

Social Care (Self Directed Support) Bill Scotland: Stage Three Briefing

We are in favour of the Bill and the new powers it will introduce. We believe that people have the right to control and choice in all aspects of their lives, especially when choosing what care they receive and how they receive it. However, we have some concerns with regards to the Bill and its implementation.

1. A child-centred, child-rights based approach

It is the view of our organisations that this Bill currently has a much greater focus on adults than children. This Bill will have a significant impact on many children and their families in Scotland, particularly on the type and kind of services available to them, and we believe that this should be specifically reflected in the Bill and its statutory regulations. In particular we would like to see the following commitments made during Stage 3 of the Bill:

- That the minister makes a clear statement that following the passing of this Bill that the Government will ensure that children and families are at the centre of implementation plans and that statutory guidance includes reference to specific needs of children and how a child-centred and children's rights approach can be delivered (as a forerunner to the Children and Young People Bill) by local authorities.
- That the minister makes a clear commitment that the proposals in this Bill will be aligned with the proposals in the Children and Young People Bill for strategic planning of children's services by all public bodies delivering services to children, the single child's plan and the new duty on all parts of Government to advance children's rights.
- That there is specific reference in statutory guidance as to how those aged 16-18 will be supported by local authorities through choosing self-directed support options and any subsequent services/care as a result.
- That there is specific reference in statutory guidance relating to transition from children's services to adult care and how local authorities should be managing this transition.
- That there will be ongoing research and review into the implementation of SDS for children and young people and those making the transition to adult services.

We believe that such commitments would strengthen and clarify the type and level of support and assistance available to children and their families under the legislation.

- ***We support the amendment to Section 1 tabled by Neil Bibby MSP and would urge all MSPs to support it.***

2. Ensuring child protection, safeguarding and quality of care

Child protection and safeguarding must be at the heart of any system that emerges following the passing of the Bill.

We are concerned that as the Bill is currently drafted, a situation may occur where those employed by families may not have completed a PVG check. We believe that this should be the very minimum that those working directly with children or with adults with children under 16 in the home must have in order to take up a care/support role. This should include all those employed as personal assistants. We believe this is essential to help minimise the risks of children and young people being abused or harmed, or placed at risk of abuse or harm.

We also believe that there must be a minimum level of quality of care delivered following the implementation of this Bill. Parents and families must have confidence that those they are hiring to carry out a caring role can deliver the best possible care for their children.

We believe that the Scottish Government should develop a register for all personal assistants. It should be a condition of funding that only those listed on such a register can be eligible to be employed by families and children, particularly when working directly with children. The Scottish Government should consider looking at ways of expanding the Scottish Social Services Council (SSSC) Register to fulfil this role.

- ***We support the amendment to Section 13 tabled by Jackie Baillie and would urge MSPs to support it.***

3. Provision of advocacy services

We welcome the ministerial amendment to section 8 ensuring that, where appropriate, independent advocacy information is provided. We welcome the fact that the definition of independent advocacy will be consistent with that laid out in clause 259 (1) and detailed in clause 259 (5) the Mental Health (Care and Treatment) (Scotland) Act. This will ensure that potential conflicts of interest are properly addressed.

However, we are concerned that the amendment as currently put could lead to further confusion regarding actually accessing an advocacy service. The amendment requires an authority (in cases where they think it's appropriate) to provide information about persons who provide independent advocacy. By referring to the 2003 act, esp Section 259 (1) this might be seen as reconfirming the existing right to advocacy for those

with 'mental disorders' (mental illness, personality disorder, learning disability). We would like the Minister to confirm that the reference to clause 259 of the Mental Health (Care and Treatment) (Scotland) Act is designed to clarify what kinds of organisations are able to deliver independent advocacy, rather than to limit independent advocacy to those with 'mental disorders'.

Without this, we are concerned that authorities will pass on information on advocacy services to those who (when they enquire) will not be able to use the services as they don't have a 'mental disorder', as set out in the 2003 Act. There will be a need for authorities to be clear on the information they give out especially the remits of all the advocacy services within their local areas otherwise they may raise unrealistic expectations for children, young people and adults.

- ***We are calling on the minister to clarify during the Stage 3 proceedings the implications of the reference to the Mental Health (Care and Treatment) (Scotland) Act as well as exactly what advocacy support will be available to who and what information will be provided.***

4. Training and support

We believe that there must be training and ongoing support for budget holders. There is currently no provision in the Bill to support this, however we believe there should be specific reference to this through statutory guidance. We are concerned families will be awarded substantial amounts of money, and that not all families will have appreciation and understanding of the value of that budget. What will happen to those families that spend their budgets before the end of the financial year? How will local authorities/services support them?

Support and training for social workers in self directed support is paramount if this system is to work. It is our understanding that social workers will be required to guide budget holders through their responsibilities of being employers, as well as advise them on their care options. This will be a significant role if the system is to work effectively. Given that many social workers are already overworked and under resourced, it would be helpful if the minister could address what action the Scottish Government will take to ensure that social workers have the capacity and prerequisite knowledge and skills to provide the effective support that service users undertaking self-directed support options will require.

5. Further choice of options on material change in circumstances

Concerns had been voiced by some service users that section 11 of the Bill might tie them into one SDS option even if, after a while, they found it overwhelming and wanted less control or alternatively they found they had the confidence to take further control. The section suggested to those service users that flexibility to choose again would only be granted following a material change in their circumstances or with the expressed agreement of the authority in other exceptional circumstances. Alison McInnes MSP submitted a probing amendment at stage 2 to broaden the grounds for further choice of options, but it was defeated in committee. Aberlour then engaged the Bill team in discussion around those concerns relating to section 11 and the team accepted there could be a need to clarify the intent of section 11. After taking legal advice, the Government confirmed that flexibility to choose another option would cover the examples given above and that this would be detailed in statutory guidance.

- ***We are calling on the minister to clarify during the Stage 3 proceedings the flexibility of choice that will be available to families and commit to setting these out in guidance.***

6. Information for children

Barnardo's Scotland and the NSPCC Scotland highlighted concerns around the information that will be available on choices to the children and worked with the minister and the Bill Team to secure a ministerial amendment. This amendment will ensure that children receive information, as well as their parents and in a format that is appropriate to their needs.

We would urge all MSPs to support the minister's amendment under section 8: Provision of information: children under 16

Contact Details:

<p>Richard Meade Public Affairs Officer Barnardo's Scotland Tel: 0131-334-9893 E-mail: richard.meade@barnardos.org.uk</p>	<p>Robert McGeachy Policy and Public Affairs Manager NSPCC Scotland Tel: 0207-650-3345/07767-006085 E-Mail: Robert.mcgeachy@nspcc.org.uk</p>
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