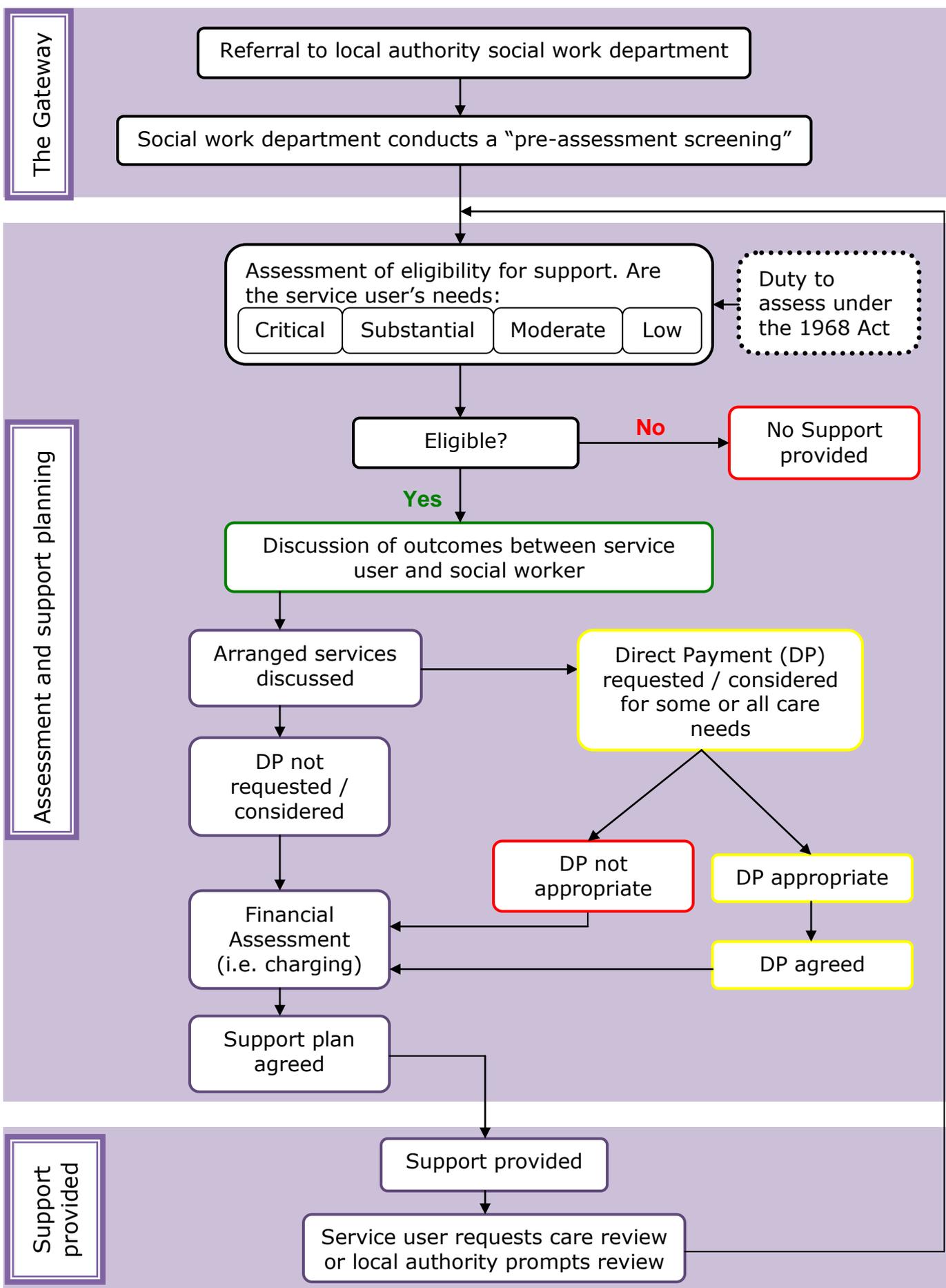
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APPENDIX 1: CURRENT ADULT SOCIAL CARE AND SUPPORT PATHWAY

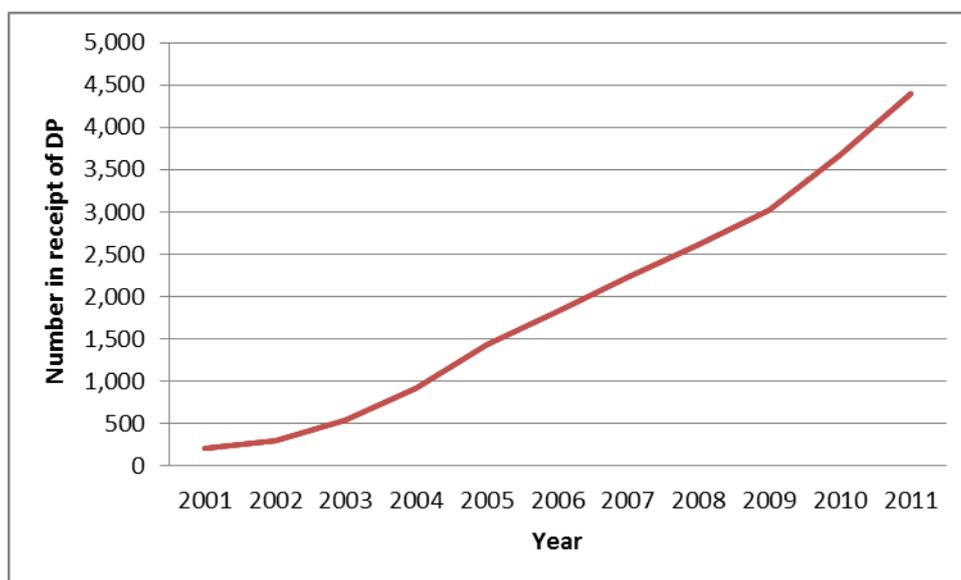


APPENDIX 2: KEY DIRECT PAYMENTS STATISTICS

The take-up of Direct Payments

The number of people in receipt of DPs has increased each year from 207 in 2001 to 4,392 in the year to 31st March 2011. Chart 1, shows the overall trend in the take up of DPs since 2001. Since the inception of DPs data has shown that the take up of DPs in Scotland has not been as high as in England. In England, there were a total of 125,000 services users with a DP in 2010-11 (Health and Social Care Information Centre, 2012). This represents a rate of 23.9 per 10,000 population¹². The equivalent rate in Scotland is 8.4.

Chart 1: Number of service users in receipt of Direct Payments, Scotland, 2001 to 2011



Source: Scottish Government (2011)

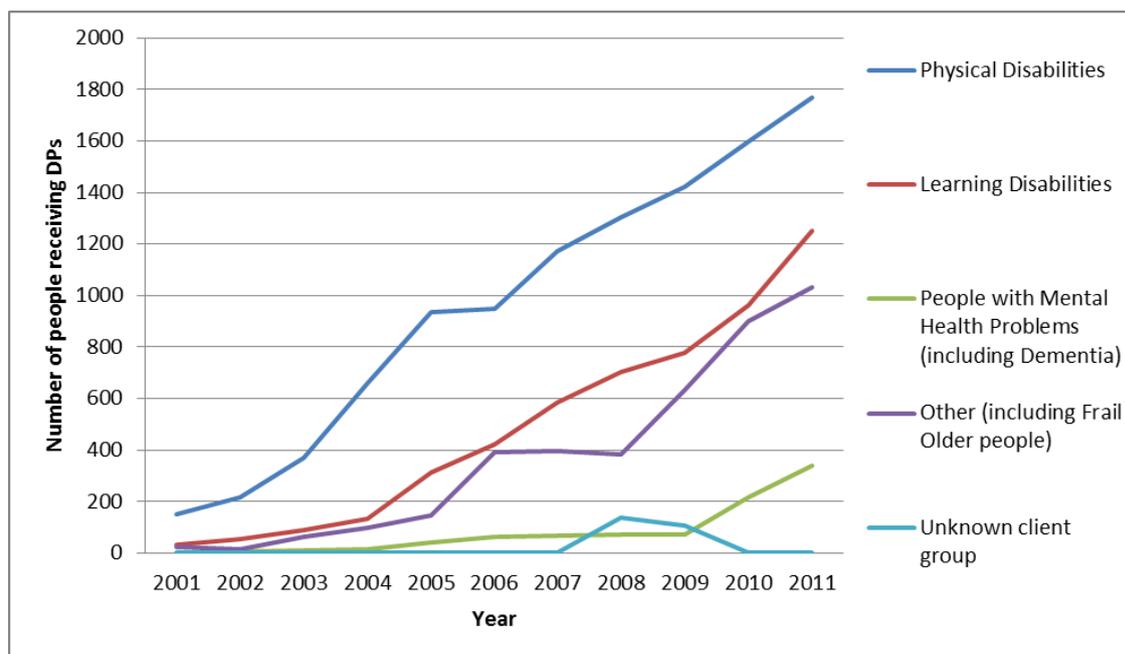
Take-up by different service user groups

Chart 2, below, considers the trend of take-up of DPs amongst different service user groups. It shows that there have been significant increases in the numbers of DPs being received by most service user groups.

Those with physical disabilities have traditionally been, and continue to be more likely to have a DP than other user groups, which is unsurprising given the background of DP development. In 2001 this group accounted for 73.4% of all DPs, though this proportion has decreased over time (to 40.3% in 2011) as DPs have become more popular with other groups. Those with learning disabilities accounted for 1.4% of all recipients of DPs in 2001, but represented 28.4% by 2011. The 'other' group, which includes frail older people accounted for 11.1% of all recipients of DPs in 2001, rising to 23.5% in 2011. Those with mental health problems (including those with dementia) have been less likely to take up DPs. In 2001 there was no-one from this group in receipt of a DP, and this had risen to only 7.7% in 2011.

¹² Using mid-year population estimates for 2009-10 (Office of National Statistics, 2011)

Chart 2: Number of people receiving Direct Payments packages, by service user group, 2001-2011



Source: Scottish Government (2011)

Age and ethnicity characteristics of Direct Payment recipients

Table 1, shows the age distribution of those in receipt of DPs in 2011. Children account for 13% of DP recipients across the country. Further analysis shows that around half of this group has a learning disability and of the remainder most have a physical disability. Of those aged between 18-34, those with learning disabilities account for over half of recipients. Those with physical disabilities are the key recipients in the 35-49, 50-64 and 65+ age groups. (Scottish Government, 2011, p 16).

Table 1: Age of those in receipt of Direct Payments, 2011

| | Age | | | | | Total |
|-------|------|-------|-------|-------|-------|-------|
| | 0-17 | 18-34 | 35-49 | 50-64 | 65+ | |
| Total | 584 | 955 | 673 | 745 | 1,435 | 4,392 |
| % | 13 | 22 | 15 | 17 | 33 | 100 |

Source: Scottish Government (2011)

The Scottish Government (2011, p 4) notes that the age profile of Direct Payment recipients has changed since 2001, with a greater proportion of recipients now aged 65 or over. In 2001 only 7% of recipients were in this age group, compared to 33% of clients in 2011. Rummery et al (2012, para 1.19) argue this is a key group in the further expansion of SDS given they form the larger part of the population, with implications for service delivery and the sustainability of SDS as a whole.

The data also shows that there has been little take-up of DPs within black and minority ethnic (BME) groups. In the year to March 2011, the Scottish Government (2011, p 5) found that there was information concerning the ethnicity of 3,667 DP recipients. Of those 98% (3,588) were white. Of the remainder only 40 were from an Asian background, 11 from an African, Caribbean or Black background, 21 from another ethnic background and 7 from a mixed ethnic background.

Personal Assistant or Service provider?

As discussed above, those choosing to take up a DP can either employ a PA or commission services from service providers. Traditionally, the majority of people in this position choose a PA. In 2011 around 39% of all DP packages involved the employment of personal assistants, 34% on service providers and a further 3% using a mixture¹³. Though it is worth noting that this has fallen recently – in 2009 51% of those with DPs employed a PA.

The PA workforce is an important contributor to the Scottish Government's plans to enhance the rollout of DPs and SDS more widely. Unlike the rest of the social care workforce, PAs are not regulated, either professionally through the Scottish Social Services Council or in terms of the service provided via the Care Inspectorate. The purpose is to allow the service user as much flexibility, control and responsibility as possible for their own support needs. Social service departments are expected to monitor how packages of care using PAs proceed, and as noted above, should be supporting the service user when they are establishing contracts. Nevertheless there is a tension between the identification and controlling of risk on the side of professionals versus the choice and control expected by service users.

It also means that little is known about the PA workforce. To support efforts to address this the Scottish Government commissioned research, which involved surveying PAs, as well as service users, local authorities and other providers. (Reid Howie Associates, 2010). In terms of the characteristics of the workforce, the [study](#) (p i-ii) found:

- the workforce to be predominantly female and white, with the average age just over 40
- just under 40% of PAs were found to have a qualification in a relevant discipline such as social care or health and many had second jobs, although not always in social care.
- the average number of hours worked weekly by a PA was 18.
- there appeared to be a high level of stability in the workforce and the employment of PAs by individuals did not appear, in the view of both local authorities and care providers, to have had an impact on the recruitment and retention of workers in other areas of social care. However, there was some evidence, particularly in rural areas that there was some reports of a loss of PAs to other employers e.g. national retailers who were able to provide better pay and conditions

The study found that PAs carried out a range of tasks, the most common of which were personal and domestic care. Significant numbers also supported their employer to take part in leisure and social activities, employment, education and training. What support was provided was found to be dependent on the nature of the employer's impairment, for example, older disabled people receive more support with personal care, and younger people receive more support with social activities.

Services provided through DPs

The services that were provided for through DPs in 2011 are shown in Table 2. There is further information on the different types of services are further explained in [Appendix 3](#). The majority of DPs are used to support service users in terms of personal care (52%), with social / educational / recreational activities (19%) and respite (18%) being the most common forms thereafter.

However, of particular interest is the low level of health care related provision, particularly given the current guidance on pulling together a range of funding, including from the NHS, in

¹³ These percentages are based on all packages of Direct Payments. The reason these do not add up to 100 is that the PA data was not provided for every package.

calculating the IB. This might suggest that, in many areas, DPs do not involve an IB which brings together different sources of funding. This is evidenced in Rummery et al (2012, para 5.29) who found in their survey of service users that individuals used their DPs for certain services and then purchased others separately using other sources of funding themselves.

Table 2: Type of Direct Payment provision, 2011

| Type of DP provision | Packages of Direct Payments | % of all packages of Direct Payments |
|--|-----------------------------|--------------------------------------|
| Personal Care | 2918 | 52% |
| Health Care | 181 | 3% |
| Domestic Tasks | 827 | 15% |
| Housing Support | 535 | 10% |
| Social/educational/recreational activities | 1062 | 19% |
| Equipment and temporary adaptations | 31 | 1% |
| Respite | 984 | 18% |
| Meals | 147 | 3% |
| Other | 334 | 6% |

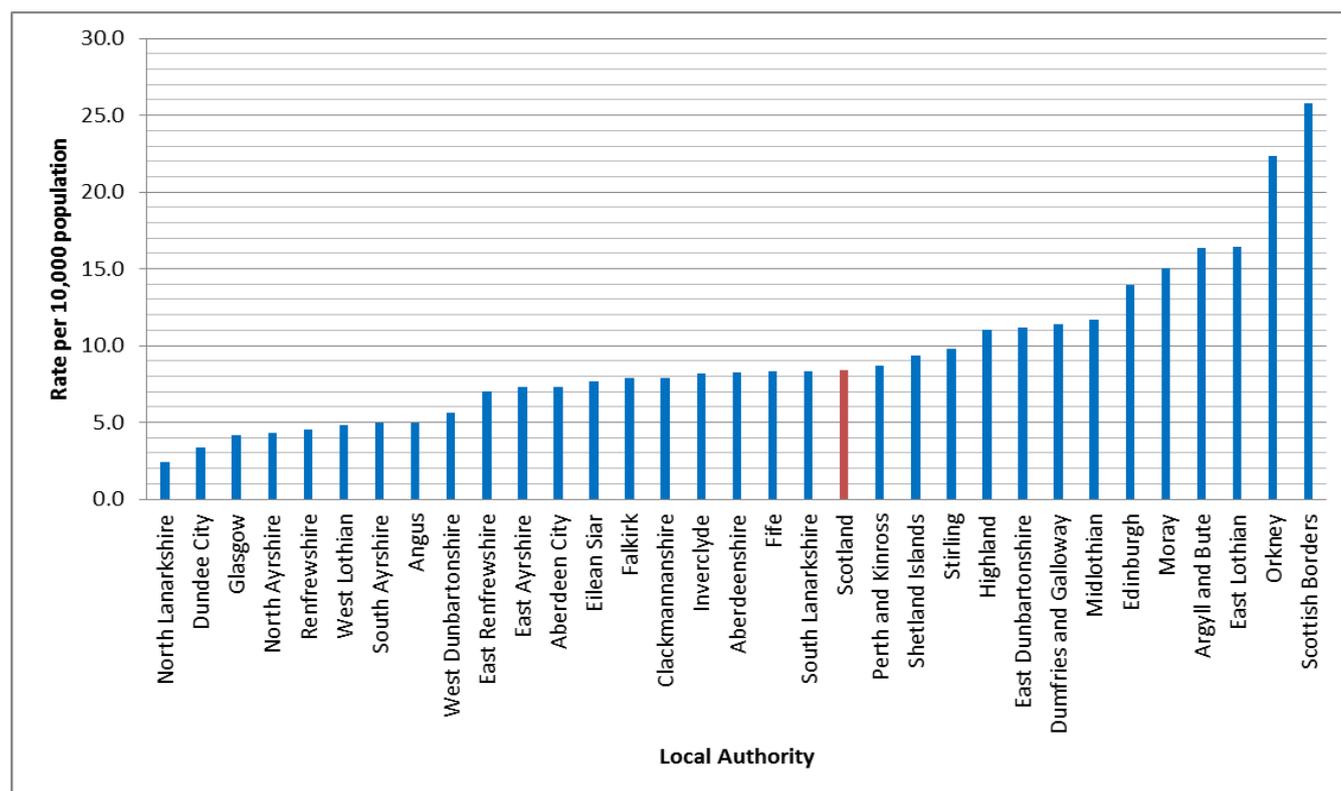
Note that as more than one type of provision can apply to an individual client percentages do not add to 100.
Note figures will not sum due to missing data

Source: Scottish Government (2011)

Take-up of DPs by local authority

A key issue in the discussion concerning DPs has been the variation across local authorities. The [statistical data](#) provides some analysis of the take-up of DPs within each local authority area. However, Chart 3, below, presents the number of DP recipients in 2011 as a rate per 10,000 population.

Chart 3: Rate of Direct Payment recipients by 10,000 population; by local authority; 2011



Source: Scottish Government (2011)

The Scottish average is just above 8 per 10,000. Nineteen local authorities have lower rates than this, though some of this is due to the particularly high rates in Scottish Borders (25.8) and

Orkney (22.4). At the other end of the scale North Lanarkshire (2.4), Dundee (3.3) and Glasgow (4.2) show lower rates of uptake.

These figures suggest a rural / urban split in the take-up of DPs. Rummery et al (2012, para 1.18), note this but also discuss that in some areas high rates may be associated with retendering of services (e.g. Edinburgh and Scottish Borders). In addition, while observing that low rates are typically found in urban areas with relatively high levels of deprivation, note that North Lanarkshire has been developing other forms of SDS that are not shown in the DP figures. This reflects the point made by Manthorpe et al (2011, para 1.5) that much of the research and analysis relating to SDS actually relates to DPs and that there is currently little evidence about other forms of SDS.

Value and length of packages

The most recent data shows that the value of direct payments has increased each year from £2.1 million in 2001 to £50.2 million in 2011. The largest increases in value have taken place over recent years, for example the value of direct payments was £39.8 million in 2010, which increased by over a quarter to 2011. The value of DPs going to recipients with physical disabilities was £23.1m (46% of the total). (Scottish Government, 2011). The statistical data, provides more data by service user group and local authority

The rise in value of DPs is perhaps unsurprising given the rise in the number of DPs, but as Rummery et al (2012, para 1.14) note, it also corresponds with an increase in new packages. Of the direct payments which were ongoing on 31 March 2011, 29% had been in place for a year or less. A further 23% had been going for over 1 year but less than 2 years and 19 per cent of payments had been in place for over 5 years. (Scottish Government, 2011).

APPENDIX 3: SERVICES THAT CAN BE BOUGHT THROUGH DIRECT PAYMENTS

| Service | Description |
|---|--|
| Employing a Personal Assistant | The option of employing a personal assistant (PA) can be attractive to some people as the best means of meeting their individual needs. It can be empowering, and can increase the choice and flexibility of the package. However, the role of employer carries important tasks and responsibilities. The service user must take on employer responsibilities such as the PA's tax, national insurance etc. This is because most individuals will want to decide who the person is that they see, how they work, and when they work. The Scottish Government's guidance on self-directed support expects support and advice to be made available to employers, and it provides information about safe recruitment. |
| Buying services from self-employed Pas | In certain circumstances it is possible for a PA to be self-employed and for their services to be bought in by the person in receipt of a DP. Buying services from a self-employed PA means that the user has some additional responsibilities. For example, they should ensure that the PA's self-employed status relates to performing caring functions, and seek evidence of appropriate training undertaken by the self-employed PA. They must also arrange emergency cover for any periods of absence the self-employed worker may have from the contracted work. The self-employed person is not able to arrange this cover unless they are registered with the Care Commission as an agency, otherwise they are effectively sub-contracting. Only registered agencies are able to provide cover as part of their service agreement. |
| Support from service providers | Service providers should be able to offer flexible tailored packages to suit individual needs. The individual who contracts with the provider can ask for consistency of staff and continuity of support and for the service to be withdrawn if it is of an unsatisfactory standard. It is best practice for local authorities to offer an individual budget of an equivalent monetary value of a council-arranged service to allow individuals to select their chosen option. Individuals can approach any local authority to purchase a service from them, but the local authorities are under no duty to sell services. |
| Housing support services | These are services that enable a person, aged 16 and over, to establish or maintain occupancy of a dwelling. They are provided to help people live as independently as possible in their own homes and might include help with home safety and security or to set up a new tenancy. Since June 2003 local authorities have had a duty to offer eligible people self-directed support to purchase these services. |
| Residential accommodation and short breaks | A person's individual budget may not be used to purchase long-term stays in residential accommodation for adults or children, but can be used to purchase short breaks subject to the maximum period specified by the 2003 Regulations. An individual budget may be used to pay for short breaks in residential respite provision or towards purchasing more flexible short breaks. For example, DPs can be used for a PA to accompany a user on holiday, so providing a complete break for the carer, or children may have a short break with a specialist care worker. |

| Service | Description |
|---|--|
| Equipment and temporary adaptations | <p>Local authorities have a duty to offer direct payments so that disabled people may purchase equipment and temporary adaptations, which would otherwise be provided by local authority social work services. Ownership of the equipment or temporary adaptation bought using the individual budget can lie with the individual, and, with it, the responsibility for service and repair. This needs to be clarified with the individual at the outset. Alternatively, the local authority could continue to maintain the equipment or arrange the maintenance under contract.</p> <p>An individual budget cannot be used as a substitute for Housing Improvement and Repair Grants for adaptations or for any adaptation that would normally be provided by a landlord. Nor can they be used to purchase equipment that would normally be provided by the NHS, for example wheel chairs.</p> |
| Health needs and continuing health needs | <p>Where a package of support includes jointly commissioned services with health, local authorities are encouraged to work with their NHS partners to provide a jointly funded individual budget wherever possible, covering health and community care. Examples of the type of condition that may benefit from this include: skincare, the administration of percussive physiotherapy, specialist cancer, brain or spinal injury care,. Such health needs must be met by someone who is qualified to do so. Health monies can be used to enhance the hourly rate so that a worker with health skills can be employed, or to increase the number of hours funded so that, for example a second, or other worker can attend to health needs at specific times of the day. Local authorities are able then to use the powers available to them under the 1968 Act to release DPs which draw on a combined budget.</p> <p>Continuing health care needs, such as for some aspects of epilepsy and diabetes care, are services that can be delivered by a PA provided that they have been trained by NHS staff, or a suitably qualified agency. Likewise a PA may need to be trained in the use of specialised equipment.</p> |

Source: Scottish Government (2007) [National Guidance on Self-Directed Support](#).

APPENDIX 4: KEY FEATURES OF THE SDS TEST SITES

| Test Site | Description of key features |
|--------------------------------|---|
| Dumfries & Galloway | <ul style="list-style-type: none"> • Aimed to test the applicability of the <i>In Control</i>¹⁴ method in a rural setting and across client groups, though early plans focused on developing personalisation approaches in learning disability services. • Activities centred around one geographical area. • Did not want to implement personalisation as a top down policy and instead took a community development approach to promoting personalisation and building staff confidence in working in this new way. • The work of the test site initially distanced itself from DPs in the Council. • The action plan was not driven by the three themes identified by the Scottish Government. |
| Glasgow | <ul style="list-style-type: none"> • Initially developed in the east of the City with people with learning disabilities. • Built upon an earlier IBs pilot in Glasgow which aimed to achieve more personalised support for people with learning disabilities • The action plan was framed around the 3 test site themes, and stated that it would increase the number of IBs, wherever possible as DPs. • To begin with, SDS was developed separately from the existing DP system. • The local authority tested and refined information resources and operational systems (including a Resource Allocation System (RAS), and self-assessment) building on the <i>In Control</i> approach. It also increasingly used Individual Service Funds (IBs) • Partnership working has seen as a key element of the test site, e.g. the in joint work with the Glasgow Social Care Providers Forum, which also received separate Scottish Government funding to promote SDS. |
| Highland | <ul style="list-style-type: none"> • Aimed to promote SDS through directly increasing the number of people accessing DPs, although towards the end of the 2 years, though this focus shifted to include IBs. • Activities concentrated on adapting self-assessment and other systems from an English local authority that had developed the <i>In Control</i> model. • Aimed to recruit SDS champions within users/carers and staff members who would become exemplars. • An existing local resource allocation system (known as the equivalency model) was tested for establishing IBs. • At first the SDS test site was run as a separate initiative to DPs, with links explored later on. • SDS was promoted mainly to young people in transition into adult services, commonly those with learning disabilities and/or autism, though one-off payments were made to a wider range of client groups. • Plans to extend SDS to older people leaving hospital were tried and abandoned. |

Ridley et al. (2011) [‘Evaluation of Self-Directed Support Test Sites in Scotland’](#)

¹⁴ *In Control* is a disability rights organisation which developed an approach to service development and delivery, aligned with co-production involving 7 key stages - self assessment; plan support; agree plan; manage Personal Budget; organise support; live life; review and learn.

APPENDIX 5: EXAMPLES OF AREAS THAT MAY BE COVERED BY DIRECT PAYMENT REGULATIONS

Employment of close relatives as personal assistants

Relatives of a service user are currently ineligible to receive DPs on their behalf unless there is an exceptional circumstance which the local authority, using their discretion, decides to allow it. A significant number of respondents (Scottish Government, 2011b), including eight local authorities, called for the current provision to be reformed or relaxed. A smaller number were against (this included 15 local authorities) and there were others who were neutral. The themes that came out included:

- carers groups provided the strongest support for a relaxation in the current regulations, though they were often unclear to what extent
- most respondents said that they found the current regulations highly variable in interpretation across Scotland
- the use of the term "exceptional" in determining cases where local authorities would use their discretion was viewed by many as being unsatisfactory

The Scottish Government (2011d, para 40) accepted there was varied use of the exception rule across the country. It stated it would consider the range of inappropriate and appropriate circumstances for employing a relative as a PA, with a view to laying fresh regulations. The Scottish Government (2012) states that these would attempt to lay the basis for the employment of close relatives where appropriate and in line with the focus on outcomes for individuals.

Gross and net payment of direct payments

Currently most local authorities pay DPs net of any individual contribution, which reflect current guidance on the SDS strategy (Scottish Government, 2007). However, some DP users would like to be paid gross. They argue that this would give them equality with individuals receiving other local authority services. However, some local authorities have commented that this would lead to inefficiency and costs associated with having an additional administrative system for dealing with this. The Scottish Government, reflecting on comments made by respondents to its consultation on the draft Bill, has said it is minded to leave the option open to users to have their payments made on a gross basis, but to allow net payments if that is the preference of all parties. (Scottish Government, 2011d, para 44-45). The Scottish Government has accepted this would result in higher administrative costs if all DP users elected to take their DP gross, but believes this will not be taken up by significant numbers of people. (Financial Memorandum, EN, para 127).

Direct payments for residential accommodation

Currently, DPs cannot be used to fund residential care. Around a third of respondents who discussed the issue considered that the restriction should be lifted as it would provide service users with more control in meeting their assessed needs. For those unsure or opposed there were a number of practical issues raised, including: top up fees, how DP users would be viewed in care homes, the impact on costs if increased personalisation in a care home environment where economies of scale are important, and the affect on the National Care Home Contract. (Scottish Government, 2011b, para 11.9-11.11). The Scottish Government accepted there were a number of practical issues that needed to be resolved, particularly in relation to the NCHC. However, it stated that if these could be resolved it would be minded to removing the restriction in the longer term, and it committed to discussing this with stakeholders. (Scottish Government,

2011d, para 49 and Financial Memorandum, EN, para 128). The Scottish Government (2012) has advised that the Law Commission in England recently recommended the removal of the equivalent provision in England.

Eligibility of those on Community Treatment Orders to receive DPs

There was significant support amongst those commenting on this area that the current restriction on those with Compulsory Treatment Orders (CTO) under the Mental Health (Care and Treatment) (Scotland) Act 2003 (2003 Act) be removed. The argument for this was that it would be in line with the principles of the Bill and would resolve some difficult practical matters that arise from the current ban. The Scottish Government also received comments from the Scottish Human Rights Commission, stating that it had concerns about blanket exclusions of any type. In contrast, a minority of those discussing this point felt it would still be inappropriate for vulnerable people. Some did raise practical issues with this that would be need to be addressed, for example the limited skill set of the current personal assistant workforce in providing support in this area. (Scottish Government, 2011b, para 11.1, 11.2 and 11.4). The Scottish Government (2011d, para 47) stated that it would like to remove the current restriction on those under a CTO.

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