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Health, Social Care and Sport Committee

Stage 1 report on the National Care Service (Scotland) Bill



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Health, Social Care and Sport Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for NHS Recovery, Health and Social Care and matters relating to drugs and alcohol policy.

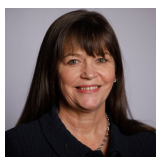


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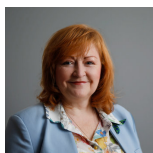
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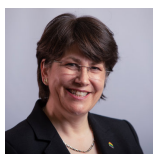
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Summary of recommendations

National Care Service principles

1. The Committee notes generally widespread support for the principles set out in section 1 of the Bill. At the same time, it draws attention to significant areas where stakeholders feel the principles could be usefully clarified and strengthened. It therefore calls on the Scottish Government, in responding to this report, to set out what it will do to clarify and strengthen the proposed National Care Service principles specifically as these relate to:
 - Independent living
 - Right to rehabilitation
 - Self-directed support
 - Ensuring consistency of access and quality
 - Transferability across geographic boundaries and life transitions
 - Making reference to relevant equalities and human rights legislation
 - The "community first" principle
 - Fair work
 - Making direct reference to public protection powers and dutiesⁱ
2. The Committee highlights evidence that the principle that "services provided by the National Care Service are to be centred around early interventions that prevent or delay the development of care needs and reduce care needs that already exist" ¹ is viewed by many as not suitably acknowledging the needs and circumstances of those in receipt of social care services who may be disabled, have long-term conditions or be approaching the end of life. The Committee calls on the Scottish Government to consider how this principle can be clarified, amended or supplemented to address these specific concerns.
3. The Committee calls on the Scottish Government, in responding to this report, to provide further detail on how adherence to the principles will be effectively monitored, evaluated and enforced as part of the creation of a National Care Service, including whether this would require additional provisions on the face of the Bill.
4. The Committee understands it is the Scottish Government's intention that the planned co-design process for the creation of a National Care Service will be informed and underpinned by the National Care Service principles. That being

ⁱ Sandesh Gulhane and Tess White dissent from this recommendation.

the case, it considers that further work to clarify and strengthen the NCS principles in the areas highlighted above should be completed to provide a suitable baseline of consensus for the co-design process to be defined and to proceed.ⁱⁱ

Co-design, timeline and sequencing

5. While acknowledging the Scottish Government's intention to utilise co-design as a key mechanism for developing the details of the proposed National Care Service once the framework legislation is in place, the Committee has heard evidence from multiple stakeholders that there appears to be an ongoing lack of clarity regarding the definition, the precise scope and key areas of focus of co-design or the anticipated outcomes of the co-design process.
6. The Committee calls on the Scottish Government to acknowledge concerns from many stakeholders that the consensus agreement concluded between it and COSLA and the way in which this was arrived at has undermined the confidence of many of those who have participated in co-design so far that their views and input are being taken seriously.
7. The Committee considers that there is a common interest for everyone involved to proceed with the process of reform in as well-planned, incremental and transparent a way as possible. In this context and to ensure its successful delivery, the Committee calls on the Scottish Government to recognise the critical role the Scottish Parliament has to play in undertaking systematic stage-by-stage scrutiny of the implementation of proposals for a National Care Service as set out in the current Bill, including in relation to the outcomes of the co-design process.
8. Given the extreme pressures currently being faced by the social care sector, the Committee seeks further reassurance from the Scottish Government that it is committed to ensuring the process of designing a National Care Service is managed in such a way as to avoid diverting attention from a necessary ongoing focus on the delivery of frontline care.
9. The Committee acknowledges the updates the Scottish Government has provided regarding the most recent progress on co-design. At the same time, reflecting the evidence it has heard to date, it believes those engaged in co-design would find it helpful for the Scottish Government to set out an overarching plan that includes a clear definition of co-design, parameters and intended outcomes of the co-design work and a timetable for its completion. This co-design plan should also provide details of the support the Scottish Government will provide to enable key stakeholders to engage properly with co-design. It should also set out how the Scottish Government will keep the Scottish Parliament regularly updated on progress and outcomes of the co-design process.
10. The Committee calls on the Scottish Government, in bringing forward amendments to the Bill as introduced, to provide detail of the extent to which and

ⁱⁱ Sandesh Gulhane and Tess White dissent from this recommendation.

in what ways the co-design work undertaken to date has informed the content of these amendments.

Fair work

11. The Committee is of the view that addressing workforce issues in social care is fundamental to the formation of the National Care Service. The Committee heard substantial evidence of the intrinsic link between fair work and ethical commissioning and considers commissioning and procurement to be the primary mechanism within the Bill to deliver on fair work commitments. We believe ensuring successful development and implementation of fair work practices across the National Care Service is key and ask the Scottish Government to strengthen the Bill in this area to reflect and maintain its stated commitment in this regard.ⁱⁱⁱ
12. The Committee therefore recommends the Bill should include the following:
 - A clear and comprehensive definition of "fair work" in the Bill under Chapter 2. This should set out how fair work principles will be incorporated within ethical commissioning and strategic planning processes.
 - Clarity on how fair work principles will be applied consistently across all services provided by and on behalf of the National Care Service. The Committee believes this should include detail of minimum contract standards and a mechanism to ensure the collective voice of the social care workforce is heard within that process.
 - Detail of how application of fair work principles will be enforced in practice across multiple and disparate providers.^{iv}
13. A crucial aspect of achieving fair work is improving pay, terms and conditions and parity in social care. We call on the Scottish Government to provide further detail as to how it plans to address these fundamental aspects of the fair work agenda.^v
14. The Committee considers implementing the recommendations of the Fair Work Convention's report on [Fair Work in Scotland's Social Care Sector](#) in 2019 as key to addressing workforce issues in social care. It therefore calls on the Scottish Government to set out the steps it will take and the anticipated timeframe to fully implement these recommendations as an intrinsic element of the creation of a National Care Service.^{vi}

Transition to a National Care Service

ⁱⁱⁱ Sandesh Gulhane and Tess White dissent from this recommendation.

^{iv} Sandesh Gulhane and Tess White dissent from this recommendation.

^v Sandesh Gulhane and Tess White dissent from this recommendation.

^{vi} Sandesh Gulhane and Tess White dissent from this recommendation.

15. The Committee highlights the multiple significant concerns that were expressed during its scrutiny of the Bill as introduced about the potential negative impact of transition to the originally proposed new governance structures involving the transfer of responsibility for social care from local authorities to Scottish Ministers and the replacement of integration authorities with local care boards.
16. In this context, the Committee will reserve final judgement on the extent to which the Scottish Government's revised approach to governance of the proposed National Care Service has addressed those concerns until it has had an opportunity to view the detail of amendments which the Scottish Government intends to bring forward at to reflect the consensus agreement with COSLA on shared legal accountability.
17. In particular, the Committee highlights that, as part of its further scrutiny, it will require a clear overview of the detail of the reforms to integration authorities the Scottish Government intends to bring forward via amendments to the Public Bodies (Joint Working) (Scotland) Act 2014.

The role of Scottish Ministers

18. The Committee notes strongly divergent views on the merits or otherwise of transferring accountability for social care from local authorities to Scottish Ministers, which it heard during its initial scrutiny of the Bill as introduced.
19. The Committee acknowledges the Scottish Government's subsequent decision not to proceed with this aspect of the Bill as introduced and instead to reach a consensus agreement with COSLA to create a governance structure for the proposed National Care Service based on a model of shared legal accountability.
20. The Committee notes that, while this change of approach will be welcomed by many, particularly local government stakeholders, others will feel disappointed that it fails to reflect one of the core recommendations of the Independent Review of Adult Social Care that "Accountability for social care support should move from local government to Scottish Ministers, and a Minister should be appointed with specific responsibility for Social Care".^{vii}
21. The Committee will reserve final judgement on this aspect of the Bill until it has seen the detail of further amendments the Scottish Government intends to bring forward, including how a model of shared legal accountability will work in practice, detail on how Scottish Ministers will exercise strategic framework accountability for the proposed National Care Service as part of this model, beyond the accountability it already has, and the reforms to integration authorities it plans to make via amendment to the Public Bodies (Joint Working) (Scotland) Act 2014.^{viii}
22. Irrespective of the model of accountability, the Committee believes proposals for the creation of a National Care Service need to be accompanied by a reinforced

^{vii} Sandesh Gulhane and Tess White dissent from this recommendation.

^{viii} Sandesh Gulhane and Tess White dissent from this recommendation.

role for the Scottish Parliament in undertaking regular, structured scrutiny of its implementation and the extent to which it is achieving its defined objectives. To support this reinforced scrutiny role, the Committee calls for the Bill to include provisions enabling the Scottish Government to keep the Scottish Parliament regularly updated on the operation of the National Care Service including, in particular, an assessment of the extent to which this is contributing to improved outcomes for those in receipt of social care.

Care boards

23. The Committee acknowledges the Scottish Government's decision to no longer proceed with plans for the creation of local care boards as part of the governance structure of the proposed National Care Service and to retain integration authorities in a reformed state. It further notes that, as part of the consensus agreement with COSLA, the Scottish Government intends to create a National Care Service Board as part of a revised governance structure.
24. The Committee wishes to highlight a number of important areas where stakeholders had requested greater clarity and detail with respect to the provisions of the Bill as introduced that related to care boards which are equally applicable to the Scottish Government's plans for creation of a National Care Service Board. These include:
 - The remit of the proposed National Care Service Board, including whether it will have responsibility for delivery, commissioning, standards-setting or a combination of these;
 - The extent to which responsibilities previously attributed to Scottish Ministers in the Bill as introduced will be transferred to the proposed National Care Service Board;
 - Membership of the proposed National Care Service Board and whether all members will have full voting rights;
 - How the proposed National Care Service Board will interact with integration joint boards and Health and Social Care Partnerships.
25. The Committee further notes that it is the Scottish Government's intention to set out many of the details of the proposed National Care Service Board via secondary legislation, with these details having previously been informed by a process of co-design. The Committee calls on the Scottish Government to give further consideration to how the Scottish Parliament will be accorded an appropriate ongoing scrutiny role with respect to the establishment and operation of the proposed National Care Service Board.
26. The Committee highlights the substantial expectations of a broad range of stakeholders submitting evidence on the Bill regarding membership of care boards as well as mixed views on the merits or otherwise of giving all care board members full voting rights. The Committee believes that these expectations will

equally need to be carefully managed and addressed with respect to membership of the proposed National Care Service Board. It further points out that the National Care Service Board's capacity to reach decisions effectively will be partly dependent on its overall membership numbers.

27. The Committee has heard concerns about the extent of powers originally conferred on Scottish Ministers by the Bill as introduced with respect to the establishment and abolition of care boards and the appointment and dismissal of care board members. It remains unclear to what extent Scottish Ministers will have similarly extensive powers with respect to the proposed National Care Service Board. If the Scottish Government's intention is that Scottish Ministers will have corresponding powers over the proposed National Care Service Board and its membership, the Committee takes a view that they will need to be subject to an appropriate level of parliamentary scrutiny and enhanced safeguards to ensure their exercise is appropriately motivated and politically impartial.

Strategic Planning

28. The Committee will reserve judgement on those aspects of the Bill related to strategic planning until it has seen the detail of amendments the Scottish Government intends to bring forward which it understands, under the new revised governance model, will give the proposed National Care Service Board a defined role in scrutinising strategic planning by integration authorities.^{ix}
29. At the same time, the Committee wishes to draw the Scottish Government's attention to a range of evidence it has gathered as part of its Stage 1 scrutiny of the Bill as introduced which may also be relevant to this Chapter of the Bill and any amendments that the Scottish Government subsequently intends to bring forward, namely that:
 - The requirement for the period of strategic plans to not exceed three years is considered by many stakeholders to be unduly prescriptive and not conducive to encouraging a longer-term approach to strategic planning, and that this provision should be replaced with a requirement for strategic plans to be reviewed at least every three years;
 - Strategic plans should be required to have explicit regard to the principles set out in section 1 of the Bill;
 - Further provision should be made to ensure appropriate alignment between any strategic plans developed as part of the proposed National Care Service and other pre-existing strategies, such as NHS strategic plans and local outcome improvement plans; and that making additional provision for an oversight function could help ensure appropriate alignment and consistency in strategic planning;
 - The provisions on consultation on strategic planning, as set out in this

^{ix} Sandesh Gulhane and Tess White dissent from this recommendation.

Chapter of the Bill as introduced, would benefit from enhancement to reflect the Scottish Government's stated commitment to co-design and co-production as an integral part of the proposed National Care Service;

- To further facilitate effective strategic planning and the successful development and implementation of ethical commissioning strategies by the relevant governing bodies, this Chapter of the Bill should include a clear and comprehensive definition of "ethical commissioning"; and
- Strategic plans should equally fulfil a number of other important criteria, namely:
 - Being outcome-focused
 - Being subject to equality impact assessment
 - Making reference to Article 19 of the UN Convention on the Rights of Persons with Disabilities
 - Promoting a collaborative approach to planning
 - Addressing workforce planning and include a detailed and comprehensive training plan
 - Including provisions on standards and governance
 - Addressing the integration of homelessness and housing services.

30. The Committee therefore calls on the Scottish Government to give careful consideration to this evidence in formulating its amendments to this Chapter of the Bill.

The National Care Service Charter

31. The Committee is sympathetic to the view expressed by many stakeholders that the creation of a Charter offers an important opportunity to give practical effect to the principles underpinning the proposed National Care Service. The Committee therefore calls for the sections of the Bill governing the creation of a National Care Service Charter to be amended to make provision that the Charter is to reflect the proposed National Care Service principles.^x

32. The Committee acknowledges the Scottish Government's approach, in making provision for a National Care Service Charter, of following the model of the Charter of Patient Rights and Responsibilities, which stipulates that "nothing in the Charter is to give rise to any new rights, impose any new responsibilities, or alter (in any way) an existing right or responsibility". At the same time, following the model of the Patient Rights (Scotland) Act 2011 and to give clarity to those in

^x Sandesh Gulhane and Tess White dissent from this recommendation.

receipt of social care services, it calls on the Scottish Government to consider the inclusion of a statement of pre-existing rights on the face of the Bill.^{xi}

33. The Committee supports the five year review period in relation to the National Care Service Charter, since this reflects review provisions with respect to the Social Security Charter and the Charter of Patient Rights and Responsibilities.^{xii}
34. The Committee will reserve final judgement on those sections of the Bill related to the proposed National Care Service Charter until it has seen the detail of any relevant amendments the Scottish Government intends to bring forward. At the same time, it already takes the view that, if the intention behind those amendments is to transfer those duties currently conferred on Scottish Ministers with respect to the Charter to the newly proposed National Care Service Board, these provisions should be accompanied by a reinforced role for the Parliament in undertaking ongoing scrutiny of the Charter.^{xiii}
35. In this context, it believes a reinforced scrutiny role for the Parliament would be best achieved by following the model of the Social Security (Scotland) Act 2018 where the creation of the first Charter and any subsequent review is subject to approval by resolution of the Scottish Parliament. The Bill should also ensure sufficient time is given to Parliamentary scrutiny of the Charter.^{xiv}
36. The Committee has heard evidence of concerns with what is meant by co-design in relation to the Charter and who exactly would be involved. The Committee notes the Minister's update in her most recent correspondence regarding progress in the process of co-design related specifically to the Charter. It welcomes the Minister's undertaking to share a draft of the Charter with the Committee once available. As part of a reinforced process of scrutiny of the Bill at Stage 2, the Committee will seek an update from relevant stakeholders to ascertain to what extent they are satisfied with the outcome of the co-design process related to the development of the Charter.^{xv}

Independent advocacy

37. The Committee will reserve final judgement on section 13 of the Bill until it has seen the detail of any amendments the Scottish Government intends to bring forward. It notes that the regulation-making powers conferred on Scottish Ministers by this section of the Bill are currently subject to the affirmative procedure. Depending on the detail of those amendments, the Committee may wish to see the scrutiny role of the Parliament with respect to the exercise of these powers further reinforced through the use of a different procedure.^{xvi}

^{xi} Sandesh Gulhane and Tess White dissent from this recommendation.

^{xii} Sandesh Gulhane and Tess White dissent from this recommendation.

^{xiii} Sandesh Gulhane and Tess White dissent from this recommendation.

^{xiv} Sandesh Gulhane and Tess White dissent from this recommendation.

^{xv} Sandesh Gulhane and Tess White dissent from this recommendation.

^{xvi} Sandesh Gulhane and Tess White dissent from this recommendation.

38. The Committee has heard a range of concerns that the provisions of the Bill relating to independent advocacy are insufficiently clear and robust to deliver the "coherent, consolidated and consistent approach" promised by the Policy Memorandum. In an effort to strengthen these provisions in the current Bill, the Committee recommends that the Scottish Government refers to the corresponding provisions of the Social Security (Scotland) Act 2018 as a potential template for the independent advocacy provisions of the Bill, in particular, the right to advocacy, the definition of "advocacy services" and the development of advocacy service standards provided by that Act.
39. The Committee requires more detailed costings related to independent advocacy in the Financial Memorandum accompanying the Bill. Before proceeding to Stage 2 of scrutiny of the Bill, the Committee calls for the Scottish Government to bring forward further details regarding estimated costs for the delivery of independent advocacy and how it intends this will be funded.

Complaints

40. The Committee has heard evidence of the key features stakeholders would like to see reflected in any complaints system supporting the proposed National Care Service, namely:
 - It enables complaints to be resolved locally wherever possible and only to be escalated to a national system if no local resolution can be found;
 - It should be independent;
 - It should make suitable provision for penalties and redress in the event a complaint is upheld;
 - It provides access to appropriate support for people making a complaint.

The Committee calls on the Scottish Government to ensure that any such complaints system reflects these key features in its design.
41. The Committee shares stakeholder concerns about the regulation-making powers conferred by section 15 of the Bill, particularly in light of their direct impact on the statutory functions of the Scottish Parliamentary Corporate Body.
42. The Committee recommends that these provisions be made subject to a procedure that would enable a further enhanced level of parliamentary scrutiny than is offered by use of the affirmative procedure.

Scottish Ministers' powers to intervene

43. The Committee will reserve final judgement on Chapter 4 of Part 1 of the Bill until it has seen the detail of any amendments the Scottish Government brings forward, including as these relate to the development of an Improvement,

Support and Escalation framework.^{xvii}

44. At this stage of the Committee's scrutiny, it remains unclear whether and to what extent the Scottish Government intends to transfer those powers currently conferred on Scottish Ministers under Chapter 4 to the newly proposed National Care Service Board. The Committee nonetheless wishes to highlight widespread concerns it has heard during its scrutiny of the Bill to date regarding the nature and extent of those powers.
45. The Committee calls on the Scottish Government to ensure these concerns are suitably addressed in the detail of any relevant amendments the Scottish Government brings forward.

Research and training

46. The Committee acknowledges the Scottish Government's stated intention, via amendments, to transfer the research and training functions set out in sections 23 and 24 of the Bill as introduced to the proposed National Care Service Board. It will reserve final judgement on these sections of the Bill until it has seen the detail of these amendments.^{xviii}
47. The Committee seeks further clarity concerning the degree to which those functions currently attributed to care boards in these sections of the Bill will be transferred to integration authorities under the revised governance structure now envisaged for the proposed National Care Service.
48. The Committee acknowledges the widespread support for the provisions of the Bill relating to research (section 23) and training (section 24) as well as strong support for these provisions to be further strengthened. With particular regard to section 24, the Committee supports making the provision of training and training grants mandatory, such as may be required to enable members of the workforce to fulfil their roles to a suitably high standard. The Committee further believes that the additional associated costs of training need to be reflected in the Financial Memorandum accompanying the Bill.^{xix}
49. The Committee has heard extensive evidence in support of the development of a comprehensive framework underpinning the training provisions of the Bill and overseen by a single body. This evidence suggests such a framework should include:
 - Clear and robust governance arrangements
 - Clear provisions setting out what categories of training are or are not covered and are mandatory or part of continuous professional development
 - Clear alignment of training plans with workforce development and planning

^{xvii} Sandesh Gulhane and Tess White dissent from this recommendation.

^{xviii} Sandesh Gulhane and Tess White dissent from this recommendation.

^{xix} Sandesh Gulhane and Tess White dissent from this recommendation.

- Clear alignment with the Advance Practice Framework for social work
 - Close involvement of independent professional associations in decision-making
 - A requirement to work closely with the SSSC as the body responsible for setting qualification and CPL requirements for the social care sector
 - A system of sanctions with respect to providers that fail to meet agreed training standards
 - Provision for data gathering to help inform continuous improvement in training outcomes.^{xx}
50. As outlined earlier in this report, the Committee believes the provisions set out in section 24 should be matched with a requirement for a comprehensive training plan to be prepared as part of the strategic planning process set out in Chapter 2 of Part 1 of the Bill.^{xxi}
51. The Committee would also like to see further provision made with respect to section 24 of the Bill to ensure members of the workforce are adequately supported to be able to participate in relevant training in a way that does not financially disadvantage them or otherwise impinge on their normal working hours.^{xxii}
52. The Committee would like to see the wording of section 24 amended to ensure any such training is appropriately commissioned from suitably qualified and experienced professionals.^{xxiii}

Support for Other Activities

53. As for the previous sections of the Bill, the Committee acknowledges the Scottish Government's intention, via amendments, to transfer the functions set out in section 25 of the Bill as introduced from Scottish Ministers to the proposed National Care Service Board. Again, it will reserve final judgement on this section of the Bill until it has seen the detail of those amendments.^{xxiv}
54. To help further inform the process of drafting these amendments, the Committee draws the Scottish Government's attention to evidence it has received arguing that this section of the Bill would equally benefit from amendment to clarify what activities may be funded through this provision and who may qualify for funding.^{xxv}

^{xx} Sandesh Gulhane and Tess White dissent from this recommendation.

^{xxi} Sandesh Gulhane and Tess White dissent from this recommendation.

^{xxii} Sandesh Gulhane and Tess White dissent from this recommendation.

^{xxiii} Sandesh Gulhane and Tess White dissent from this recommendation.

^{xxiv} Sandesh Gulhane and Tess White dissent from this recommendation.

55. The Committee also seeks assurances from the Scottish Government that, if loans are to be issued as part of the financial assistance provided for by this section, it will issue clear guidance setting out rates of interest for loans and how these will be managed.

Compulsory Purchase

56. The Committee notes concerns that the wording of section 26 should be amended to provide stronger safeguards that the powers it confers will only be used as a last resort. The Committee notes suggestions this should include a requirement to collaborate with local partners to fully explore other options for making best use of existing public assets before this power can be exercised.
57. The Committee recognises that, based on provisions as originally set out in the Bill as introduced, there could have been a conflict of interest between Scottish Ministers having the power to authorise the compulsory purchase of land and to make the decision to compulsorily purchase land in the first place. The Committee will reserve final judgement on these provisions until it has seen the detail of any amendments the Scottish Government intends to bring forward. If the powers of compulsory purchase are to be retained in some form, in the broader interests of transparency, it believes that the exercise of these powers should be made subject to a process of appeal.^{xxvi}

Powers to transfer functions

58. The Committee notes significant concerns raised by multiple stakeholders during its Stage 1 scrutiny of the Bill as introduced regarding the potential impact of the powers conferred by sections 27 to 29 – that is to transfer functions out of local government control - being exercised. It therefore welcomes confirmation from the Scottish Government that, under the new consensus agreement with COSLA, local government will retain functions, staff and assets and, as a consequence, these provisions will no longer be required.
59. The Committee notes the Scottish Government's intention to make alternative provision for functions to be transferred between statutory partners if there is a rationale and clear local agreement to do so. However, it will reserve final judgement on this point until it has seen the full text of its amendments.^{xxvii}
60. In those circumstances where functions are to be transferred, the Committee also emphasises the importance of ensuring absolute clarity around the scope of functions to be transferred and of undertaking proper prior consultation with those potentially affected.^{xxviii}

^{xxv} Sandesh Gulhane and Tess White dissent from this recommendation.

^{xxvi} Sandesh Gulhane and Tess White dissent from this recommendation.

^{xxvii} Sandesh Gulhane and Tess White dissent from this recommendation.

^{xxviii} Sandesh Gulhane and Tess White dissent from this recommendation.

Children's services and justice social work

61. In light of the widespread concerns expressed to it and other committees taking evidence on the Bill at Stage 1 about potential implications of transferring children's services and justice social work into the proposed National Care Service, the Committee welcomes the Scottish Government's change of approach.
62. At the same time, the Committee will need to take further evidence from stakeholders as part of its further scrutiny of the Bill to determine the precise implications of this revised approach for the future delivery of children's services and justice social work, taking due account of any relevant amendments the Scottish Government brings forward.^{xxix}

Other services

63. During its scrutiny of the Bill, the Committee heard evidence from many stakeholders highlighting a lack of clarity as to how the planned transfer of adult support and protection and mental health services into the proposed National Care Service would be managed. It notes similar concerns with respect to alcohol and drugs support and homelessness services and wishes to highlight evidence of the risks potentially posed to the continuity of service provision in these areas as well as to effective integration with other related services if such transfers are not carefully managed.
64. In light of these concerns, the Committee broadly welcomes the change of approach to proposed governance structures in reducing the risk of disruption to ongoing delivery of these other services but will again reserve final judgement until it has seen the detail of relevant amendments.^{xxx}
65. The Committee further notes the Minister's commitment to share with it further details of delegation arrangements for other services early in 2024 and intends to use this additional information to further inform its final conclusions with respect to the Bill as it relates to those other services.^{xxxi}

Transfer of staff, property and liabilities etc.

66. During its initial scrutiny, the Committee heard concerns raised by many stakeholders concerning the implications of transferring staff, property and liabilities from local government to the proposed National Care Service, as originally provided for in the Bill as introduced. In this context, it acknowledges the Scottish Government's significant change of approach towards governance and accountability and the reassurance this should hopefully provide, particularly

^{xxix} Sandesh Gulhane and Tess White dissent from this recommendation.

^{xxx} Sandesh Gulhane and Tess White dissent from this recommendation.

^{xxxi} Sandesh Gulhane and Tess White dissent from this recommendation.

to staff currently working within the sector.^{xxxii}

67. At the same time, the Committee will reserve final judgement on these sections of the Bill until it sees the detail of relevant amendments brought forward by the Scottish Government and has an opportunity to take further evidence from relevant stakeholders as part of its further scrutiny of the Bill.^{xxxiii}

National Social Work Agency (NSWA)

68. Given that the proposed remit of a National Social Work Agency, as described in the Policy Memorandum, is to include responsibilities to "monitor and improve the quality of the services that the NCS provides" and to oversee and support education, improvement and scaling up of good practice, workforce planning, training and development and terms and conditions including pay, the Committee requests clarification from the Scottish Government as to why its scope is limited to the social work profession rather than addressing these important issues with respect to the wider social care workforce.
69. The Committee recognises stakeholders' concerns that, if it is set up as currently proposed as a department within the Scottish Government, the NSWA will lack the requisite operational independence to be able to fulfil its role effectively.
70. The Committee therefore calls on the Scottish Government to undertake further engagement with relevant professionals to explore:
- what scope there might be for such an agency to assume responsibilities beyond the social work profession to include the wider social care workforce;
 - how the operational independence of such an agency can be assured to enable it to fulfil its role effectively; and
 - how the future role of Chief Social Work Officers and their ongoing relationship with this agency will be addressed and managed.
71. The Committee further calls on the Scottish Government to set out to what extent and in what ways the ongoing development of its proposals for the establishment of a NSWA have taken account of the concluding recommendations of the Independent Review of Inspection, Scrutiny and Regulation in Scotland.

Health and social care information

72. The Committee believes that a single electronic health and care record is fundamental to the success of the proposed National Care Service and calls on the Scottish Government to complete this as a matter of urgency.^{xxxiv}

^{xxxii} Sandesh Gulhane and Tess White dissent from this recommendation.

^{xxxiii} Sandesh Gulhane and Tess White dissent from this recommendation.

^{xxxiv} Sandesh Gulhane and Tess White dissent from this recommendation.

73. A majority of witnesses submitting evidence to the Committee agreed with the need for a single electronic record, but concerns were also raised about various aspects, including data security, access to and ownership of data, and cost. Ahead of Stage 2, the Committee calls on the Scottish Government to provide:
- a secondary Data Protection Impact Assessment (DPIA) which looks beyond just the framework, to show how it is taking into consideration the privacy risks which could result from the exchange of personal data;
 - confirmation of who will be able to access, view and update health and care records;
 - details of how federated access to the care record will be achieved; and
 - clarification of who will have ownership of the data recorded.
74. The need for enormous investment to achieve Part 2 of the Bill was highlighted to the Committee along with concerns that even an estimate of costings was omitted from the Financial Memorandum accompanying the Bill as introduced. The Committee agrees with the Finance and Public Administration Committee that indicative costs for implementation of Part 2 of the Bill need to be included in the Financial Memorandum and calls on the Scottish Government to provide these in advance of Stage 2.
75. In light of the considerable concerns raised by a broad range of stakeholders about the many implications of implementation of the data and information provisions of the Bill, the Committee believes that the regulation-making powers conferred by section 36 must be subject to a further reinforced process of parliamentary scrutiny than is currently afforded by use of the affirmative procedure.

Monitoring and evaluation

76. The Committee believes that a comprehensive process for the monitoring and evaluation of the National Care Service is a fundamental prerequisite for measuring the extent to which it has successfully achieved its objectives. It is also going to be vital in enabling the Scottish Parliament to effectively fulfil its role in undertaking ongoing scrutiny of the implementation of proposals for a National Care Service.
77. Ahead of Stage 2, the Committee calls on the Scottish Government to bring forward amendments to the Bill making appropriate provision for effective monitoring and evaluation of the National Care Service. This should include provisions enabling the Scottish Government to keep the Scottish Parliament regularly updated on implementation of the Bill and operation of the proposed National Care Service.

Carers

78. The Committee strongly supports the personalisation agenda, whereby individuals have choice and control over their care and support. We recommend the Scottish Government should include further detail on the definitions included in this section, particularly in relation to what constitutes "sufficient breaks" as well as how it plans to ensure any such provision can be flexible, person centred and accessible, and aligned to the principles as set out in section 1.
79. The Committee welcomes provisions in the Bill detailing the rights to breaks for carers, but remains concerned these implementation gaps will persist unless the right to breaks is matched by action to:
- increase appropriate respite (and supportive) care provision and associated funding, and
 - improve flexibility and responsiveness to individual needs and circumstances.
80. The Committee asks the Scottish Government to provide clarity on how the right to breaks for carers will be funded and what steps it will take to ensure any associated implementation gap is avoided.

Care homes

81. The Committee welcomes the commitment to Anne's Law and considers it should be fully implemented as soon as possible to ensure a human rights-based approach to care.
82. The Committee further calls on the Scottish Government to consider bringing forward amendments to these provisions of the Bill to address the following:
- Provisions covering redress and a complaint process should these rights not be realised in practice.
 - Development of a guidance framework to ensure transparency and consistent decision making across all settings.
 - Potential extension of Anne's Law to include wider health and care settings.

Ethical commissioning

83. The Committee notes that discussions are ongoing with COSLA and the NHS to agree details of "how operational commissioning and procurement should be delivered at a local and national level". It further notes that the outcome of these discussions will determine whether amendments will require to be brought forward to those provisions of the Bill related to procurement and ethical commissioning. The Committee will reserve final judgement on the relevant provisions of the Bill until it has been updated on those outcomes and the detail of any amendments.^{xxxv}

84. The Committee is of the view that ethical commissioning is fundamental to the success of the National Care Service, as both the mechanism to deliver on fair work commitments and to address both workforce and service-delivery issues. However, the Committee is concerned that there is too little detail on ethical commissioning within the Bill as introduced.^{xxxvi}
85. The Committee acknowledges that ethical commissioning will form part of the Scottish Government's planned co-design process. However, as already stated in relation to strategic planning, the Committee calls for Chapter 1 of Part 1 of the Bill to include a clear and comprehensive definition of ethical commissioning. The Committee recommends that any definition of ethical commissioning must include fair work principles, including pay, terms and conditions and parity considerations.^{xxxvii}
86. The Committee agrees with views expressed by stakeholders that ethical commissioning should embody the personalisation agenda as established within self-directed support legislation, ensuring choice and control for individuals to ensure the best possible outcomes. The Committee commends the model embraced by the Granite Care Consortium and its outcomes-focused personalised approach to care delivery, its emphasis on providing freedom and autonomy for staff to plan care, and to offer plurality of provider to ensure that local care meets the needs and preferences of individuals. The Committee considers this and other alternative models could provide the basis for development of a best practice approach to the implementation of ethical commissioning practices. The Committee calls for further research into the development and delivery of these models to determine how they can be adapted to represent all providers in an area.
87. The Committee also agrees with stakeholders that oversight in commissioning is crucial to ensuring the legislation does not lead to further implementation gaps. As such, the Committee recommends:
- provisions for rectification should be included within the Bill, alongside a complaints and whistleblowing process, should ethical commissioning and fair work practices not be realised in practice;
 - national ethical commissioning guidance is developed to inform individual ethical commissioning strategies; and
 - the Bill should include a requirement for a review of ethical commissioning practices to take place, within 3 years of the relevant provisions coming into effect.^{xxxviii}

Reserving right to participate in procurement by type of organisation

^{xxxv} Sandesh Gulhane and Tess White dissent from this recommendation.

^{xxxvi} Sandesh Gulhane and Tess White dissent from this recommendation.

^{xxxvii} Sandesh Gulhane and Tess White dissent from this recommendation.

^{xxxviii} Sandesh Gulhane and Tess White dissent from this recommendation.

88. The Committee notes the Scottish Government is considering a potential amendment to section 41 of the Bill to modify the definition of qualifying organisation. It will reserve final judgement on this section of the Bill until it has seen the details of this amendment. It nonetheless calls on the Scottish Government to give due consideration to the points raised in this section of the report in determining its approach to amending this section of the Bill.^{xxxix}
89. The Committee has concerns that there is an inherent contradiction between reserving the right to participate in procurement by type of organisation, and the principles of ethical commissioning. The Committee heard evidence that competitive tendering, as reflected in the “call for competition” set out in the Bill by reserving rights to participate in procurement, is not compatible with ethical commissioning and that it promotes transactional procurement related to cost that, to date, has led to time and task approaches and unfair work practices in the provision of social care, irrespective of whatever guidance is in place.^{xl}
90. The Committee recommends the Scottish Government should undertake a review of procurement practices and develop a strategy to remove competitive tendering from social care procurement, in favour of a collaborative approach to commissioning and procurement which is underpinned by ethical commissioning principles. This should include a clear definition of ethical commissioning. The Scottish Government should further set out detail on how the Parliament will have an ongoing scrutiny role in this area.^{xli}
91. Notwithstanding the Committee's concern as to whether this section is compatible with the Scottish Government's commitment to ethical commissioning, the Committee has heard further concerns over how this provision (reserving right to participate in procurement by type of organisation) would work in practice if enacted.^{xlii}
92. The Committee has concerns that reserving the right to participate in procurement by type of organisation implies a judgement on the types of organisations that provide quality care. We have further concerns that such a provision could unintentionally have a negative impact on outcomes for individuals, particularly in relation to already established and valued local provision and future sustainability of services. We also require further detail from the Scottish Government on the extent to which commissioning and procurement will be undertaken at either a national or local level or both, and how consistency of approach will be ensured while still allowing for local variation.^{xliii}

Regulation of social services

93. The Committee wishes to highlight stakeholder concerns around responsibility for

^{xxxix} Sandesh Gulhane and Tess White dissent from this recommendation.

^{xl} Sandesh Gulhane and Tess White dissent from this recommendation.

^{xli} Sandesh Gulhane and Tess White dissent from this recommendation.

^{xlii} Sandesh Gulhane and Tess White dissent from this recommendation.

^{xliii} Sandesh Gulhane and Tess White dissent from this recommendation.

care provision following cancellation of a care service's registration and that this could have negative consequences for individuals' outcomes if there is no capacity and resilience within the local social care system to respond quickly and to provide alternative, appropriate care in these situations.

94. The Committee requires further assurance in the legislation that every effort will be made to ensure a timely continuation of service delivery for those affected and to minimise disruption in their care and that such decisions do not place undue pressure on other service providers in the marketplace. The Committee notes a suggestion from certain stakeholders that the Care Inspectorate should have a wider market oversight role, similar to that of the Care Quality Commission in England and asks the Scottish Government for its view on this suggestion and how it will ensure there are no oversight gaps.
95. The Committee also believes that there is a case for strengthening collaboration in relation to improvement work and sharing information, when there are concerns about the quality of care in advance of any service closure and in the registration of new services. The Committee would welcome further detail of this on the face of the Bill.
96. The Committee has heard evidence from stakeholders that the regulation landscape across health and social care is complex, with different systems in operation across different sectors and services. The Committee wishes to highlight stakeholder views that further consideration of regulation may be needed rather than only focusing on instances of service closure. We would welcome further detail on how the National Care Service will ensure consistent regulation and oversight across all services provided by and on behalf of the National Care Service.

Ancillary provision and regulation-making powers

97. The Committee has heard significant concerns about the regulation-making powers conferred on Scottish Ministers by sections 4 (Establishment and abolition of care boards), 27 (Power to transfer functions from local authorities), 28 (Power to bring aspects of healthcare into the National Care Service), 29 (Power to re-organise the National Care Service), 31 (Transfers of staff) and 32 (Transfers of property and liabilities, etc.) of the Bill. It therefore welcomes indications from the Minister that, as a consequence of the consensus agreement with COSLA that legal accountability for the proposed National Care Service will be shared between the Scottish Government and local government, these powers will no longer be required and will be removed from the Bill via amendments at Stage 2.^{xliv}
98. In some areas, particularly relating to technical provisions, the Committee is sympathetic to the Scottish Government's view that using secondary legislation is a suitable mechanism to ensure flexibility and enable changes to be implemented as identified through an iterative process. However, we are concerned that an

^{xliv} Sandesh Gulhane and Tess White dissent from this recommendation.

across-the-board approach, as set out in the Bill, is not appropriate and could reduce the scope for effective parliamentary scrutiny.

99. Given the lack of detail on how the key provisions in the Bill will work, as this is to be set out in future regulations, the Committee recommends the following changes to the regulation-making powers set out in section 46 of the Bill:

- The regulation-making powers in section 15 (Dealing with complaints) should be subject to review. In particular, the Committee highlights the recommendation in evidence from the Presiding Officer that “any measures proposed by the Scottish Ministers which have the potential to affect the SPCB in any aspect of the exercise of its functions” should “follow a legislative route which affords proper scrutiny and ensures parliamentary approval”.
- Regulations in section 36 (Care records) should be subject to a further reinforced process of parliamentary scrutiny than that afforded by the affirmative procedure.
- The regulation-making power in section 41 (Reserving right to participate in procurement by type of organisation) should be subject to review given the Committee’s view that section 41 is incompatible with the policy intent of ethical commissioning. We recommend the section, and hence the associated regulation-making power, is removed.^{xlv}

100. The Committee urges the Scottish Government to bring forward the necessary amendments to give effect to these changes.^{xlvi}

101. One of the challenges the Committee has faced with this Bill has been the lack of available detail at the start of our scrutiny. The Committee believes that should the Bill be enacted, post-legislative scrutiny of the Bill, including the regulation-making powers contained within it, will be essential. We ask the Scottish Government to mandate a review of the regulation-making powers of the Bill and of any regulations made using these powers, within 3 years of each of the corresponding provisions coming into effect.^{xlvii}

Recommendation on the general principles of the Bill

102. The Committee draws its conclusions and recommendations on the Bill to the attention of the Parliament.^{xlviii}

103. As reflected by the Independent Review of Adult Social Care, the Committee recognises the case for reform in social care to address existing inconsistencies in access across local authorities, to ensure consistent application of guidance

^{xlv} Sandesh Gulhane and Tess White dissent from this recommendation.

^{xlvi} Sandesh Gulhane and Tess White dissent from this recommendation.

^{xlvii} Sandesh Gulhane and Tess White dissent from this recommendation.

^{xlviii} Sandesh Gulhane and Tess White dissent from this recommendation.

and legislation, to address ongoing challenges in workforce, including terms and conditions of employment, and capacity, to improve commissioning and procurement and, ultimately and most importantly, to improve outcomes for those in receipt of social care and support. It therefore welcomes the intentions underlying the Scottish Government's proposals for the creation of a National Care Service.^{xlix}

104. However, the Committee has expressed concern that the Scottish Government has so far been unable to provide details of amendments which it will bring forward to clarify the details of its revised proposals. While the Committee understands that this is a framework Bill, the lack of detail at this stage on what that framework will look like is concerning, and has made the work of the Committee less effective as a consequence.
105. The Committee is also concerned that the Scottish Government has so far been unable to articulate and communicate a model of how the proposed National Care Service would operate. We understand that the Scottish Government intends to share this information prior to the Stage 1 debate and look forward to receiving it.
106. The Committee's recommendation therefore remains conditional on the Scottish Government addressing the concerns it has set out in this report and agreeing to facilitate significant further scrutiny of the Bill at Stage 2, ahead of the formal Stage 2 proceedings taking place.ⁱ
107. The Committee notes calls from a key stakeholder to establish an expert legislative advisory group for the Bill to help guide the co-design process and encourages the Scottish Government to fully explore this possibility and report to the Committee prior to Stage 2.ⁱⁱ
108. To enable it to undertake effective ongoing scrutiny of the Bill, the Committee calls on the Scottish Government to publish:
 - the full text of any amendments it intends to lodge at Stage 2;
 - a marked-up version of the Bill as introduced incorporating these amendments in a highlighted format; and
 - an updated Policy Memorandum and Explanatory Notes.ⁱⁱⁱ
109. The Committee further gives due notice that, subsequent to receiving the items outlined above, it will require additional time to take further oral and written

^{xlix} Sandesh Gulhane, Carol Mochan, Paul Sweeney and Tess White dissent from this recommendation; There was a division on this paragraph. For further details, see Annex B.

ⁱ Sandesh Gulhane, Carol Mochan, Paul Sweeney and Tess White dissent from this recommendation. There was a division on this paragraph. For further details, see Annex B.

ⁱⁱ There was a division on this paragraph. For further details, see Annex B.

ⁱⁱⁱ Sandesh Gulhane and Tess White dissent from this recommendation; There was a division on this paragraph. For further details, see Annex B.

evidence from key stakeholders prior to commencing the formal process of considering and disposing of amendments at Stage 2.^{liii}

110. That being the case, in order for the Committee to be in a position to conclude its Stage 2 scrutiny of the Bill in a timely manner, it calls on the Scottish Government to publish the documents outlined above ideally prior to 26 February 2024 and certainly no later than 29 March 2024.^{liv}
111. Subject to these conditions, the Committee recommends that the general principles of the Bill be agreed to.^{lv}

^{liii} Sandesh Gulhane, Carol Mochan, Paul Sweeney and Tess White dissent from this recommendation; There was a division on this paragraph. For further details, see Annex B.

^{liv} Sandesh Gulhane, Carol Mochan, Paul Sweeney and Tess White dissent from this recommendation; There was a division on this paragraph. For further details, see Annex B.

^{lv} Sandesh Gulhane, Carol Mochan, Paul Sweeney and Tess White dissent from this recommendation; There were two divisions on this paragraph. For further details, see Annex B.

Membership changes


112. The following changes to Committee membership occurred during the course of the Committee's scrutiny:

- On 19 January 2023, Paul Sweeney MSP replaced Carol Mochan MSP.
- On 18 April 2023, Clare Haughey MSP replaced Gillian Martin MSP.
- On 25 April 2023, Carol Mochan MSP replaced Paul O'Kane MSP.
- On 31 October 2023, Ivan McKee MSP replaced Stephanie Callaghan MSP.
- On 9 November 2023, Ruth Maguire MSP replaced Evelyn Tweed MSP.

Introduction

113. The [National Care Service \(Scotland\) Bill](#) ("the Bill") was introduced in the Scottish Parliament by Kevin Stewart MSP, then Minister for Mental Wellbeing and Social Care, on 20 June 2022. The Parliament designated the Health, Social Care and Sport Committee ("the Committee") as the lead committee for Stage 1 consideration of the Bill.
114. Under the Parliament's Standing Orders Rule 9.6.3(a), it is for the lead committee to report to the Parliament on the general principles of the Bill. In doing so, it must take account of views submitted to it by any other committee. The lead committee is also required to report on the Financial Memorandum and Policy Memorandum, which accompany the Bill.

Overview of the Bill as introduced

115. Firstly, it should be noted that, as described throughout this report, the Scottish Government's proposed approach towards the creation of a National Care Service changed substantially during the course of the Committee's Stage 1 scrutiny of the Bill. This has meant that the bulk of the evidence the Committee has taken has been based on assumptions around an operating model that is fundamentally different to that which will now be taken forward.
116. The [Policy Memorandum](#) for the Bill as originally introduced states that "The purpose of the National Care Service (Scotland) Bill is to improve the quality and consistency of social services in Scotland." ² The Bill as introduced seeks to achieve this through the creation of a national body, accountable to ministers, that will set the priorities and standards for how social care is delivered in Scotland. Currently, local authorities in Scotland have a statutory duty to assess needs, to organise social care and support and to provide funding and Scottish ministers, through health boards, are responsible for health care.
117. As described in the Policy Memorandum, the Bill as introduced "creates a framework for the National Care Service, but leaves space for more decisions to be made at later stages through co-design with those who have lived experience of the social care system, and flexibility for the service to develop and evolve over time". The Policy Memorandum concludes:
-  Some of those future decisions will be implemented through secondary legislation, others will be for policy and practice. Where those decisions are implemented through secondary legislation (under this Bill or through pre-existing powers), financial and regulatory impact assessments will be provided. The Parliament will, therefore, have further opportunities to examine the implications of the Scottish Government's proposed reforms to the social care system.
118. The Policy Memorandum sets out the Scottish Government's view that "Over many years, various issues have demonstrated that social services and the integration of health and social care services are not working as well as they should." ² It highlights the 2021 report of the Independent Review of Adult Social Care (also

known as the Feeley Review) which recommended the creation of a National Care Service. It also sets out the Scottish Government's vision for the NCS.

119. The Explanatory Notes that accompany the Bill explain the parts of the Bill as introduced as follows:
- Part 1 establishes the National Care Service. It makes the Scottish Ministers responsible for organising the National Care Service, enables them to establish new public institutions called care boards to comprise the National Care Service and gives the Ministers power to make regulations transferring health and social care functions to the institutions comprising the National Care Service.
 - Part 2 gives the Scottish Ministers powers to make records about people's health and social care more consistent and better integrated.
 - Part 3 contains modifications to existing laws relating to the provision and regulation of care.
 - Part 4 contains provisions usually found at the end of a Bill, namely the power to make ancillary regulations, further elaboration in relation to regulation-making powers elsewhere in the Bill and the sections dealing with commencement and short title.
120. Further detail on the background to the Bill can be found in the [Bill briefing](#) produced by the Scottish Parliament Information Centre (SPICe).

Consideration by the Health, Social Care and Sport Committee and other Committees

121. A joint call for views involving all those parliamentary committees conducting scrutiny of various elements of the Bill, ran between 8 July and 2 September 2022 and received [217 responses](#). SPICe have produced a [summary of the written submissions](#).
122. The Committee continued to receive supplementary written submissions and correspondence throughout its Stage 1 scrutiny of the Bill. These are available on the [Committee's correspondence page](#).
123. Alongside the formal call for views, the Committee agreed to gather the views and experiences of the public in relation to the National Care Service (Scotland) Bill, to support its Stage 1 scrutiny of the Bill.
124. An [online platform](#) was open for submissions from 8 July to 9 September 2022. The platform enabled participants to rate proposals using rating buttons indicating agreement, disagreement or being unsure about the proposals and wanting to have more information. Participants were also able to comment on seventeen individual provisions set out in the Bill. There were also [discussions](#) on people's hopes, fears and questions about the Bill.
125. Over 150 users took part in the online discussion providing over 300 comments on provisions in the Bill and over 550 ratings. A [summary of the digital engagement](#) was produced. The data gathered from this exercise is not intended to be a representative sample of the population, but rather to give a snapshot of some of the experiences, questions and concerns the public have about the Bill.
126. To better understand how social care was provided around the world, the Committee commissioned research on international models of social care. This research was undertaken by Dr Irena Connon. Dr Connon published her research: "[Literature Review of International Models of Social Care Lessons for Social Care Delivery, Sustainability and Funding in Scotland](#)" on 3 October 2022.
127. The Committee also held a number of informal engagement sessions. On 12 October 2022, the Committee ran a workshop at the Voluntary Health Scotland Annual Conference in Glasgow.
128. The Committee also held informal sessions in private with a range of people with different lived experiences.
129. On 14 November 2022, the Committee visited Aberdeen. The Committee met with Granite Care Consortium and people in receipt of care. The Committee also visited Camphill - Tigh A' Chomainn to engage with staff and service users.

Members have a roundtable discussion in Aberdeen with Granite Care Consortium.



130. On 21 November 2022, the Committee visited Dumfries. The Committee held informal discussions with Stewartry Care and other organisations representing registered care homes, registered care at home and wider community and third sector organisations.

Members with local social care providers and service users in Dumfries (brought together via Scottish Care and Stewartry Care).



131. On 5 December 2022, the Committee visited Glasgow. The Committee met with representatives from the Coalition of Care and Support Providers in Scotland before meeting service users and frontline staff from the Key. As part of this visit the Committee also held a formal evidence session at the William Quarriers Conference Centre.

Committee members meet with service users and frontline staff from Key, Glasgow.



132. The Committee then held two informal, online meetings. The first of these was with frontline health and social care staff on 6 December 2022 and allowed the Committee to hear their experiences of integration and explore their views on the proposed National Care Service. The second session took place on 12 December with key stakeholders and service users, including representatives from Age Scotland, Scottish Independent Advocacy Alliance, Scottish Families Affected by Alcohol & Drugs, Carers Scotland, and Inclusion Scotland's People-led Policy Panel.
133. The Committee began taking formal oral evidence on the Bill on 25 October 2022 and continued taking oral evidence throughout November and December. The evidence sessions covered:
- [25 October 2022](#) - international examples of how social care is organised and funded;
 - [1 November 2022](#) - two panels focusing on a human rights approach and legislative considerations and then local government;
 - [8 November 2022](#) - evidence on the Bill as it relates to the future of integrated health and care services including community health, prevention, local services, rural services and transfer of functions. The Committee then heard from Derek Feeley, former Chair of the Independent Review of Adult Social Care commissioned by the Scottish Government;
 - [15 November 2022](#) - one panel with representatives of a number of professional bodies and regulators representing sections of the health, social care, and social work workforce. A second panel with trade unions representing

the social care workforce;

- [22 November 2022](#) - one panel focusing on data and information sharing aspects of the Bill and then a second panel focusing on the Bill in relation to regulation and quality improvement;
- [29 November 2022](#) - two panels focusing on ethical commissioning and procurement and long-term sustainability of social care services;
- [5 December 2022](#) - two panels focusing on the voluntary sector and carers and then disability and independent advocacy;
- [13 December 2022](#) - two panels focusing on certain services related to social care, including mental health services and drug and alcohol services as well as public protection and then older people and "Anne's Law"; and
- [20 December 2022](#) - evidence from the Minister for Mental Wellbeing and Social Care.

Formal Committee meeting at William Quarriers Conference Centre, Glasgow on 5 December 2022.



134. The Committee thanks everyone who provided evidence as part of our consideration of the general principles of this Bill. It would particularly like to thank those who attended informal sessions in Aberdeen, Dumfries and Glasgow, and the online informal events. The views of those with lived experience of care and those who provide it has been essential to the Committee's scrutiny of the Bill at Stage 1.

Changes to the Stage 1 timetable and further scrutiny

135. On 28 February 2023, the office of the Minister for Parliamentary Business contacted the Committee to request that the Stage 1 deadline for scrutiny of the National Care Service (Scotland) Bill, originally agreed as Friday, 17 March 2023, be delayed until 30 June 2023. This new Stage 1 deadline was subsequently agreed by the Bureau of Parliament on Tuesday, 7 March and agreed by motion of the Parliament on Wednesday, 8 March 2023.
136. On 29 March 2023, the Convener of the Health, Social Care and Sport Committee [wrote to the newly elected First Minister, Humza Yousaf](#), seeking clarification of the Scottish Government's up-to-date position regarding the planned timetable for completion of Stage 1 scrutiny of the National Care Service (Scotland) Bill.
137. In a [letter to the Committee dated 17 April 2023](#), the newly appointed Minister for Social Care, Mental Wellbeing and Sport (Maree Todd MSP) indicated her intention, through the offices of the Minister for Parliamentary Business, to "seek Parliament's approval, via the parliamentary Bureau, to extend the Stage 1 deadline beyond June".
138. This letter further outlined the Scottish Government's intention "to use the time ahead of a Stage 1 debate to find compromise and reach consensus with those who have raised concerns during the Stage 1 scrutiny undertaken so far".
139. On [9 May 2023](#), the Committee took oral evidence from the Minister for Social Care, Mental Wellbeing and Sport concerning the timetable for Stage 1 scrutiny of the National Care Service (Scotland) Bill. At that meeting, the Minister provided an overview of planned further engagement on co-design to be undertaken by the Scottish Government over the summer.
140. A new Stage 1 deadline of 31 January 2024 was subsequently agreed by the Parliament.
141. On 12 July 2023, [the Minister wrote to the Committee](#) to provide an update on the Bill. This update included further details of "an ambitious programme of local co-design activity" to be undertaken over the summer period and the formation of an "initial consensus proposal between the Scottish Government and Cosla (on behalf of local government) ... on a partnership approach that will provide for shared legal accountability". The letter further explained that this new model "would provide Scottish Ministers, local authorities and NHS boards with overarching shared accountability for the care system" before concluding that "Local Government will retain functions, staff and assets".
142. On 20 September 2023, [the Minister wrote to the Committee again](#) to provide a further update on the National Care Service Bill. This indicated that reports on the regional co-design events held over the course of the summer would be [published on 27 September](#).
143. Following the formation of an initial consensus proposal on shared legal accountability for integrated health and social care services between the Scottish Government and local authorities, this letter stated that "officials from Scottish

Government and Cosla, and NHS leaders, are continuing to work together to develop more detailed proposals which will in due course inform proposed Government amendments to the Bill”.

144. This letter further stated: “In order to provide effective national oversight and governance of social work, social care support and community health, we are agreed that the National Care Service will have a national Board.”
145. The Committee took further oral evidence from the Minister about the Bill [at its meeting on 3 October 2023](#). The Committee then took further oral evidence from selected stakeholders at its meetings on 24 and 31 October 2023:
 - [24 October 2023](#) - Representatives of local government and integration joint boards
 - [31 October 2023](#) - Representatives of trade unions, care providers and the voluntary and third sectors.
146. On 7 November 2023, the Committee [issued a letter to the Minister for Social Care, Mental Wellbeing and Sport](#) requesting additional information “regarding the precise implications for the Bill as introduced of the proposed shift towards a model of shared legal accountability”.
147. The Minister for Social Care, Mental Wellbeing and Sport [submitted a response](#) to the Committee’s letter on 6 December 2023.

Consideration by other Committees

148. Given the cross-portfolio nature of the Bill, several other committees carried out scrutiny of the Bill as introduced at Stage 1. The Local Government, Housing and Planning Committee and the Education, Children and Young People Committee undertook scrutiny as designated secondary committees. Although they did not request secondary Committee status, the Social Security and Social Justice Committee and the Criminal Justice Committee also undertook scrutiny.
149. The Delegated Powers and Law Reform (DPLR) Committee are required to report on the delegated powers within the Bill. The Committee consider each of the delegated powers in a Bill and whether they are framed appropriately (for example, the power being conferred is not too broad) and that the Parliament is afforded sufficient scrutiny of the exercise of these powers.
150. The DPLR Committee [wrote](#) to the Scottish Government on 7 November 2022 to ask questions and request more information about the delegated powers in the Bill and received a [response](#) on 16 November 2022. The DPLR Committee took evidence from the Minister for Mental Wellbeing and Social Care on [10 January 2023](#). Following the evidence session, the Committee received a [letter](#) from the Minister.
151. The DPLR Committee [published its report](#) on 2 February 2023. The report expressed the DPLR Committee's concern that "there is insufficient detail on the face of the Bill and within the Bill documents to allow for meaningful parliamentary scrutiny" which, it concluded, "is unacceptable and risks setting a dangerous

precedent, undermining the role of the parliament." ³

152. The Finance and Public Administration (FPA) Committee scrutinised estimated costs arising from the Financial Memorandum for the National Care Service (Scotland) Bill as introduced.
153. Around a third of the submissions to the joint call for views commented on the Financial Memorandum for the Bill. The FPA Committee took evidence from three panels of witnesses on [25 October](#) and [1 November 2022](#), before hearing from the Minister for Mental Wellbeing and Social Care on [8 November 2022](#).
154. The FPA Committee published its [report on the Financial Memorandum](#) for the Bill on 1 December 2022. In the report, the FPA Committee expressed significant concerns in relation to the costings within the Financial Memorandum, which it considered did not provide best estimates of the costs the Bill as introduced would give rise to. It further stated the Financial Memorandum in its present form did not provide an overall estimate of the costs of creating a National Care Service.
155. The FPA Committee requested:
 - ” ...that the Scottish Government provides a revised Financial Memorandum, including full details of the underlying assumptions, updated estimates for the gaps identified in this report, as well as updates to the existing cost estimates set out in the FM. This updated FM should be provided at least two weeks prior to the completion of Stage 1 – scheduled for March 2023 - to inform Members’ approach to the debate on the general principles of the Bill and consideration of the Financial Resolution. ⁴
156. The FPA Committee subsequently issued a letter to the Minister for Social Care, Mental Wellbeing and Sport on 8 February 2024, which concluded:
 - ” The Committee acknowledges the significant amount of work that has been undertaken to improve the cost estimates associated with the National Care Service (Scotland) Bill since we published our report on the original FM back in December 2022. This includes narrowing the variances between the lower and upper cost ranges and enhancing the level of detail regarding the costs associated with the rights to breaks for unpaid carers.
157. In relation to the updated Financial Memorandum provided to that Committee on 11 December 2023, the FPA Committee’s letter further concluded:
 - ” Given the ongoing co-design and continued uncertainty regarding the final policy detail relating to the Bill, although the variance in costs has reduced considerably, we are not confident that the figures presented in the updated FM and the accompanying shared accountability paper are an accurate reflection of the final costs of the Bill.
158. The Local Government, Housing and Planning (LGHP) Committee took oral evidence on the Bill on [8 November 2022](#), [15 November 2022](#) and [29 November 2022](#). In its approach to scrutinising the Bill the LGHP Committee agreed to focus on the impact of the proposed National Care Service on local authorities and the implications for housing issues, in line with the Committee’s remit.

159. The LGHP Committee wrote to the Health, Social Care and Sport Committee on [14 December 2022](#) outlining the views expressed by witnesses on a number of key themes which emerged during the course of the evidence heard.
160. The Education, Children and Young People (ECYP) Committee focused its Stage 1 scrutiny on the impact of the Bill as introduced on children and young people. It did so recognising that, regardless of whether or not children's services were included within its scope, a new National Care Service would inevitably have an impact on children's services.
161. The ECYP Committee took evidence on [9](#) and [16 November 2022](#), before hearing from the Minister for Children and Young People and the Minister for Wellbeing and Social Care jointly on [23 November 2022](#).
162. The ECYP Committee also held an informal session with groups working directly with care-experienced children and young people, young carers, children and young people affected by domestic abuse, neurodivergent children and young people, children and young people in conflict with the law and those working with children and young people facing a range of other challenges, including poor mental health, familial substance misuse and poverty.
163. The ECYP Committee's report was published on [19 December 2022](#). The Committee concluded that as "critical research and detailed financial information was not available for scrutiny prior to the end of Stage 1" it was not possible for them to "form a clear view on whether children and young people's services should be included under any future National Care Service." ⁵
164. The Social Justice and Social Security (SJSS) Committee took evidence on [10](#) and [17 November 2022](#). This evidence focused on aspects of the Bill as introduced falling within the remit of the SJSS Committee – social justice, the third sector and homelessness.
165. The SJSS Committee wrote to the Health, Social Care and Sport Committee on [8 December 2022](#). The letter covered a number of key themes including workforce, third sector and volunteers and homelessness.
166. The Criminal Justice Committee took evidence on the Bill as introduced from stakeholders on [23 November 2022](#) and then from the Minister on [21 December 2022](#). These sessions examined those provisions of the Bill relating to the possible transfer of criminal justice social work from local authorities to the NCS. The Minister [wrote](#) to the Criminal Justice Committee on 13 January 2023 to provide further information.
167. The Criminal Justice Committee [wrote](#) to the Health, Social Care and Sport Committee on 10 February 2023 outlining its findings. The letter noted key stakeholders had told that Committee they believed there was insufficient information available to them at the time to allow them to form a view on the merits of transferring criminal justice social work to a National Care Service.

National Care Service principles, fair work, co-design, timeline, sequencing and transition

168. The Bill as introduced provides an overarching framework for the creation of a National Care Service. Section 1 of the Bill sets out a series of principles underpinning the proposed National Care Service. The Policy Memorandum accompanying the Bill also describes how the detail of the proposed National Care Service will be developed through a process of co-design involving a range of key stakeholders including those with lived and living experience of receiving social care.
169. During its Stage 1 scrutiny of the Bill, the Committee heard a range of evidence raising broader issues and concerns about fair work and the co-design process as well as the overall timeline and sequencing of the process of creating a National Care Service and how the transition from existing structures to new structures as envisaged by the Bill as introduced would be managed.

National Care Service principles

170. Section 1 of the Bill as introduced sets out the National Care Service principles. The Policy Memorandum describes these principles as reflecting the following opportunities and further states that the intention is to "make clear from the outset the Scottish Government's commitment to deliver on them" ² :



- Embed human rights in care support
 - Increase equality and enable people and communities to thrive
 - Ensure that the NCS is an exemplar of Fair Work practices
 - Effectively co-design services with people with lived and living experience
 - Ensure that the care workforce is recognised and valued
 - Improve outcomes through prevention and early intervention
 - Provide financially sustainable care giving security and stability to people and their carers
 - Ensure that the NCS communicates with people in an inclusive way.
171. Much of the evidence submitted to the Committee was broadly supportive of the principles as set out in the Bill, as were a substantial majority of responses to the Committee's digital engagement exercise. One contributor to the online platform commented::

” ...the aspiration is to be commended but the practicalities of how we move from the current system to deliver on these aspirations, whilst continuing to meet people’s needs, requires more detailed planning and analysis.⁶

172. While much of the written evidence was supportive of the principles in theory there were also a number of concerns raised. Broadly, these related to:

- How the principles would be achieved in practice
- Whether the principles need a National Care Service to be delivered
- Whether there are key areas missing from the principles
- Whether the principles are sufficiently outcome-focused
- Whether the specific principles accurately reflect the aims of the National Care Service
- How the principles are explicitly linked to the provisions of the Bill, and to the application of human rights.

173. On the question of how the principles would be achieved, Angus Council stated:

” It is unclear why the principles have been included on the face of the Bill. As articulated, it is unclear what purpose they can serve in supporting members of the public to hold Ministers to account for delivery – they are too vague. The NHS legislation includes no such principles, instead setting out powers, duties, and entitlements. These are much more in keeping with the language of law.⁷

174. The Law Society of Scotland expanded further on this point in its written submission, arguing:

” It is not clear to whom these principles are addressed and to what extent they are supported by attributable duties or mechanisms for accountability and enforcement. It is not clear how they will interact with existing rights and duties, for example under the Equality Act 2010. It is not clear how these principles will be measured or evaluated. It appears that significant discretion will be afforded to the Scottish Ministers.⁸

175. The Scottish Human Rights Commission argued that, to give proper effect to a human rights-based approach, the principles in the Bill should make direct and explicit reference to relevant human rights standards and legislation. This, in its view, “...would provide a much more consistent, intentional and evident use of a human rights based approach”.⁹ It concluded:

” As the Principles inform the rest of the Bill, there is an important opportunity to embed human rights standards in a more specific, robust way, which will lend substance to the Bill’s rights based approach.⁹

176. In its written submission, the Faculty of Advocates suggested that in their current form “it would be more accurate, and perhaps more appropriate, to identify these [the principles] as ‘guidance statements’ or ‘declarations’ rather than principles”.¹⁰

177. Local authority stakeholders were generally unsupportive of the proposals for the creation of a National Care Service as set out in the Bill as introduced and, as with other key aspects of the Bill as introduced, argued they would prefer to see the aims encapsulated by the principles achieved via alternative means.
178. COSLA expanded on this viewpoint in its written submission, concluding:
- ” Fundamentally, COSLA believes the delivery of such principles is better served with the critical integration of care and support with housing, education, welfare, and community services which only Local Government offers in partnership with service users and communities.¹¹
179. North Ayrshire Council and North Ayrshire Integration Joint Board suggested that although the principles set out in the Bill could be delivered by Health and Social Care Partnerships:
- ” There would remain a role for a National Care Service to promote and drive forward:
- National improvement of care for people.
 - Improvement of working conditions, workforce planning, and enhancing training and development for the social care and social services workforce.
 - Strengthening the regulation and scrutiny of social care service providers.¹²
180. Some evidence suggested there were important principles missing from the Bill as introduced, which would be fundamental to the goal of achieving better outcomes for those in receipt of social care. In its written submission, CCPS stated:
- ” These include transferability across geographic areas and life transitions, and consistency in access and quality, both of which will be critical to the efficacy of the National Care Service for those receiving support and their families and carers.¹³
- CCPS went on to articulate the following concerns on the question of delivery against the principles:
- ” The focus of the principles appears to be on service provision alone. However, services are the end point of delivery. Not everything about the way the National Care Service will operate falls into the definition of a service. Where does this leave the responsibility of everyone involved in the structure, from ministers down, to deliver against the principles?¹³
181. While welcoming the focus in the principles on "early interventions that prevent or delay the development of care needs and reduce care needs that already exist"¹, a variety of stakeholders pointed out that this would need to be balanced against the needs of many of those in receipt of social care for continued and lifelong care.
182. The Glasgow Disability Alliance argued that this wording failed to recognise the circumstances of disabled people who "often need social care support to live an independent life they want to live".¹⁴ It went on to say:

” Framing early intervention as being only focused on a way to delay or prevent social care, to GDA members, feels like a step backward and indeed seems to contradict sentiments about social care helping communities to flourish. At worst it was feared that this approach can lead to cuts to social care packages or reduced support. ¹⁴

183. Parkinson's UK Scotland argued:

” The concept of “reduc[ing] care needs that exist” is unhelpful for people with progressive incurable conditions like Parkinson's. Until better treatments are found, it is inevitable that care needs will increase. We are concerned that framing this principle towards the idea of recovery could prevent people whose condition is stable or deteriorating from getting the support that they need. ¹⁵

184. In a similar vein, organisations representing those in receipt of end-of-life care pointed out the failure of the principles to reflect the specific needs of those they represent. Marie Curie's written evidence stated:

” The principles set out in Section 1 refer to people who are enabled to “thrive” and services that “prevent or delay the development of care needs and reduce care needs that already exist”. While these principles are important for many people with disabilities and long-term health conditions, they exclude and therefore deprioritise the high proportion of people who have a terminal illness or who are otherwise approaching death. They, too, continue to have rights which must be upheld by our health and care system. ¹⁶

185. To address this specific issue, the Scottish Partnership for Palliative Care suggested the inclusion of a new principle:

” ‘Services provided by the NCS will include care and support for people whose health is in irreversible decline through illness or old age and for whom the end of life is approaching.’ ¹⁷

It further recommended the rewording of other principles in the Bill to better reflect the needs of those in receipt of end-of-life care.

186. The Scottish Association of Social Work noted that, in response to its internal consultation on the Bill:

” One social worker commented that the principles should mention 'meeting' rather than 'reducing' care needs. We would like to see this amended wherever mentioned in the Bill. ¹⁸

187. A number of written submissions from organisations representing disabled people particularly welcomed the commitment that “the National Care Service, and those providing services on its behalf, are to communicate with people in an inclusive way”. ¹

188. The Health and Social Care Alliance Scotland was similarly supportive of this principle but went on to argue:

” ...the sections on strategic planning, complaints, care boards, care records, rights to breaks for unpaid carers, and visits to or by care home residents should include an obligation on duty bearers to ensure that people have access to inclusive communication in a timely manner. ¹⁹

189. Many written submissions to the Committee were supportive of the reference to fair work in the principles but said they believed this needed to go much further. The Health and Social Care Alliance Scotland concluded:

” The mentions of fair work in Section 1(g) are welcome, but no further detail is offered on the effective implementation and funding of this work. This single mention of fair work is not likely to prompt substantive improvement. Significantly more detail should also be provided in regulation if the National Care Service is to address current inequalities in care work. ¹⁹

190. Trade Unions submitting written evidence to the Committee made the case that national collective bargaining would be a crucial means of giving practical effect to fair work principles in the social care sector. Unite the Union's Edinburgh Not For Profit Branch argued:

” We believe that the bill should include an explicit commitment to establish national collective bargaining including trade unions as a key partner. ²⁰

191. In relation to fair work, Volunteer Scotland's written submission called for the role of volunteers within social care to be fully recognised and concluded:

” In the commitment to Fair Work, and to ensuring that the care workforce is recognised and valued, we would like to see explicit recognition that volunteers will not be used to carry out duties normally performed by paid staff or to disguise the effects of staff shortages. ²¹

192. Asked in writing for further detail as to how fair work principles would be embedded in the Bill, the Minister for Mental Wellbeing and Social Care responded:

” The Bill already states as part of its principles that the NCS will be an exemplar of Fair Work and, as such the NCS will seek to embed the five dimensions of Fair Work as defined by the Convention. Along with partnership work to improve entry routes into the sector and career progression, work is underway with key stakeholders to develop longer term and sustainable improvements for the social care workforce, relating to pay, better terms and conditions, the introduction of sectoral bargaining, improved training and development opportunities, better recognition and representation – particularly in respect of trade unions, and more rewarding roles.

We expect that the fair work measures described above will help to support the long running recruitment and retention challenges in the sector, and attract new people to the sector to ensure the sustainability of services in the future. ²²

193. Multiple submissions from and on behalf of public protection officers within local authorities highlighted the importance of addressing public protection within the proposed National Care Service principles in the Bill. The submissions suggested:

” For example, section 1(e)(ii) could include a reference to advancing equality and non-discrimination whilst also recognising the need to balance the enjoyment of equal rights against the needs of public protection. As detailed in responses to other questions, in the sphere of public protection, removing rights from individuals occurs daily to protect said individuals and those around them.²³

194. A number of written submissions argued in support of an additional Principle to be included in the Bill that local communities should have ownership over social care services in their local area.

195. In particular, the written evidence from ENABLE Scotland argued that an entitlement to self-directed support "in the community in preference to institutional residential settings" should be enshrined within the national care service principles in the Bill. Its submission concluded that such an approach would amount to:

” clearly enshrining a “community first” principle within the National Care Service legislation, which would be consistent with the jointly published Scottish Government and COSLA “Coming Home Implementation” report of February 2022, and with Article 19 of the UK Convention on the Rights of Persons with Disabilities (UNCPRD).²⁴

196. The written submission from Edinburgh Health and Social Care Partnership made a specific recommendation that:

” It is important that equality is added into the principles and that there [sic] are structured alphabetically as it could be implied there [sic] are listed in priority order.²⁵

197. A number of written submissions to the Committee argued that a right to rehabilitation should be included in the principles set out in the Bill. Deafblind Scotland provided evidence of the benefits the inclusion of this principle could have for those in receipt of care:

” If this right to rehabilitation support was recognised in the Bill then we would hopefully no longer discover people with a dual sensory loss too late in the progression to support them to learn new skills and would reduce the trauma attached to going through this transition alone.²⁶

198. In its written submission, Inclusion Scotland and the People Led Policy Panel argued that the principles set out in the Bill should be expanded to include the right to independent living, which they argued "elaborates on general human rights - specifically how disabled people should have choice, control, dignity and respect through social care support and in participating in the community".²⁷ This view was also supported by a number of other organisations including the Scottish Association for Mental Health, who argued:

” The inclusion of a principle promoting independent living would reinforce compliance with international human rights obligations in line with Article 19 of the United Nations Convention on the Rights of Persons with Disabilities (UNCPRD)).²⁸

199. "Recognising that any future structure will have geographical boundaries", in written evidence, the NHS Board Chief Executives and Chairs made the case for the incorporation into the principles of "effective community engagement in the planning of services".²⁹
200. In its written submission, Scotland Against the Care Tax made the case for the principles in the Bill to incorporate a principle of "free at the point of delivery" as enshrined in the 1942 Beveridge report with respect to the founding of the National Health Service. It stated:
- ” This founding principle led to the creation of social institutions funded by contributions from all classes of citizens through general taxation and National Insurance. As a result, it created a health service, which, now as then, feels part of everyone’s citizenship, and still contributes to the high regard and respect in which the NHS is held. The National Care Service needs to include an additional “principle” in line with the aims of this statement. We recognise the complexities of current social and residential care provisions but believe it is still possible to deliver a “free at the point of delivery” principle.³⁰
201. After giving oral evidence to the Committee, the Minister for Mental Wellbeing and Social Care was invited to set out in further detail what value the proposed National Care Service principles add to pre-existing standards as enacted through human rights legislation. The Minister responded:
- ” The NCS principles set out in section 1 of the NCS Bill provide the foundational values on which the NCS will be built...
- The NCS principles recognise care and community health services as essential to the realisation of fundamental human rights, and that these services will have equality, non- discrimination, and the dignity of the individual at their heart. They enshrine in law our commitment to fair work, inclusive communication, prevention and early intervention, investing in care services as well as the innovative approach being taken to collaboratively design services.³¹
202. In her update to the Committee on 6 December 2023, the Minister for Social Care, Mental Wellbeing and Sport confirmed:
- ” The shared accountability agreement between national and local government included agreement that statutory delivery functions would remain with local government and health boards respectively, along with assets, employment and relevant funding. Consequentially, there are provisions in the NCS Bill as introduced which would no longer be intended to be used as originally envisaged.
- The Minister's letter concluded:
- ” ...we no longer expect to abolish integration authorities and establish care boards.³²
203. At the same time, the Minister's update gives no indication that the Scottish Government would intend to introduce any amendments at Stage 2 that would alter the NCS principles as set out in section 1 of the Bill as introduced.

204. The Committee notes generally widespread support for the principles set out in section 1 of the Bill. At the same time, it draws attention to significant areas where stakeholders feel the principles could be usefully clarified and strengthened. It therefore calls on the Scottish Government, in responding to this report, to set out what it will do to clarify and strengthen the proposed National Care Service principles specifically as these relate to:

- Independent living
- Right to rehabilitation
- Self-directed support
- Ensuring consistency of access and quality
- Transferability across geographic boundaries and life transitions
- Making reference to relevant equalities and human rights legislation
- The "community first" principle
- Fair work
- Making direct reference to public protection powers and duties^{lvi}

205. The Committee highlights evidence that the principle that "services provided by the National Care Service are to be centred around early interventions that prevent or delay the development of care needs and reduce care needs that already exist"¹ is viewed by many as not suitably acknowledging the needs and circumstances of those in receipt of social care services who may be disabled, have long-term conditions or be approaching the end of life. The Committee calls on the Scottish Government to consider how this principle can be clarified, amended or supplemented to address these specific concerns.

206. The Committee calls on the Scottish Government, in responding to this report, to provide further detail on how adherence to the principles will be effectively monitored, evaluated and enforced as part of the creation of a National Care Service, including whether this would require additional provisions on the face of the Bill.

207. The Committee understands it is the Scottish Government's intention that the planned co-design process for the creation of a National Care Service will be informed and underpinned by the National Care Service principles. That being the case, it considers that further work to clarify and strengthen the NCS principles in the areas highlighted above should be completed to provide a suitable baseline of consensus for the co-design process to be defined and to proceed.^{lvii}

^{lvi} Sandesh Gulhane and Tess White dissent from this recommendation.

^{lvii} Sandesh Gulhane and Tess White dissent from this recommendation.

Co-design, timeline and sequencing

208. The concept of co-design was much discussed during the process of gathering evidence on the Bill at Stage 1. While many contributing evidence recognised and welcomed the Scottish Government's intentions in seeking to flesh out the details of a National Care Service through a process of co-design, many concerns were also raised around the timeframe for completion of the co-design process, how it would be managed and how key stakeholders would be supported to engage meaningfully with the process.
209. In oral evidence, Isla Davie KC from the Faculty of Advocates described the use of co-design to develop the details of a national care service as "innovative" but also highlighted the inherent complexity of the co-design process and her expectation that it would require significant time to be completed:
- ” It will be complicated and I suspect that it will take some time, but formulating legislation through co-design is a bold approach.³³
210. Isla Davie KC went on to highlight particular concerns about the co-design process, related in particular to timescales and defining outcomes from that process:
- ” ... one concern that we have raised in our written submission is that the process could become difficult. There is a danger of our putting the structure in place at this point and then finding it difficult to keep the momentum going. The timetabling might be difficult or it might be hard to know exactly what will happen further down the line once the codesign has been gone through.³³
211. In light of the huge pressures facing the social care sector, Karen Hedge from Scottish Care suggested it would be difficult for many in the social care workforce to engage properly with a co-design process at the current time:
- ” The care sector is currently experiencing a crisis like no other. We thought that things were hard during the pandemic but, for a variety of reasons, the aftermath of the pandemic has been significantly worse. In one area of Scotland alone, we have seen a 32 per cent increase in unmet need. We are really in dire circumstances. Our members do not have capacity to engage effectively in a co-design process because they are out there pulling shifts, frankly.³⁴
212. Julie Welsh from Scotland Excel echoed this view and concluded in summary:
- ” How can people find the space to free themselves up and get involved in co-design discussions when they face the challenges on the front line that they are facing? If there was some way to make that simpler and a bit easier, that would help all of us.³⁴
213. Mhairi Wylie from Highland Third Sector Interface outlined some of the practical obstacles to participation in co-design many stakeholders could face, explaining:
- ” In remote and rural areas, that might be about transport but it might also be about their being an unpaid carer, their having a part-time job and so on.³⁵

214. Mhairi Wylie went on to argue that creating the capacity for meaningful engagement in a co-design process would require financial investment but would also necessitate giving participants a clear sense of how their participation was contributing to positive outcomes:

” We need to ensure that we are clear about people’s sense that they are achieving something. I have participated in a number of exercises and—particularly in relation to things such as policy development, pieces of legislation, changing elements of practice or system change—it can be difficult to see evidence that you have achieved something. If you cannot see that evidence, your interest in participating lessens, because you cannot see the pathways to the difference that you might be making.³⁵

215. Sandra Macleod from Aberdeen City Health and Social Care Partnership supported this view and highlighted the importance of providing the necessary resources to enable key stakeholders to engage properly with the co-design process:

” The question is how we will find resources and—Karen Hedge and Rachel Cackett have said this—how we will create the space for providers, the third sector and people who use the service and have lived experience to be engaged in co-design before things even get to a board.³⁴

216. In oral evidence to the Committee, Derek Feeley acknowledged the time that might be needed to complete the co-design process but argued this needed to be balanced against the need to maintain momentum in implementing reform. He also argued that allowances would need to be made to enable the continued involvement of service users and those with lived and living experience in the ongoing development of the national care service, far beyond the initial co-design process:

” Once we have established a national care service, we will need to switch from co-design to co-production. Voices must continue to be elevated and amplified and be central to the decisions that are made about the priorities of the national care service and how we allocate resources.³⁶

217. Dr Pauline Nolan from Inclusion Scotland supported this view and made the case for continued involvement of service users in an ongoing process of co-design that would go beyond the point where new structures have been put in place:

” The fact that participation is not included in what the bill says about governance is a real omission. It should really be in the bill as part of a human rights-based approach, because the first letter in the PANEL principles stands for “participation”.³⁵

218. Andy Miller from the Scottish Commission for People with Learning Disabilities highlighted one practical example of an area where he would like to see co-design carried through to the ongoing operation of the proposed National Care Service once established:

” ... the three-year national care service strategies should be co-designed, but at the moment there is nothing that suggests that they will be. There needs to be an on-going commitment to co-design and implementing each thing as it comes up.³⁵

219. Certain evidence submitted to the Committee made the case for a clear definition of co-design to be included on the face of the Bill. Jennifer Paton of the Law Society of Scotland told the Committee:

” ... we are concerned that the bill as introduced does not appear to contain a statutory basis for the co-design process and therefore there is no statutory guarantee of meaningful engagement with the full range of stakeholders.³³

220. Oral evidence from Rachel Cackett of the Coalition of Care and Support Providers in Scotland highlighted the importance of having a clearer understanding of what is meant by the term "co-design". She also questioned whether the processes set out under the provisions of the Bill constitute genuine co-design:

” Despite the language of co-design, even in what is being proposed for the post-framework process and the strategic process that will happen locally, there is still quite a traditional consultation process. People will write a document and give it to a few people, and they can tell them what they think. That is not co-design. Fundamentally, we need to look at what is in the bill and the expectations that are being set by primary legislation of what co-design is.³⁴

221. However, Derek Feeley expressed doubts to the Committee as to whether inclusion of a definition of co-design and related terms on the face of the Bill itself would be feasible:

” I am not absolutely sure that a bill is the right place to do this, but definitions of what we mean by co-design, co-production and innovation in the explanatory notes or the policy memorandum would be no bad thing. However, I am not sure whether they could be defined in a bill.³⁶

222. Nick Morris from the NHS Chairs Group in Scotland expressed a view that the co-design process should be "built around the Delphi model", concluding:

” That, I believe, will get us to significant consensus on the design. I do not think that the bill, as structured, will get us there.³⁶

223. Patricia Cassidy from Health and Social Care Scotland relayed the organisation's positive experience of applying a co-design process to the redesign of its services for people with learning disabilities:

” We have done a range of consultations. We used a third sector organisation to be the interface for us with our social work staff. We did about 14 months of consultation to look at what was important for people and what they would like to do. That formed the basis of a collaborative piece of work on redesigning our services.

...

Doing that level of change was quite challenging for the council. Our local elected members were concerned that there might have been a significant backlash in the community, but the co-design work that we did and the continual feedback loops into the consultation groups and the stakeholders were such that we did not hear even a murmur of dissent in the community.

...

That is a microcosm of the potential of co-design.³⁶

224. Rosemary Agnew, the Scottish Public Service Ombudsman, relayed to the Committee a positive experience of a co-design process that ran concurrently with the development of legislation to establish an independent national whistleblowing officer function:

” We worked closely with the Government, which led and hosted events for a whole range of stakeholders. Concurrently, the legislation was being developed and drafted, so there was an outline framework for the legislation. That meant that, by the time the legislation had been drafted, it had been informed by the co-design; it also worked the other way, so they informed each other.

There were huge benefits to that, because it meant that, by the time the legislation came for parliamentary scrutiny, there was a very real example in the whistleblowing standards of what that might look like in practice.³⁷

225. Rosemary Agnew concluded by arguing the case for a similar approach to be taken with respect to the co-design process related to the proposed National Care Service:

” At the moment, one of my concerns is about the timing of the codesign process and the drafting of the legislation. We are in danger of losing the benefit of the two things happening concurrently if one happens ahead of the other.³⁷

226. Asked in written follow-up what experience they had had to date of the co-design process related to the proposed National Care Service, many stakeholders who had previously given oral evidence to the Committee described the co-design work they had so far been involved in as very complicated, involving a plethora of different groups and stakeholders, and lacking clarity on outputs. Unite Scotland responded:

” The feedback we have had from members on groups are that they feel their voice is not heard and it is not clear where the outputs from the group land and how the consultation feedback is tracked.³⁸

227. Asked how the Scottish Government intended to approach the co-design process,

the Minister for Mental Wellbeing and Social Care responded:

” There are three clear phases to the national care service collaborative design. The first is understanding; that is, building on the shared understanding of the current challenges that I mentioned. The second phase is sense making—what we can deliver and how in order to make the improvements that we all want. The third phase is agreement. Do the proposed changes address the issues that have been raised by people? ³¹

228. In written follow-up, the Minister for Mental Wellbeing and Social Care emphasised the Scottish Government's intention to keep all co-design activities outcomes-focused and provided some specific examples of potential co-design outcomes.

229. In written follow-up, the Minister also acknowledged the importance of ensuring participants have sufficient capacity and resources to be able to engage meaningfully with co-design before setting out what the Scottish Government was planning to do to support participants, specifically in terms of providing training:

” Successful co-design can only happen when people have access to the information and training needed to take part in co-design, and the support to ensure that the barriers to doing that (such as transport, accessibility, and lack of practical and emotional support) are removed. It is important that the Scottish Government officials supporting the co-design of particular parts of the NCS understand the principles of co-design to ensure that people with lived experience are properly supported to take part and officials understand their role in creating the space for those open and reciprocal engagements to take place. A National Care Service Design School has been developed and is now co-ordinating guidance and training teams and people with lived experience to help them do that. ³¹

230. Throughout scrutiny of the Bill, the Committee heard frequent concerns with regard to the current long-standing challenges in social care and current deterioration of conditions, the timeline for the Bill's implementation, and sequencing of co-design and legislation.

231. During its scrutiny of the Bill, the Committee heard evidence that, for many, the Bill as introduced would not address the systemic challenges facing social care and social work services. Some raised concerns that the Bill as introduced would be a distraction, diverting attention away from urgently needed improvements while others argued that the cost of such a large-scale reform would divert funding away from making those improvements on the 'front-line', supporting the workforce, or improving implementation of existing legislation. Fears were also expressed that, based on prior experience of public service reform, the process of such major structural reform would be likely to be disruptive, diverting attention from frontline activity and potentially also leading to many leaving the sector.

232. During the Committee's scrutiny, a number of organisations also raised concerns around the sequencing of the legislation and the Scottish Government's co-design work, with some calling for the Bill to be paused or withdrawn completely.

233. The Bill as introduced is described as a framework Bill. The [policy memorandum](#) states:

” ... the Bill creates a framework for the National Care Service, but leaves space for more decisions to be made at later stages through co-design with those who have lived experience of the social care system, and flexibility for the service to develop and evolve over time.²

234. Giving oral evidence to the Committee, the Minister for Mental Wellbeing and Social Care set out the Scottish Government's rationale for its sequencing approach whereby the co-design process would follow development and adoption of the framework legislation:

” We have to have a framework before we can move to co-design. We had to show the people who we want to help us co-design the bill with us that there is a framework to blanket that co-design around. We came to that decision because that is the logical way to do it, and because we looked at what has happened previously. I remind the committee that the formation of the national health service was based on a framework bill, and I think that the national health service has been a wee bit of a success, has it not?³⁹

235. Many witnesses expressed concerns over this sequencing of events. At a fundamental level, the Coalition of Care and Support Providers in Scotland (CCPS) highlighted an inherent contradiction in establishing the legislation before the co-design process as it would prevent the legislation itself from being drafted using the principles of co-design:

” ... fundamentally, the development of the primary legislation in relation to ministerial control does not appear to have been subject to the commitment to the co-design advocated for the extensive raft of secondary legislation to come ... we are concerned about the approach to codesign in the process. The Scottish Government appears to have taken the view that aspects of the detailed implementation of the Bill should be subject to codesign but that the overall approach to system redesign and structural reform should not.¹³

236. Further concerns raised during the Committee's scrutiny related to a lack of detail in the Bill and a perceived over-reliance on co-design and future secondary legislation to develop that detail at a later stage. In formal evidence, Tracey Dalling from UNISON provided the analogy:

” It is like buying a house without ever having seen it or knowing how many rooms it has or where it is located...

It goes back to the discussion of buying something off-plan. I need more guarantees and detail. I would not be spending that amount of money. I rarely spend a huge amount of money on anything without being clear about what I will be getting for my money and where the value is. There is insufficient detail on so many fronts in the bill for me to say that I have confidence that, for example, if we just take the Feeley side of things—the sectoral bargaining—it will all work out as we would like it to.⁴⁰

237. When questioned on whether the end of this session of Parliament was a realistic timescale for the delivery of a National Care Service, Alison White from Social Work Scotland commented positively in agreement, but added the following caveats:

” The only thing that we would change is that we would do the co-design prior to some of that set of legislation. It is not an unrealistic timeframe for us to do some of that work; it is the timing that we question.³⁶

238. Isla Davie from the Faculty of Advocates also expressed concerns over difficulties with precise scrutiny of the Bill, suggesting that the sequencing of legislation to be followed by co-design could create "a danger that you get left with the structure and that what follows on does not quite fit with it"³³ :

” You might go through the co-design process and then discover that what is in the framework does not fit with the substantive part that emerges later. In essence, it is almost as if we are formulating the legislation in two parts. At the moment, we are looking at very high-level provisions, and there is only so far that you can go with that.³³

239. When the Scottish Government first indicated its intention to request an extension to the Stage 1 deadline for scrutiny of the Bill beyond June 2023, it cited a key reason for doing so as being to enable it to continue “engagement and co-design activities through summer before moving to the next stage of the Bill”⁴¹ .

240. In subsequent correspondence dated 20 September 2023, the Minister outlined further details of these activities as follows:

” As part of our commitment to build the National Care Service with people with lived experience, we have held regional events across Scotland this summer to hear from the diverse range of people who use and deliver community health and social care support.

The events focused on five initial co-design themes; keeping care support local, information sharing to improve care support, valuing the workforce, realising rights and responsibilities, and making sure my voice is heard.

The regional events took place from June to August and covered Stirling, Glasgow, Dundee, Stranraer, Oban, Skye, Shetland and Elgin. It has been a busy, packed summer and we have heard from more than 340 people across the in-person events. To allow for maximum accessibility we provided supporting materials in easyread and other formats on request and also held online events across the five themes and welcomed a further 260 people to those sessions at the end of August.

We have analysed these conversations and produced summary reports from what we have learned from the diverse range of experiences and what people would like to see from a National Care Service.⁴²

241. When the Committee subsequently took further oral evidence from selected stakeholders in October 2023, it heard a range of views concerning the experiences of those participating in these co-design activities.

242. Cara Stevenson from GMB Scotland told the Committee:

” The discussions have been helpful, because the minister has been able to hear the views of our members and people who use services, but nothing seems to have come out of them. Nothing has moved forward and nothing has changed, so, right now, it is just discussion. ⁴³

243. Representing Inclusion Scotland and the People Led Policy Panel, Dr Jim Elder-Woodward expressed disappointment that the agreement that had been reached between the Scottish Government and COSLA on shared legal accountability was in direct contradiction with the idea that the proposed National Care Service should be delivered through a process of co-design involving people with lived experience. He concluded:

” We felt that the agreement did not take any cognisance of the co-design process and that it was made without reference to any stakeholder other than the Scottish Government and COSLA. ⁴³

244. This view was supported by Rob Gowans from the Health and Social Care Alliance Scotland. He argued that the agreement between COSLA and the Scottish Government “raises questions about the co-design process if some parts are to be co-designed but some parts are to be subject to decision making between the Scottish Government and COSLA. Where does that extend?” He went on to reflect the experience of his organisation’s members in participating in the regional forums held over the summer 2023 period:

” We encouraged people to take part in the codesign sessions and regional forums over the summer, but a number of our members were sceptical or concerned, partly because, although there has been much engagement on what the issues are with social care, people feel that they have said what the issues are many times before and that, if the process becomes a well-resourced consultation, that risks letting people down. ⁴³

245. Rachel Cackett from the Coalition of Care and Support Providers in Scotland questioned to what extent the co-design activity undertaken to date would have any direct bearing on the legislative process related to the National Care Service Bill:

” It is quite hard to see progress with regard to how what is coming out of those sessions is informing the legislative process that we are here to scrutinise today. That is not—as colleagues have said—to say that those discussions are not important; they clearly are, because the national care service goes beyond a piece of legislation. However, the piece of legislation is what we have, and there is not, in my view, a great sense that there is a clear connection between what is being heard and what is being delivered through the bill. ⁴³

246. While giving evidence to the Committee at its meeting on 3 October 2023, the Minister for Social Care, Mental Wellbeing and Sport described how, in her view, co-design differs from traditional consultation as part of the policy development process:

” Co-design delivers a sense of empowerment—it really is about empowering people. It is about handing the power over to them and saying, “If you were in charge, what would you do? How would you do it? How would you design a service?” We hear from people time and again about where things go wrong and how difficult that feels, so it is about making sure that we get it right from the conception stage rather than just rubbing the edges off delivery. I have heard from people who are involved that it feels very different. They say to me, “We have been saying these things for years; it’s not like we’re saying anything new.” The difference is that the system, which includes us all, is now listening, which is an important part of the process. ⁴⁴

247. In its letter to the Minister of 7 November 2023, the Committee asked:

” What effect, if any, does the Scottish Government expect the new consensus agreement with COSLA and the model of shared legal accountability to have on the scale, focus and timetable of any co-design work to be undertaken as part of the proposed creation of a National Care Service? In connection with this, to what extent and in what ways will the outputs from engagement on co-design undertaken so far be used to inform the Scottish Government’s proposed amendments to the Bill as introduced at Stage 2? ⁴⁵

248. In her letter of 6 December 2023, the Minister responded:

” My colleagues and I have been clear that we want to put people at the heart of the development of the NCS. For that reason, the co-design work over recent months has been running in parallel with the tripartite negotiations. We have been clear that meaningful co-design engagement with all partners (including delivery partners, stakeholders and people with lived experience) will be key to delivery of the NCS. We are expecting that, with the new consensus agreement in place, this will enable us to build on the work already underway and to further enhance co-design engagement, as well as allowing the opportunity to create spaces for people with lived experience of both receiving and delivering services to undertake co-design together.

The completion of the tripartite negotiations provides agreement on the overarching structure and delivery framework of the future NCS. If parliament are in agreement with this framework and the general principles of the Bill, this will allow the co-design programme of work to focus on more detailed delivery design questions centred around meaningful engagement.

This is likely to include areas such as; the role of locality engagement forums; the mechanics of meaningful representation for people with lived experience on the National Board; the design of the complaints process and; future state reporting for the National Board as defined by the perspective of people with experience of delivering or receiving care.

Co-design insights gained to date will form part of the evidence base used to inform the Scottish Government's proposed amendments to the Bill at Stage 2. The insights are broad in their perspective and will contribute to amendments across Bill, and, in particular in relation to the role and provision of independent advocacy services, the managing of care complaints, information sharing and views on effective local and national representation. ³²

249. While acknowledging the Scottish Government's intention to utilise co-design as a key mechanism for developing the details of the proposed National Care Service once the framework legislation is in place, the Committee has heard evidence from multiple stakeholders that there appears to be an ongoing lack of clarity regarding the definition, the precise scope and key areas of focus of co-design or the anticipated outcomes of the co-design process.
250. The Committee calls on the Scottish Government to acknowledge concerns from many stakeholders that the consensus agreement concluded between it and COSLA and the way in which this was arrived at has undermined the confidence of many of those who have participated in co-design so far that their views and input are being taken seriously.
251. The Committee considers that there is a common interest for everyone involved to proceed with the process of reform in as well-planned, incremental and transparent a way as possible. In this context and to ensure its successful delivery, the Committee calls on the Scottish Government to recognise the critical role the Scottish Parliament has to play in undertaking systematic stage-by-stage scrutiny of the implementation of proposals for a National Care Service as set out in the current Bill, including in relation to the outcomes of the co-design process.
252. Given the extreme pressures currently being faced by the social care sector, the Committee seeks further reassurance from the Scottish Government that it is committed to ensuring the process of designing a National Care Service is managed in such a way as to avoid diverting attention from a necessary ongoing focus on the delivery of frontline care.
253. The Committee acknowledges the updates the Scottish Government has provided regarding the most recent progress on co-design. At the same time, reflecting the evidence it has heard to date, it believes those engaged in co-design would find it helpful for the Scottish Government to set out an overarching plan that includes a clear definition of co-design, parameters and intended outcomes of the co-design work and a timetable for its completion. This co-design plan should also provide details of the support the Scottish Government will provide to enable key stakeholders to engage properly with co-design. It should also set out how the Scottish Government will keep the Scottish Parliament regularly updated on progress and outcomes of the co-design process.
254. The Committee calls on the Scottish Government, in bringing forward amendments to the Bill as introduced, to provide detail of the extent to which and in what ways the co-design work undertaken to date has informed the content of these amendments.

Fair work

255. The [Bill as introduced](#) directly refers to fair work within the National Care Service principles in Chapter 1:

- ” The National Care Service is to be an exemplar in its approach to fair work for the people who work for it and on its behalf, ensuring that they are recognised and valued for the critically important work that they do. ¹

256. The [policy memorandum](#) also states:

- ” The NCS Bill will have a positive impact on low income staff in the sector by enabling Scottish Ministers to ensure that Fair Work is embedded into the NCS as a founding principle...

The Scottish Government is seeking to improve Fair Work practices consistently across the social care sector. The Bill proposes to enable the NCS to support Fair Work in the sector, by including Fair Work within the guiding principles of the NCS (section 1 of the Bill), establishing the NCS as an exemplar of Fair Work. The NCS ethical commissioning strategies also need to reflect the NCS principles, and will therefore be a key tool for ensuring Fair Work is embedded in the way services are planned and provided. This will also support the Scottish Ministers to improve the way in which Fair Work is identified and considered as part of commissioning and procurement practices.

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257. Prior to and during scrutiny of this Bill, the Committee has heard long-standing concerns over social care and ongoing issues that affect the social care workforce.
258. In 2021, The Scottish Social Services Council (SSSC) reported that 209,690 people were working in social care in 2020, making up approximately 8% of all Scottish employment. ⁴⁶
259. [Audit Scotland reported in 2021](#) that this workforce had been working and was continuing to work, under “immense pressure”, with challenges around recruitment and retention affecting the sustainability of social care services. It reported that “almost a quarter of staff leave within the first three months of joining an organisation” and that “88 per cent of social care providers said that recruitment and retention was problematic.” ⁴⁷
260. During the Committee's Stage 1 scrutiny of the Bill as introduced, many stakeholders noted that unlike the NHS there is not one single employer in social care, nor one single type of provider. Instead there is a mix of private, public and third sector provision in Scotland. The [policy memorandum](#) states:
- ” It is estimated that over 1,200 providers employ the social services workforce in the public, independent and third sectors, many of whom employ less than 50 people. ²
261. The Committee heard that this more than 200,000 strong workforce, spread across 1,200 providers, is fragmented, with high levels of inequality and inequity among workers. Due to this disparity, the social care workforce faces issues around rates of pay, terms and conditions, career pathways and recognition.
262. In 2021, the [Independent Review of Social Care in Scotland](#) reported that “the social care workforce is undervalued, badly paid for vital, skilled work and held in

low esteem in comparison particularly to the health workforce.”⁴⁸

263. During its scrutiny of the Bill as introduced, the Committee further heard evidence that workforce pressures were at an unprecedented level and the social care sector was facing a substantial crisis, with the Covid-19 pandemic and the increased cost of living exposing many of these long-standing issues. Representing the Granite Care Consortium, Nick Price was among many who spoke about their experiences of the current pressures:

” I have worked in health and social care for a long time, and I can honestly say that the past six to nine months have been the hardest that I have ever seen ... the recruitment pressures now are ones that I have never seen or experienced before.”³⁴

264. While all stakeholders agreed that reform is needed, the Committee heard concerns around current workforce pressures in health and social care and the timing of the introduction of legislation and a National Care Service. This is also discussed in further detail elsewhere in this report.

265. A number of witnesses suggested that a key workforce issue was that of parity. The Committee, and its predecessors, have long heard evidence of the need for parity of esteem between health and social care staff, because social care staff are not well valued in comparison to healthcare staff and have poor pay, terms and conditions in comparison. Colin Poolman from the Royal College of Nursing told the Committee:

” The issue of parity of esteem is hugely important when it comes to not only the voice at the governance tables but recognition of people in the workforce, wherever they work. Clearly, you would not expect me to not mention the issue of fair work. Pay and terms and conditions are key issues across health and social care, and those issues are part of the crisis. You are all aware of where we are in relation to the health service. Social care pay in the health service is, frankly, upsetting, when we consider what some colleagues are paid in other roles. It is no surprise that we have a crisis in the social care workforce as well as in the health workforce.”⁴⁰

266. Furthermore, during its Stage 1 scrutiny of the Bill as introduced, the Committee heard evidence of various areas within social work and social care itself where further progress towards parity is needed.

267. Stakeholders told the Committee that alongside parity of esteem of health and social care professions, there was also a need for parity across all of the following areas:

- social care pay;
- terms and conditions;
- working conditions;
- wider community and planning considerations;
- training and development;

- and regulation.

In evidence to the Committee, Alison White suggested:

” It is parity, full stop. It is not just parity of esteem that we need to look for. ³⁶

268. Margaret McCarthy from Crossroads Caring Scotland highlighted challenges related to pay levels across social care providers:

” From a provider’s point of view, we are seeing a mass exodus of staff due to fair work and pay issues. If we could come to a point where there was consistency on rates of pay, which really means the rates that we are paid for delivery, that would make a big difference. ³⁴

269. Kay McVeigh from South Lanarkshire Council, representing the Society of Personnel and Development Scotland, pointed to challenges related to parity of terms and conditions and the number of organisations involved in social care:

” Terms and conditions is a difficult issue, because so many employers are involved, and employment law is one of the difficult aspects that we need to overcome. A fair bit of further discussion is needed about how we can make changes. For example, there is the fact that some staff are paid 61p per mile and others are paid 45p per mile, and there is different pay for the occupational therapist who works under local government conditions from that of the OT who works in health. There are huge structures behind that with regard to job evaluation and pay models, which are not easy things to change. There is not much opportunity in the existing system to have a good conversation about those issues. It is not just about pay and mileage rates. It is probably a broader issue of modernising terms and conditions of employment. ⁴⁰

270. Various witnesses called for increased consistency in treatment of staff across different social care employers. In his evidence, Nick Kempe from the Common Weal’s Care Reform Group called for national terms and conditions under the National Care Service:

” It is about paying them properly, and seeing that they are trained and supported and have time to spend with one another. We need national terms and conditions for all staff. That is what needs to underpin ethical commissioning. That would mean that there would be agreed unit costs and that we would know the cost of providing whatever service a person needs. It is absolutely fundamental that the approach should be the same across the country, whatever sector people work in. ⁴⁹

271. Sharon Wiener-Ogilvie from the Allied Health Professions Federation Scotland noted issues around parity of support, training and development:

” There are issues around parity of terms and conditions between local authorities and the health service, but they are not just around pay; they are also around support, provision, training and career pathways support the workforce, not just in terms of pay and conditions, but with training, development and career pathways. ⁴⁰

272. There was agreement between witnesses that no matter what sector someone works in, there should be commonality in terms of fair work practices. Councillor Kelly from the Convention of Scottish Local Authorities (COSLA) told the Committee:

” Whether workers are in a council, the third sector or the independent sector, they are all helping individuals and communities in really difficult circumstances, so they deserve to have fair wages, fair work practices and improvements to those practices. ³³

273. Alison Keir from the Royal College of Occupational Therapists explained to the Committee:

” We come into integrated teams from a health or from a social work background. We have different terms and conditions, pay scales and holidays, but we sit together in integrated teams, doing the same job... It works now because of the good will of staff, who have worked really hard to get over that and to make their teams work, but their terms and conditions are fundamentally different and that will be a big issue in the long term if we do not challenge it. ³⁶

274. Alison Bavidge from the Scottish Association of Social Work underlined the importance of parity of esteem:

” For social workers—my constituency—parity of esteem means their being able to work as autonomous professionals whose judgments are viewed as sound and whose assessments are taken with the seriousness with which they should be taken, and without there being a constant battle for budget for each piece of support that someone might need. Parity of esteem means our being round the table with our colleagues in health and social care and the third sector, so that we can deliver smooth transitions between life stages and services. ⁴⁰

275. Alison White from Social Work Scotland highlighted issues regarding parity in relation to rural areas and additional challenges associated with wider community housing and planning considerations:

” In many cases in rural areas, the issues are not just about the volume of staff but about having affordable housing; it is about the broader community planning aspect of how we support our workforce and staff in those areas and not just about attracting people to those posts. A colleague was highlighting that they had been able to appoint someone but the person ultimately withdrew after spending six weeks trying to find accommodation in the area and not being able to find it. It remains critical that, whatever we do, we work in that broader community planning environment to ensure that things such as housing are available for people. ³⁶

276. Witnesses giving evidence were clear that issues relating to fair work extended beyond parity and establishing common pay, terms and conditions. The Committee heard these wider issues include the following, which are discussed within other sections of this report:

- [Recruitment and retention](#)
- [Training and development](#)

- Regulation, including [oversight for professional development](#)
 - Monitoring, evaluation, and collection and use of [workforce data](#)
277. On the subject of fair work, many witnesses to the inquiry highlighted the Fair Work Convention's report on [Fair Work in Scotland's Social Care Sector](#) in 2019. The report made 5 recommendations summarised below:
- Supporting establishment of a sector-level body responsible for ensuring that social care workers have effective voice in the design, development and delivery of social care services.
 - Setting out minimum contract standards for the provision of publicly-funded social care services, including pay and hours/income stability, supervision, training and development.
 - Overhauling commissioning practices in social care to end current commissioning practices of hourly rate-based competitive tenders and framework agreements.
 - Commitments to improving pay, conditions and opportunities for progression for directly employed care workers and for Personal Assistants, underpinned by Stakeholder Fair Work action plans.
 - Supporting delivery of the preceding recommendations, and incorporate them into their Fair Work Action Plan and Gender Pay Action plan.
278. The [Independent Review of Adult Social Care in Scotland](#) concluded by confirming its agreement to all of the Fair Work Convention's recommendations:
- ” We recommend that the Scottish Government set an ambitious implementation timetable to ensure progress and momentum. In setting that timetable, we recommend that priority is given to the establishing of the sector level body as a means to take forward the Fair Work recommendations in partnership. That body should also take the lead in creating national sector level collective bargaining of terms and conditions. ⁴⁸
279. The Minister for Mental Wellbeing and Social Care reiterated the commitment to fair work when he gave evidence to the Committee:
- ” I want to make sure that we do our level best to get all this right and to embed fair work principles as much as we can. ³⁹
280. On the other hand, various stakeholders told the Committee that, in their view, the Bill as introduced did not adequately address fair work. Stakeholders called for the Bill to set out what is meant by fair work, to clarify working arrangements and how fair work principles would be applied across all services provided by and on behalf of the National Care Service, and how such arrangements would be funded.
281. In her evidence to the Committee, Roz Foyer from the Scottish Trade Unions Congress (STUC) highlighted differences in opinion on what fair work means and called for the Scottish Government to provide a clear definition of fair work in the context of proposals for a National Care Service:

” I absolutely agree that fair work has to be at the heart of the delivery of the national care service. The trouble with terms such as “fair work”, “the wellbeing economy” and “a just transition” is that, although they sound great, there is still a need to drill down into them and define much more clearly what we mean by them.

[...] We need to be much more clear about how people are implementing, evaluating and enforcing fair work. As has been proven in recent Fair Work Convention inquiries, the Scottish Government can now go much further in its commissioning processes to batten down some clear benchmarks that we need to be in place. Although we agree that fair work should be at the heart of the service, we need more assurance about what the bill means by that term. It all sounds lovely, but I want to see what it will actually look like.⁴⁰

282. In its response, COSLA expressed dissatisfaction with the way the Bill as introduced approaches fair work in relation to terms and conditions:

” [The] Bill and its accompanying documents do not clearly set out, for example, how national terms and conditions will be competently rolled out in a mixed social care market which comprises thousands of employers, and employees with varying job titles and descriptions.¹¹

283. Trade Unions have called for sectoral or collective bargaining as a way of ensuring collective pay, terms and conditions. Roz Foyer from the STUC argued:

” ... we would absolutely like to see an explicit commitment and reference to a sectoral bargaining framework in the bill. I do not think that what you read out goes far enough, frankly. It commits the Government to the principle of extending collective bargaining, but it does not clearly say that we will have a collective national pay and conditions bargaining framework as part of a national care service, which is the surety that we need.⁴⁰

284. Tracey Dalling, from UNISON, argued that fair work should be a benchmark for all employers as well as being a precondition to the process of contracting, whereby “if a provider does not pay the Scottish living wage, it should not be in a position to bid for a contract and have it awarded”.⁴⁰ In support of this view, Roz Foyer added:

” At the end of the day, the Scottish Government contracts care. You spend an awful lot of money on contracting care services, so you have every legal right to lay out that collective bargaining should be part of the process and that you would expect contractors who deliver care to uphold certain collective bargaining principles. I believe that that has been tested through the construction inquiry. Adherence to collective bargaining is something that the Scottish Government could and should require as part of its contracting process.⁴⁰

285. In its written evidence, Close the Gap raised concerns that “workforce proposals thus far have been couched in ‘optional’ and ‘encouraging’ terms” and that “Employers will not voluntarily deliver high-quality pay and conditions”.⁵⁰ They further argued that frameworks for embedding fair work principles should be tied to contracting:

” Such a framework must be firmly bounded to ensure procurement requires service providers to meet minimum pay and employment standards as a condition of funding. Funding must be set at a level that enables this.⁵⁰

286. In his evidence to the Committee, Derek Feeley spoke about the importance of fair work and national terms and conditions. He went on to state that the Bill should ensure the connection between fair pay and ethical commissioning:

” The bill refers to fair pay and ethical commissioning. We need to ensure that we keep on the table the connection between those two things. We ought to use the redesigned commissioning and procuring process as a vehicle for fair pay. Essentially, we would be saying to care providers that, if they are going to receive public money, they will have to follow a set of expectations that we have of them. One of them is that they should pay a fair wage, and a second might be that they are transparent about their profits. Our report sets out a set of potential conditions for ethical commissioning and procurement. If the bill is explicit about the commitment to fairness and sees the ethical commissioning and procurement process as a viable route for securing fair pay for social care staff, that will be satisfactory.³⁶

287. During his evidence, the Minister for Mental Wellbeing and Social Care emphasised the importance of ethical procurement and fair work principles:

” Ethical procurement and fair pay and conditions are at the heart of the bill. Do we aspire to do better in all of that? Absolutely, we do. We need to do this for the simple reason that if we do not, we will be unable to grow the social care profession, which has taken a huge hit in recent times. I want to ensure that we have a workforce that is bolstered by fair work and that has ethical procurement guarding its back in terms of fair work and pay and conditions.³⁹

288. The [policy memorandum](#) states that ethical commissioning, as part of strategic planning, will be the vehicle for embedding fair work practices as part of the proposed National Care Service:

” The Scottish Government is seeking to improve Fair Work practices consistently across the social care sector. The Bill proposes to enable the NCS to support Fair Work in the sector, by including Fair Work within the guiding principles of the NCS (section 1 of the Bill), establishing the NCS as an exemplar of Fair Work. The NCS ethical commissioning strategies also need to reflect the NCS principles, and will therefore be a key tool for ensuring Fair Work is embedded in the way services are planned and provided. This will also support the Scottish Ministers to improve the way in which Fair Work is identified and considered as part of commissioning and procurement practices.

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289. In a letter to the Committee after giving oral evidence, the Minister for Mental Wellbeing and Social Care outlined the work of the Fair Work in Social Care (FWiSC) Group to take forward the recommendations of the Fair Work Convention Social Care Report, noting:

” The Group’s work was organised into three workstreams around pay, the development of minimum standards of terms and conditions, and establishing minimum standards to enable Effective Voice at a local level. A fourth dedicated workstream on Sectoral Bargaining has since been established.³¹

290. In a letter to the Committee on 19 December 2022, the Minister for Mental Wellbeing and Social Care also set out the rationale behind the decision not to include more detail in relation to fair work on the face of the Bill:

” Employment rights and industrial relations are a reserved matter in the terms of the Scotland Act 1998.

The Bill sets out the very clear intent through the principles of the NCS to ensure that it will be an exemplar of fair work practices. The Bill provides for the Scottish Ministers (in relation to any NCS services they provide) and care boards to put in place strategic plans, which must include an ethical commissioning strategy, being a strategy for ensuring that arrangements for service provision best reflect the principles of the NCS, including the principle that the NCS is to be an exemplar in its approach to fair work.

The recommendations set out by the Fair Work Convention, following their report and recommendations on adult social care, are already being taken forward through the Fair Work in Social Care Implementation Group. Actions delivered through this activity, such as the two pay uplifts delivered in December 2020 and April 2021, as well as ongoing work on Terms and Conditions, Sectoral Bargaining and Effective Voice, will be embedded within the operating model of the NCS.²²

291. Ethical procurement and commissioning, as vehicles for the implementation of fair work are discussed in more detail [later in this report](#).

292. The Committee heard concerns from many stakeholders about the financial memorandum and proposed costings of the National Care Service and, in particular, how fair work considerations would be resourced. Representing the Granite Care Consortium, Nick Price highlighted inconsistencies between local authority funding limits, what councils can pay for services and ethical considerations:

” Many councils put ethical demands in their contracts, but, unfortunately, as they are not appropriately funded, those demands are not achievable. The councils can pay out only what they are funded to pay out, so it is very difficult. The aspirations are there, but—certainly with all the councils that we work with—there is a lack of funding.³⁴

293. In its written response, the Key, Community Lifestyles and The Advisory Group (TAG) outlined their concerns related to current funding challenges:

” Delivery of the Fair Work agenda is already being compromised due to existing funding challenges and therefore may be further undermined by not fully considering the long-term sustainability of these, absolutely vital, activities. How the costs of implementing Fair Work and achieving parity of pay and conditions across NHS and NCS staff will be achieved and annually adjusted in line with the economic climate, particularly given the volatility of the current economic situation across Scotland, the UK and internationally.⁵¹

294. The Scottish Federation of Housing Associations also questioned funding commitments related to the Bill as introduced, noting a lack of detail in the financial memorandum in relation to operating costs once the National Care Service structure was in place:

” Given that the funding arrangements set out in the Bill, largely relate to the costs of a structural change, it is unclear how the government’s commitment to Fair Work for care and support staff will be met, the impact of competitive commissioning on fair work and what funding will be available for services under the new system.⁵²

295. The Committee is of the view that addressing workforce issues in social care is fundamental to the formation of the National Care Service. The Committee heard substantial evidence of the intrinsic link between fair work and ethical commissioning and considers commissioning and procurement to be the primary mechanism within the Bill to deliver on fair work commitments. We believe ensuring successful development and implementation of fair work practices across the National Care Service is key and ask the Scottish Government to strengthen the Bill in this area to reflect and maintain its stated commitment in this regard.^{lviii}

296. The Committee therefore recommends the Bill should include the following:

- A clear and comprehensive definition of "fair work" in the Bill under Chapter 2. This should set out how fair work principles will be incorporated within ethical commissioning and strategic planning processes.
- Clarity on how fair work principles will be applied consistently across all services provided by and on behalf of the National Care Service. The Committee believes this should include detail of minimum contract standards and a mechanism to ensure the collective voice of the social care workforce is heard within that process.
- Detail of how application of fair work principles will be enforced in practice across multiple and disparate providers.^{lix}

297. A crucial aspect of achieving fair work is improving pay, terms and conditions and parity in social care. We call on the Scottish Government to provide further detail as to how it plans to address these fundamental aspects of the fair work

^{lviii} Sandesh Gulhane and Tess White dissent from this recommendation.

^{lix} Sandesh Gulhane and Tess White dissent from this recommendation.

agenda.^{lx}

298. The Committee considers implementing the recommendations of the Fair Work Convention's report on [Fair Work in Scotland's Social Care Sector](#) in 2019 as key to addressing workforce issues in social care. It therefore calls on the Scottish Government to set out the steps it will take and the anticipated timeframe to fully implement these recommendations as an intrinsic element of the creation of a National Care Service.^{lxi}

Transition to a National Care Service

299. During its scrutiny, the Committee heard a range of concerns about the process of transitioning from existing structures to the new structures originally envisaged by the Bill as introduced. As was confirmed to the Committee in written follow-up by the then Minister for Mental Wellbeing and Social Care, this transition process would have included the dissolution of integration joint boards and their replacement with new local care boards.
300. The concerns expressed included:
- The significant additional capacity and resources required to deliver these structural changes including the potential additional cost of running two structures concurrently during the transition period;
 - The need for additional education and training support to ensure the process of transition was managed smoothly;
 - The necessity for the process of structural change to be gradual might mean associated improvements to delivery of social care might be correspondingly slow;
 - How quality and continuity of service delivery would be maintained during the transition process;
 - How disruption to established local networks would be avoided through the process of transition to new structures;
 - The apparent lack of a clear transition plan;
 - Wider public service impacts of the proposed structural changes;
 - Potential wider impacts of structural change on the market for social care services; and
 - Potential negative impact on capital investment in the sector.

^{lx} Sandesh Gulhane and Tess White dissent from this recommendation.

^{lxi} Sandesh Gulhane and Tess White dissent from this recommendation.

301. As already referenced earlier in this report, in her response to the Committee of 6 December 2023, the Minister for Social Care, Mental Wellbeing and Sport confirmed it is no longer the Scottish Government's intention to proceed with the structural changes originally envisaged in the Bill as introduced. In particular, her letter confirms: "...we no longer expect to abolish integration authorities and establish care boards." ³²
302. The letter from the Minister also explains that the Scottish Government has "been examining whether the intended outcomes could be achieved by putting forward amendments to the Public Bodies (Joint Working) (Scotland) Act 2014 under which the integration authorities were created", concluding:
- ” We are now of the view that this is a reasonable approach, and would achieve the intended reforms in a manner proportionate to the aim. ³²

303. The Committee highlights the multiple significant concerns that were expressed during its scrutiny of the Bill as introduced about the potential negative impact of transition to the originally proposed new governance structures involving the transfer of responsibility for social care from local authorities to Scottish Ministers and the replacement of integration authorities with local care boards.
304. In this context, the Committee will reserve final judgement on the extent to which the Scottish Government's revised approach to governance of the proposed National Care Service has addressed those concerns until it has had an opportunity to view the detail of amendments which the Scottish Government intends to bring forward at to reflect the consensus agreement with COSLA on shared legal accountability.
305. In particular, the Committee highlights that, as part of its further scrutiny, it will require a clear overview of the detail of the reforms to integration authorities the Scottish Government intends to bring forward via amendments to the Public Bodies (Joint Working) (Scotland) Act 2014.

The role of Scottish Ministers

306. As described by the Policy Memorandum accompanying the Bill as introduced, Section 2 "gives the Scottish Ministers a duty to provide a care service for Scotland".² In discharging this duty Ministers should act in accordance with the principles.
307. Section 3 of the Bill as introduced gives Scottish Ministers responsibility "for monitoring and improving the quality of NCS services".²
308. During its initial scrutiny of the Bill, many stakeholders were highly critical of the proposed transfer of accountability from local authorities to Scottish Ministers. In its written submission, Unite Scotland asserted:
- ” The plans as they are presented, appear to involve a power grab on local authority functions and local accountability at a time when local democracy is in the spotlight for its response during the pandemic.⁵³
309. A number of local government stakeholders argued that centralising accountability in this way would run counter to the recommendations of the Christie Commission and was out of step with the European Charter of Local Self-Government which the Parliament agreed, in 2021, to incorporate into Scots law. In its written submission, COSLA explained that the Charter "holds that "Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen.""¹¹ and concluded:
- ” This Bill therefore stands counter to both the European Charter and the expressed will of the Scottish Parliament.¹¹
310. Many local government stakeholders submitting written evidence to the Committee pointed to a perceived lack of evidence that greater ministerial accountability for social care would result in improved consistency or quality of provision. In written evidence, Health and Social Care Scotland Chief Officers concluded:
- ” Other centrally directed services under direct control of Ministers such as acute hospitals continue to display significant local variation and inconsistencies.⁵⁴
311. Evidence from CCPS also questioned whether the proposed transfer of accountability to Scottish Ministers would necessarily have the desired results in terms of improving outcomes:
- ” The underlying suggestion here appears to be that integrated joint boards have not succeeded merely because they do not have direct lines of accountability to ministers. Our view would be that integration has worked where cultures and relationships have changed and that there is no clear evidence that centralising to ministers will provide a means of closing the implementation gap.¹³
312. Giving oral evidence to the Committee, Rachel Cackett from the CCPS argued the case in favour of reinforcing local accountability and, with that in mind, suggested there needed to be a different approach to defining accountability within the

proposed national care service to that set out in the Bill as introduced:

” We have got a bit stuck in a groove, and we need to step back and think, “Okay. Let’s be clear about what accountability is to be held by ministers. Let’s make sure that that accountability is transparent, but let us start at the other end and think about what needs to happen at the front line and then work up.” We have a bill that would set up a culture that starts by holding things at the top and then goes down. I would argue that that is probably the wrong way round.
34

313. Some written submissions went so far as to suggest that the proposed transfer of responsibility to Scottish Ministers would be likely to result in lines of accountability becoming even less clear and coherent than is currently the case. Glasgow City Health and Social Care Partnership argued in its written submission:

” NCS will generate significant ‘accountability confusion’ for community health and social care services, especially where existing national accountability mechanisms are already in place. The more confused public service accountability becomes the more duplication, gaps and bureaucracy flourishes, wasting the public pound yet further.⁵⁵

314. In its written submission, Aberdeenshire Council recognised the need for reform but suggested this could be better achieved with a National Care Service focused on coordination and improvement at a national level but working within existing accountability structures.⁵⁶

315. Roz Foyer of the Scottish Trades Union Congress similarly acknowledged the need for change but argued that such change should have a focus on establishing overarching standards while retaining the local accountability provided by existing structures:

” It is not necessarily a bad thing to have a set of national standards as part of a national care service, but it is important to have local accountability and democracy when it comes to implementing services to suit local areas.⁴⁰

316. A number of other organisations also suggested that there was scope to effect change and improvements to social care while using existing structures. The written submission from Glasgow City Integration Joint Board set out a “more proportionate and less disruptive approach” to addressing issues around accountability, namely for the Scottish Government and Ministers “to utilise the levers available to them already within the Public Bodies (Joint Working) (Scotland) Act”.⁵⁷ Community Integrated Care suggested the approach to accountability recommended by the Independent Review of Adult Social Care of “local boards reporting in to an intermediary National Board” would be preferable, arguing this would retain “the local and regional knowledge, relationships and expertise.”⁵⁸

317. While many local authority stakeholders were critical of these provisions of the Bill, many representing those in receipt of social care services were supportive, arguing that they would result in improved accountability and, as a consequence, enhance the consistency and quality of social care services across the country. The Scottish Association for Mental Health stated:

” A national approach to strategic planning and improvement, with clear national standards, has potential to significantly improve and simplify the system from the perspective of those supported by social care in Scotland. ⁵⁹

318. Inclusion Scotland and the People Led Policy Panel were highly critical of existing local government structures and consequently strongly supportive of the proposed transfer of accountability to Scottish Ministers. ²⁷

319. In oral evidence, Don Williamson of Shared Care Scotland also highlighted the high level of frustration from carers arising from a perceived lack of accountability in existing systems and as a result expressed support for measures to improve accountability:

” People are saying that, if the current system is not working, we need to change it, and that if we need radical change in order to create accountability and ensure that they can exercise their rights, they would like that to happen. ³⁵

320. In oral evidence, Derek Feeley pointed to a lack of accountability in current structures that he felt had been highlighted by experiences during the pandemic:

” One thing that the pandemic taught us was that the public held the Scottish ministers accountable for what happened in social care, but the way in which our system of social care support was set up did not provide ministers with all the levers that they needed to give effect to that accountability ... Therefore, a strengthening of accountability seemed important to us and the bill captures that. ³⁶

321. In a letter dated 12 July 2023, the Minister for Social Care, Mental Wellbeing and Sport advised the Committee of work it had been undertaking to agree an “initial consensus proposal between the Scottish Government and Cosla (on behalf of local government) ... on a partnership approach that will provide for shared legal accountability” for the proposed National Care Service. ⁶⁰

322. In a letter to the Minister, issued on 7 November 2023, the Committee requested confirmation that the emergence of an agreement on shared legal accountability would necessitate substantial amendments to be made to sections 2 and 3 of the Bill at Stage 2. In response, the Minister informed the Committee:

” Amendment will be required to sections 2 and 3 of the Bill. As I have set out earlier, the NHS and local government would each retain responsibility for service delivery under the shared accountability agreement. Scottish Ministers will exercise strategic framework accountability for NCS services which will include a role in setting policy, having oversight and providing direction. Our amendments at Stage 2 will reflect this. ³²

323. In her letter of 6 December 2023, the Minister went on to inform the Committee:

” As part of the tripartite discussions with COSLA and the NHS, we have agreed that shared accountability will be discharged in the form of a National Care Service Board (the National Board) ³²

and

” This will also mean that changes are required to provisions which affect local integration arrangements.³²

324. The Committee notes strongly divergent views on the merits or otherwise of transferring accountability for social care from local authorities to Scottish Ministers, which it heard during its initial scrutiny of the Bill as introduced.
325. The Committee acknowledges the Scottish Government's subsequent decision not to proceed with this aspect of the Bill as introduced and instead to reach a consensus agreement with COSLA to create a governance structure for the proposed National Care Service based on a model of shared legal accountability.
326. The Committee notes that, while this change of approach will be welcomed by many, particularly local government stakeholders, others will feel disappointed that it fails to reflect one of the core recommendations of the Independent Review of Adult Social Care that "Accountability for social care support should move from local government to Scottish Ministers, and a Minister should be appointed with specific responsibility for Social Care".^{lxii}
327. The Committee will reserve final judgement on this aspect of the Bill until it has seen the detail of further amendments the Scottish Government intends to bring forward, including how a model of shared legal accountability will work in practice, detail on how Scottish Ministers will exercise strategic framework accountability for the proposed National Care Service as part of this model, beyond the accountability it already has, and the reforms to integration authorities it plans to make via amendment to the Public Bodies (Joint Working) (Scotland) Act 2014.^{lxiii}
328. Irrespective of the model of accountability, the Committee believes proposals for the creation of a National Care Service need to be accompanied by a reinforced role for the Scottish Parliament in undertaking regular, structured scrutiny of its implementation and the extent to which it is achieving its defined objectives. To support this reinforced scrutiny role, the Committee calls for the Bill to include provisions enabling the Scottish Government to keep the Scottish Parliament regularly updated on the operation of the National Care Service including, in particular, an assessment of the extent to which this is contributing to improved outcomes for those in receipt of social care.

^{lxii} Sandesh Gulhane and Tess White dissent from this recommendation.

^{lxiii} Sandesh Gulhane and Tess White dissent from this recommendation.

Care boards

329. The Bill as introduced makes provision for both geographically defined local care boards and for "special care boards" to deliver national functions if needed. Provisions relating to care boards include establishing and abolishing boards, board membership, staffing, powers and accounts and annual reports.
330. It is implied but never overtly stated in any of the documentation accompanying the Bill that the Scottish Government's original intention was that local care boards would replace the existing health and social care integration structure provided by integration joint boards and Health and Social Care Partnerships. The Public Bodies (Joint Working) (Scotland) Act 2014 allowed for the establishment of Integration Joint Boards to which health boards and local authorities in a health and social care partnership can delegate planning, delivery and monitoring of social care services in their local area.
331. As already referenced earlier in this report, after giving oral evidence to the Committee in December 2022, the then Minister for Mental Wellbeing and Social Care confirmed to the Committee in written follow-up:
- ” Going forward, as part of NCS reforms, the new local care boards will replace the current IJBs. Local care boards would be the sole model for local delivery of community health and social care in Scotland to ensure the ambition for consistent, quality delivery across services.³¹
332. Many written submissions to the Committee called for greater clarity in relation to those provisions of the Bill related to care boards, including in relation to their number, their geographic boundaries, their membership, duties and functions and the services they would provide.
333. Many submitting written evidence to the Committee questioned whether proposals for the creation of care boards would represent enough of a break from existing structures to have any impact on service delivery. The Chartered Institute of Housing Scotland noted:
- ” The proposed structure for Care Boards set out in the Bill seems to largely reflect the current set up of IAs – with some aspects devolved to all and others at local discretion - and therefore it is difficult to see how this will be an improvement on the current situation.⁶¹
334. Conversely, others argued that proposals to move to a new structure would undermine the progress made so far towards integrating health and social care. The Royal College of General Practitioners Scotland opposed the creation of new care boards, arguing:
- ” There has already been multiple re-organising of similar structures. Many relationships and systems have, or are being established, in Health and Social Care Partnerships (HSCPs) and Integrated Authorities, and we do not want to lose these. It is crucial to maintain local alignment of teams to ensure joint working.⁶²

335. Written evidence from Leonard Cheshire in Scotland suggested the proposed creation of care boards ran counter to the recommendations of the Independent Review of Adult Social Care, led by Derek Feeley:
- ” The ‘Feeley Review’ was clear, for example in recommendation 23 of its report, that “Integration Joint Boards should be reformed to take responsibility for planning, commissioning and procurement and should employ Chief Officers and other relevant staff. They should be funded directly by the Scottish Government.” ⁶³
336. Giving oral evidence to the Committee, Derek Feeley expressed a hope that Integration Joint Boards would continue to exist as part of the creation of a National Care Service, highlighting the importance of the proposed service being responsive to local requirements and circumstances:
- ” We would need to ensure that a centralised national-level entity paid due regard to such issues. That is why we recommended in our report that integration joint boards—or some form of them—ought to continue. I assume that that is the intent in the bill around the care boards—that they will be able to capture some of that local diversity and factor it in. ³⁶
337. Many written submissions to the Committee specifically sought additional clarity with respect to the creation of special care boards, including what their precise scope and function would be as well as how their creation would be scrutinised.
338. A number of written submissions outlined specific concerns about the powers the Bill would give Scottish Ministers to abolish care boards and, in particular, how such decisions would be arrived at and scrutinised. The Scottish Association of Social Work argued:
- ” Process around this will need to be developed to ensure decision[s] are based on transparent and robust evidence and that care boards received notice and support to address concerns about quality... Abolishment cannot be a decision that Scottish Ministers can take without scrutiny. ¹⁸
339. The Committee received a range of evidence regarding the geographic scope of local care boards with some arguing that these should be co-terminous with local authority areas while others expressed arguments either in favour of or against aligning their boundaries with those of Scotland’s 14 geographical NHS Boards.
340. Giving oral evidence to the Committee, Rachel Cackett of the Coalition of Care and Support Providers in Scotland outlined her organisation’s proposal that the structure of the proposed national care service should include a National Care Service Board with an overarching strategic role:
- ” ... rather than having a direct line from care boards to ministers, we strongly support Derek Feeley’s original suggestion of a National Care Service Board with a diversity of voices. Good decisions are made by diversity of voice. ³⁴
341. Meanwhile, the written submission from Common Weal raised concerns about the extent of centralisation the Bill could allow:

” The Bill does not rule out and indeed allows specific provision of a single National Care Service Board covering all of Scotland and under the direct control of Scottish Ministers. This too should be explicitly ruled out. ⁶⁴

342. Many organisations submitting written evidence made the case for the stakeholders they represent to be directly represented on care boards. These included:

- representatives of disabled people and those with learning disabilities
- carers and unpaid carers
- those with lived and living experience of receiving social care and support
- autistic people and their families
- representatives of the third sector
- voluntary sector organisations
- trade unions
- representatives of the nursing profession
- allied health professionals
- independent care providers
- representatives of the social work profession

343. In written evidence, the Equality and Human Rights Commission made a broader case in favour of diverse representation on care boards:

” Public boards should be diverse and represent the communities they serve. The arguments for diverse and inclusive boards are well established. Boards that are more diverse are associated with improved performance and corporate governance and better decision making. ⁶⁵

344. With respect to care board membership, many stakeholders argued that, whereas membership of integration joint boards is currently differentiated between those with voting powers and those without, all members of the proposed new care boards should be given full voting rights.

345. Conversely, the written submission from Glasgow City Health and Social Care Partnership expressed concern as to the potential impact on decision-making of giving all care board members equal status and full voting rights:

” The current basis for decision making within GCHSCP is based on consensus and works well. Operating on this basis has led to a position where votes being required to make decisions have not been required. The introduction of voting rights for all may change the dynamic and introduce a situation where there are votes forced which currently would not be required. ⁵⁵

346. More broadly, Glasgow City Integration Joint Board raised the prospect that efforts

to achieve diverse representation on local care boards may result in those boards becoming too large to be able to reach decisions effectively.⁵⁷

347. A number of written submissions raised questions about the processes for appointing members of care boards and to what extent they would be accountable to those they were appointed to represent. The submission from Unite the Union's Edinburgh Not for Profit Branch stated:

” ...we would argue that representatives of the community/representatives appointed as a result of lived experience as cared for or carers should be chosen by and accountable to those they are appointed to represent through clear and transparent mechanisms.²⁰

348. Community Integrated Care highlighted the need for those with lived and living experience to be appropriately supported in order to be effectively represented on care boards, asking:

” ... whether there would be some element of training or capacity building for carers and people receiving support to feel comfortable to sit on one of these care boards and how they would be inclusive.⁵⁸

349. In its written submission, Glasgow City Council raised concerns that giving Scottish Ministers exclusive responsibility for appointing the membership of care boards would remove local accountability for the provision of social care services:

” It is of concern that the members of a care board, including the chairing member, are to be appointed by the Scottish Ministers, as is the Chief Executive of a care board. It is also noted that the Scottish Ministers will set not only the terms and conditions for the Chief Executive but also all of the staff appointed by the care board.⁶⁶

350. COSLA further questioned the power of Ministers to remove those appointed to local care boards, particularly as this would relate to the potential involvement of local government members. It argued:

” This provision within the Bill appears to lack the necessary checks and balances which would limit power of government Ministers to intervene in operational issues.¹¹

351. Many written submissions called for greater clarity on how care boards would interact with NHS Boards. Parkinson's UK Scotland argued:

” This is particularly important for people with complex conditions like Parkinson's, or those with multiple conditions, who will need seamless support from professionals and services spanning both the NHS and National Care Service.¹⁵

352. In its written submission, the Faculty of Advocates highlighted the discretionary nature of the provision of financial assistance to care boards as set out in section 5 of the Bill. It concluded:

” The recommendations, and indeed the Policy Memorandum, appear to envisage that there would be an absolute duty on the Scottish Ministers to provide financial assistance to the National Care Service Boards. In that context it is suggested that section 5 should be mandatory with the word ‘may’ changed to ‘shall’. ¹⁰

353. In her response to the Committee’s letter of 7 November 2023, the Minister for Social Care, Mental Wellbeing and Sport confirmed a fundamental change of approach with respect to those sections of the Bill as introduced related to the creation and abolition of care boards:

” The shared accountability agreement between national and local government included agreement that statutory delivery functions would remain with local government and health boards respectively, along with assets, employment and relevant funding. Consequentially, there are provisions in the NCS Bill as introduced which would no longer be intended to be used as originally envisaged.

This raises questions of the necessity of particular provisions, and we have therefore been examining whether the intended outcomes could be achieved by putting forward amendments to the Public Bodies (Joint Working) (Scotland) Act 2014 under which the integration authorities were created. We are now of the view that this is a reasonable approach, and would achieve the intended reforms in a manner proportionate to the aim. Therefore we no longer expect to abolish integration authorities and establish care boards. ³²

354. Although confirming that it is no longer the Scottish Government’s intention to establish local care boards as part of the architecture of the proposed National Care Service, the Minister’s response goes on to confirm:

” ... it has been agreed that a National Care Service Board would be established as the primary means through which to secure, operationalise and manage shared accountability... ³²

355. Later in her letter, the Minister expands further on the planned functions of a National Care Service Board:

” In my previous letter of 20 September, I outlined some high level functions for which we expected the Board to be responsible. Subsequent discussions with COSLA and NHS have expanded this list to include:

- setting national strategic direction
- developing standards, guidance and operating frameworks
- overseeing and seeking delivery assurance on local strategic plans and ethical commissioning strategies;
- monitoring system performance;
- maintaining a support and improvement framework which will aim to provide support to local areas when monitoring indicates that standards are not being met with powers of intervention, when required, as a last resort;
- ensuring visibility of data, information, and analysis about social care support, social work and primary and community health services through reporting on delivery;
- national commissioning and procurement by agreement for complex and specialist social care services which will include prison social care;
- seeking assurance on public protection arrangements; and
- providing support to local delivery partners.³²

356. The Minister’s letter goes on to elaborate on the proposed legislative mechanisms for creating a National Care Service Board and an indication of its proposed membership:

” We are currently developing the delivery mechanism for the National Board. While this may be in the form of a public body, the final shape of the entity is still to be agreed. There is a rigorous approval process within Scottish Government for any new public body and the proposals for this Board will be subject to that in due course. If appropriate following a final decision, we will amend the Bill at Stage 2 to ensure the Board has the necessary duties and powers to fulfil its role effectively.

We would expect to introduce amendments at Stage 2 which provides for Ministers to set out the detail and composition of National Care Service Board membership through regulations. Although we do not intend to outline the membership of the National Care Service Board within primary legislation, it is intended to include, at a minimum, an independent chair; representatives from local government to preserve local democratic accountability; the NHS and people with lived experience.

To ensure our commitment to enabling meaningful representation of people with lived experience of using or working in services on the National Care Service Board, we will also amend the Bill to allow for Ministers to set out the support the Board should provide for lived experience representatives at both individual and structural levels, to ensure all Board members can play a meaningful role.³²

357. In relation to the proposed creation of a National Care Service Board, the Minister's letter concludes:

” These provisions will ensure we have the opportunity fully to co-design those aspects with people who access NCS services, workforce representatives from the public, third and independent sectors, and unpaid carers, as well as with local government, NHS Boards and stakeholders.³²

358. The Committee acknowledges the Scottish Government's decision to no longer proceed with plans for the creation of local care boards as part of the governance structure of the proposed National Care Service and to retain integration authorities in a reformed state. It further notes that, as part of the consensus agreement with COSLA, the Scottish Government intends to create a National Care Service Board as part of a revised governance structure.

359. The Committee wishes to highlight a number of important areas where stakeholders had requested greater clarity and detail with respect to the provisions of the Bill as introduced that related to care boards which are equally applicable to the Scottish Government's plans for creation of a National Care Service Board. These include:

- The remit of the proposed National Care Service Board, including whether it will have responsibility for delivery, commissioning, standards-setting or a combination of these;
- The extent to which responsibilities previously attributed to Scottish Ministers in the Bill as introduced will be transferred to the proposed National Care

Service Board;

- Membership of the proposed National Care Service Board and whether all members will have full voting rights;
- How the proposed National Care Service Board will interact with integration joint boards and Health and Social Care Partnerships.

360. The Committee further notes that it is the Scottish Government's intention to set out many of the details of the proposed National Care Service Board via secondary legislation, with these details having previously been informed by a process of co-design. The Committee calls on the Scottish Government to give further consideration to how the Scottish Parliament will be accorded an appropriate ongoing scrutiny role with respect to the establishment and operation of the proposed National Care Service Board.
361. The Committee highlights the substantial expectations of a broad range of stakeholders submitting evidence on the Bill regarding membership of care boards as well as mixed views on the merits or otherwise of giving all care board members full voting rights. The Committee believes that these expectations will equally need to be carefully managed and addressed with respect to membership of the proposed National Care Service Board. It further points out that the National Care Service Board's capacity to reach decisions effectively will be partly dependent on its overall membership numbers.
362. The Committee has heard concerns about the extent of powers originally conferred on Scottish Ministers by the Bill as introduced with respect to the establishment and abolition of care boards and the appointment and dismissal of care board members. It remains unclear to what extent Scottish Ministers will have similarly extensive powers with respect to the proposed National Care Service Board. If the Scottish Government's intention is that Scottish Ministers will have corresponding powers over the proposed National Care Service Board and its membership, the Committee takes a view that they will need to be subject to an appropriate level of parliamentary scrutiny and enhanced safeguards to ensure their exercise is appropriately motivated and politically impartial.

Strategic Planning

363. Chapter 2 of Part 1 of the Bill as introduced relates to strategic planning. The Policy Memorandum accompanying the Bill explains that this Chapter:

” ... sets out that each care board must have a Strategic Plan, which sets out their vision, objectives and budgets for their care board area. Scottish Ministers will review and approve care boards’ Strategic Plans against statutory guidance, which will be co-designed with stakeholders. ²

364. In relation to this Chapter of the Bill as introduced, the Policy Memorandum further explains:

” The Bill also sets out that each care board must have an ethical commissioning strategy included within their Strategic Plan, which sets out their arrangements for providing services and how those arrangements have been designed to ensure they best reflect the NCS principles. The Scottish Ministers must also have an ethical commissioning strategy for any services provided at the national level. Both the Scottish Ministers and care boards must consult publicly on their draft strategies, and make the latest version of the strategy public. Local care boards must also consult their community planning partners and neighbouring care boards. ²

365. COSLA's analysis of this Chapter of the Bill as introduced, in common with that of many local authorities contributing evidence, was that "Strategic planning as proposed in the Bill would centralise decision-making to Ministers further". While it suggested "it is not unhelpful to have national improvement plans with key goals which systems across Scotland can work toward", it went on to raise concerns that:

” By centralising national strategic decision-making to Ministers, it risks local expertise being underrepresented or absent altogether in decision making forums. There is the potential for Ministers to set plans without necessary local expertise, risking the creation of initiatives which may prove impractical in local delivery. ¹¹

366. In a similar vein, Common Weal described this Chapter of the Bill as a "lost opportunity" to embed a bottom-up approach to planning. It concluded:

” In our view there is a contradiction between the top-down and tokenistic approach set out in clauses 7-9 and the Scottish Government’s declared intention to co-design services alongside previous commitments to empower communities. ⁵⁸

367. In their written submissions, Aberdeen City Council and Aberdeen City Health and Social Care Partnership both highlighted the pre-existence of a significant number of strategic plans related to health and social care and concluded:

- ” It is suggested that the Scottish Government takes stock of all plans, strategies and policies required of community planning partners in the context of the proposals for an NCS. Where possible, the number of and content of strategic planning documents required by law should be streamlined to avoid duplication and ensure simplicity and alignment. They should be minimal in number, simple, straightforward, and accessible for both practitioners and for the public.
67 68
368. NHS Ayrshire and Arran stressed in particular the importance of ensuring strategic plans provided for by the Bill are properly aligned with NHS strategic planning:
- ” It would be advantageous for Scottish Ministers to guarantee alignment between the NCS Strategic Plan and that of the NHS in order to improve integrated healthcare delivery and, by extension, people's experiences with services, as provided under the Bill.⁶⁹
369. Many local government stakeholders submitting evidence to the Committee argued that strategic planning and commissioning should remain aligned with Local Outcome Improvement Plans.
370. North Ayrshire Council and North Ayrshire Integration Joint Board suggested that this alignment should also apply to the timescale for the planning cycle:
- ” Recent thinking at a local level has considered the development of longer-term strategic planning cycle to help support local stability and cohesion of a longer-term vision. We have aligned our most recent Strategic Plan to the timescales of the CPP Local Outcome Improvement Plan to 2030 and will undertake reviews at 3 year intervals. It is essential that Strategic Planning is streamlined to avoid duplication.¹²
371. Angus Council argued that the stipulation that the period of a strategic plan must not exceed three years would:
- ” [...] create continual change in contractors which will result from short term plans, contracts and initiatives as well as a significant amount of work, very little of which will be directly related to end service provision and may detract from the core requirements of the Bill and the care it is designed to deliver.⁷
372. In common with a number of other stakeholders, Glasgow City Health and Social Care Partnership drew unfavourable comparisons between the proposed three-year strategic planning cycle envisaged by the Bill as introduced and current arrangements for strategic planning as part of health and social care integration. It argued:
- ” The current legislation underpinning integration requires reviews of strategic plans every 3 years but does not compel integration authorities to replace plans every 3 years. GCHSCP does not understand why scope has been removed for care boards to plan on a more medium to long term basis, which is something that partners across the city have asked GCHSCP to consider.⁵⁵
373. Although many witnesses argued that a three-year planning cycle would be too short-term the Scottish Association of Social Work pointed out that, in budget terms,

even a three-year strategic planning cycle would be hampered by the continuing existence of single year budgets:

” Without a requirement on Scottish Ministers to set budgets for care boards for more than a one-year period, it will be challenging for care boards to set out three-year strategic plans for services. This in turn will maintain the existing problems with year-on-year commissioning creating a fragile provider environment. We suggest this is re-examined. ¹⁸

374. As already outlined, many witnesses questioned how the national care service principles set out in the Bill would be meaningfully applied. The Faculty of Advocates suggested that, with regard to strategic planning, there would be "a number of elements which require to be incorporated into the strategy, but only one element, that relating to ethical commissioning of services, requires to attempt to reflect the National Care Service principles". It concluded:

” It is not clear why the Scottish Ministers, or the National Care Service Boards, as the case may be, ought not to have regard to the principles when setting out their strategy, the vision and/or objective for the service. ¹⁰

375. Camphill Scotland argued for the Scottish Parliament to be given a greater scrutiny role with respect to the development of the Scottish Ministers' strategic plan:

” To improve transparency and accountability we also take the view that the draft Strategic Plan must be submitted to the Scottish Parliament, and that the Bill must place a duty on the Scottish Ministers to make arrangements for the Strategic Plan to be debated by the Scottish Parliament. ⁷⁰

376. A number of stakeholders contributing evidence argued that there should be an explicit focus in the development of strategic plans on identifying measurable outcomes for the plan. Sharing this view, the Care Inspectorate further argued:

” We would also welcome an indication of how the government intends to provide scrutiny and assurance of the quality and effectiveness of the care boards' strategic plans, along with any indication of how improvement will be supported. This equally applies to ethical commissioning strategies. ⁷¹

377. The Equality and Human Rights Commission drew attention to the existence of the Public Sector Equality Duty and made clear its expectation that "Social Care Boards created through the NCS Bill would be made subject to the specific duties" contained therein. It expressed its view that this Chapter of the Bill "should be clear that strategic planning must include an equality impact assessment at local level" before concluding:

” We also recommend that Care Boards set SMART outcomes that tackle the most significant inequalities relevant to their work and remit, and that they consider how best to align their equality outcomes with their Strategic Priorities, public performance reporting and any long term local or national outcomes (such as National Performance Framework) where possible. ⁶⁵

378. While the requirement for Scottish Ministers to consult publicly on a draft of their strategic plan was generally supported, many submitting evidence to the Committee

argued that it did not go far enough in involving those with lived and living experience or in promoting support for independent living. Others equally made the case for a variety of stakeholders, including unpaid carers, trade unions and the third and independent sectors, to be involved in the consultation process related to strategic plans.

379. The Scottish Association for Mental Health went so far as to argue that the requirement to consult publicly on strategic plans should be replaced with a commitment to "co-production, and mandating Scottish Ministers [to] engage with people with lived experience of social care when producing the plan".²⁸ It argued for an equivalent shift in relation to the development of strategic plans by care boards.
380. In oral evidence to the Committee, Hannah Tweed from the Health and Social Care Alliance Scotland shared this view and summarised the Alliance's position as follows:
- ” ... we would like there to be a commitment to more than just public consultation—there should be co-production, and involvement in decision making should be stipulated in primary legislation.³⁵
381. The Law Society of Scotland raised concerns that, whereas local care boards would be required to seek the views of local residents on a draft of their strategic plan, "There is no duty to take the views of local residents or the public in Scotland into account in preparing the draft plan". It added: "There is no duty to specifically consult with people in receipt of care or unpaid carers" before concluding: "This would appear to be inconsistent with the overall policy aims".⁸
382. Meanwhile, NHS Ayrshire and Arran argued that provisions relating to the requirement for care boards to consult community planning partners on a draft of their strategic plans should be further strengthened to promote "collaborative planning":
- ” We would appreciate the addition of a mutual obligation for Community Planning Partners to work together in the creation of strategic plans in Chapter 2 Section 8 Paragraph 3, which would strengthen the suggested language from "gathering perspectives." Integrating planning timelines and methods would be advantageous to maximising the power of collaborative planning.⁶⁹
383. SOLACE Scotland raised concerns around the proposed shift in the focus of consultation requirements for strategic plans from local authorities to community planning partnerships, arguing that it "represents a significant softening and does not reflect that statutory responsibilities remain with the local authority".⁷²
384. In common with many NHS stakeholders, NHS Board Chief Executives and Chairs emphasised the importance of integrating workforce planning into strategic plans and made the case for inclusion in those plans of a strategic link "to national and local workforce planning across health and social care to ensure the workforce is recruited, retained, educated, trained and supported to meet the diverse needs of people in local communities".²⁹
385. Workforce issues are addressed more fully elsewhere in this report; the Committee

has heard stakeholder evidence emphasising the benefits of a strategic approach to workforce training as part of strategic planning.

386. The Royal Pharmaceutical Society pointed to a lack of detail in the Bill about what strategic plans must include. In particular, it regretted that there was "no mention of the need for minimum standards to be met" nor of "any governance that must be put in place within the National Care Service" and concluded that the Bill should require strategic plans to include "a section on standards and governance".⁷³
387. The Royal College of Nursing Scotland recommended that strategic plans must also include:
- Workforce data and projections.
 - How Care Boards/Ministers are meeting their safe staffing duties under the Health and Care (Staffing) (Scotland) Act 2019 and the challenges and risks they have faced in relation to this.⁷⁴
388. Giving oral evidence to the Committee, Mark Hazelwood from the Scottish Partnership for Palliative Care emphasised the importance of addressing palliative and end-of-life care as part of the strategic planning process and concluded that there should be:
- ” ... a population health approach at local level in the strategic planning and commissioning.⁷⁵
389. In relation to the provision of homelessness services, Crisis related its experience that "where homelessness services are situated within the HSCP there is better joined-up working between homelessness and health and social care" before recommending that, to ensure effective joined-up working as part of the proposed national care service, this Chapter of the Bill should include:
- ” ... a requirement as part of the strategic planning duty (chapter 2 of the Bill) for Scottish Ministers and local care boards to set out how they will integrate their functions with local homelessness and housing services and helping people live successfully in their own homes, including to prevent homelessness, through joint strategic planning and service level delivery.⁷⁶
390. Giving oral evidence to the Committee, Tracey Dalling of Unison emphasised the importance of ensuring ethical commissioning strategies are "as robust and transparent as possible".⁴⁰
391. However, while welcoming the requirement for Scottish Ministers and care boards to include ethical commissioning strategies in their strategic plans, National Autistic Society Scotland was critical of section 10 of the Bill, arguing that it lacked clarity on the definition of ethical commissioning:
- ” National Autistic Society Scotland would like this section amended to provide a clearer definition of ethical commissioning and outline the specific principles associated with ethical commissioning.⁷⁷
392. In its written submission, the Scottish Federation of Housing Associations argued that ethical commissioning strategies should have a focus on the promotion of

collaborative commissioning:

” In our response to the previous consultation on the National Care Service, SFHA agreed with the need to shift thinking from price-based procurement and competition to genuine partnership and collaboration, moving away from commissioning care in time slots to focus on wellbeing and positive outcomes for people.⁵²

393. In her letter to the Committee of 6 December 2023, the Minister for Social Care, Mental Wellbeing and Sport indicated that the Scottish Government’s revised approach to governance of the proposed National Care Service would necessitate consequential amendments to those provisions of the Bill related to strategic planning:

” To ensure that there is a clear link between local and national shared accountability, we intend to put forward amendments which achieve the aim of ensuring reformed integration authorities are accountable to the National Care Service Board, with the National Care Service Board responsible for reviewing, and securing assurance on the deliverability of local strategic plans. This will require amendments to provisions relating to strategic planning beyond what is proposed in the NCS bill as introduced. The National Care Service Board is also envisaged to have a role in scrutinising reformed integration authorities’ performance reports, with strengthened powers to require evidence and documentation to be introduced. In doing so, it is a priority to ensure this does not become an added layer of accountability or bureaucracy and actively streamlines the existing complicated landscape.⁷⁸

394. The Committee will reserve judgement on those aspects of the Bill related to strategic planning until it has seen the detail of amendments the Scottish Government intends to bring forward which it understands, under the new revised governance model, will give the proposed National Care Service Board a defined role in scrutinising strategic planning by integration authorities.^{lxiv}

395. At the same time, the Committee wishes to draw the Scottish Government’s attention to a range of evidence it has gathered as part of its Stage 1 scrutiny of the Bill as introduced which may also be relevant to this Chapter of the Bill and any amendments that the Scottish Government subsequently intends to bring forward, namely that:

- The requirement for the period of strategic plans to not exceed three years is considered by many stakeholders to be unduly prescriptive and not conducive to encouraging a longer-term approach to strategic planning, and that this provision should be replaced with a requirement for strategic plans to be reviewed at least every three years;
- Strategic plans should be required to have explicit regard to the principles set out in section 1 of the Bill;
- Further provision should be made to ensure appropriate alignment between

^{lxiv} Sandesh Gulhane and Tess White dissent from this recommendation.

any strategic plans developed as part of the proposed National Care Service and other pre-existing strategies, such as NHS strategic plans and local outcome improvement plans; and that making additional provision for an oversight function could help ensure appropriate alignment and consistency in strategic planning;

- The provisions on consultation on strategic planning, as set out in this Chapter of the Bill as introduced, would benefit from enhancement to reflect the Scottish Government's stated commitment to co-design and co-production as an integral part of the proposed National Care Service;
- To further facilitate effective strategic planning and the successful development and implementation of ethical commissioning strategies by the relevant governing bodies, this Chapter of the Bill should include a clear and comprehensive definition of "ethical commissioning"; and
- Strategic plans should equally fulfil a number of other important criteria, namely:
 - Being outcome-focused
 - Being subject to equality impact assessment
 - Making reference to Article 19 of the UN Convention on the Rights of Persons with Disabilities
 - Promoting a collaborative approach to planning
 - Addressing workforce planning and include a detailed and comprehensive training plan
 - Including provisions on standards and governance
 - Addressing the integration of homelessness and housing services.

396. The Committee therefore calls on the Scottish Government to give careful consideration to this evidence in formulating its amendments to this Chapter of the Bill.

Information and support

397. Chapter 3 of Part 1 of the Bill as introduced includes information on a Charter, advocacy and complaints in relation to the National Care Service.

The National Care Service Charter

398. Sections 11 and 12 of the Bill as introduced provide for a National Care Service Charter. The Bill requires the Scottish Ministers to prepare and publish a Charter of rights and responsibilities, following appropriate consultation and engagement, including with those with lived experience. As a minimum the Charter will set out:

- The rights and responsibilities of those who access community health and social care services
- The processes available for ensuring these rights are upheld.

399. The [Policy Memorandum](#) states:

” A fundamental tenet of the human rights-based approach to the NCS is providing accountability to those accessing support and empowering them to claim their care-specific rights. Central to facilitating this is the development of an NCS Charter of Rights and Responsibilities co-designed with those with lived or living experience. ²

400. The Bill as introduced states that in preparing and reviewing the National Care Service Charter, the Scottish Ministers must:

- consult any person they consider appropriate and have particular regard to the importance of eliciting the views of service users and those who provide services
- lay before the Scottish Parliament a copy of the first version of the Charter, and any new version resulting from their making changes following a review.
- undertake a first review of the Charter within 5 years of a copy of the first version being laid before the Scottish Parliament, and after that, review it within 5 years of the last review concluding.

Following a review of the Charter, the Scottish Ministers may make any changes to it that they consider appropriate. ¹

401. Witnesses contributing evidence to the Committee were generally of the view that the obvious place for the principles of the NCS to be reflected would be through the Charter but pointed out there was no link between the two on the face of the Bill as introduced.
402. Many submitting evidence raised concerns that the proposed model for the NCS Charter was unclear. As described on the face of the Bill, some suggested it resembles the [Charter contained in the Patient Rights \(Scotland\) Act 2011](#), which outlines both rights and responsibilities of people using NHS services. Other

witnesses assumed that it would or should resemble the [Charter provided for by the Social Security \(Scotland\) Act 2018](#). However, others pointed out the danger of comparing the two models - namely, while eligibility criteria for social security benefits are quite clear cut, the criteria for determining eligibility for social care are much more open-ended.

403. However, the written submission from SAMH expressed their view that:

” Our Charter [the Social Security Scotland Charter] provides a helpful model for development of the NCS Charter. The Social Security Scotland Charter has strong statutory underpinnings informed by intensive stakeholder engagement and was co-produced by people with lived experience of social security. We believe this model should be used when developing the NCS. ²⁸

404. In evidence to the Education, Children and Young People Committee on 9 November 2022, Iain Nisbet of Cairn Legal and My Rights, My Say explained the benefits a Charter could bring from a human rights perspective:

” Having a Charter helps people to understand easily what their rights are. It sets them out more readably than in the legislation, and that is a good thing ... I would want to see an explanation of where people should go and who they should speak to if their Charter rights are not being delivered. Will there be an easy system for resolving those disputes and for enforcing those rights and making them real? ⁷⁹

405. This Committee also heard from a number of witnesses who wanted the Charter to be clearer about both the rights that people have and how they can be enforced. Common Weal, for example, argue that "There is nothing in the bill which places new responsibilities on Scottish Ministers which could be enforced by the public." ⁶⁴ while the Scottish Association of Social Work suggested that making clear what rights people have as part of the Charter would be "a positive inclusion in the Bill that supports the commitment of an NCS to adopting a human rights and person-centred approach". ¹⁸

406. Frank Jarvis from the Scottish Human Rights Commission highlighted potential challenges with accountability in relation to delivery of the Charter:

” The bill does not indicate how delivery of the Charter will be monitored or what the consequences will be for care providers if its requirements are not fulfilled ... It is not clear how the Charter will support accountability, which suggests that the Charter is a presentational device of repackaging rights that care users already hold. ⁹

407. Derek Feeley, former Chair of the Independent Review of Adult Social Care, suggested

” "it would be a good thing to make the Charter even more explicit about the human rights-based approach ... I support the idea of a Charter, and I invite the committee to think about making it as explicit as possible so that there is no wriggle room for people when we come to give life to what the Charter says." ³⁶

408. Some witnesses expressed concerns beyond how the Charter deals with existing

rights. Many witnesses were concerned by section 11's statement that nothing in the Charter is to "give rise to any new rights".¹ Cathie Russell representing Care Home Relatives Scotland noted "That is disappointing. I think that a lot of people would have wanted the inclusion of specific rights."⁷⁵

409. The National Autistic Society of Scotland noted in its written submission:

” We are concerned that the specification that no new rights can be created will result in a weakened Charter which fails to specify in enough detail what service individuals are entitled to. National Autistic Society Scotland would like the Scottish Government to provide clarity on why this subsection is deemed necessary, and to consider if an appropriate amendment can ensure that a Charter does not fail from the outset as a result of this specification.⁷⁷

410. Much of the evidence received on the establishment of a Charter relates to how participants would be involved in the process of co-design. Many welcomed the involvement of people with lived experience of receiving social care and of service providers while others argued involvement should be widened to include family members of those who experience care as well as unpaid carers.

411. In its written submission, the Allied Health Professions Federation Scotland sought clarification on the use of the words “co-designed or co-commissioning” and went on to suggest:

” Such a Charter would require to be built around the person using the care service, their family and/or carer and be created with their views being heard. This would require huge public engagement.⁸⁰

412. In its written submission, Alzheimer Scotland encouraged continued dialogue with key stakeholders including the third sector and people with lived experience to inform and influence how the proposed Charter is shaped. It pointed out that the Bill as introduced:

” ... does not make specific provision for the inclusion of third sector organisations or for people with lived experience to be consulted with regard to preparing or reviewing the National Care Service Charter...the legislation should establish a clear direction that Scottish Ministers must consult with both third sector organisations and individuals with lived experience in the process of developing and reviewing the Charter.⁸¹

413. Cerebral Palsy Scotland highlighted its concerns about the wording of Section 12.4 which states that "Following a review of the Charter, the Scottish Ministers may make any changes to it that they consider appropriate".⁸² It interpreted this provision as meaning Scottish Ministers could choose to disregard the outcome of co-design and to change the Charter unilaterally without further scrutiny or accountability, which they would oppose.

414. During oral evidence, the Minister for Mental Wellbeing and Social Care confirmed the intentions behind the provisions of the Bill related to the Charter:

” The design and development of the Charter will set out the rights and responsibilities of people accessing national care service support, information on the national care service complaints and redress system, which will provide recourse if the Charter rights are breached, and information about how to access further information, advice and advocacy services. The Charter will support people who are accessing NCS services to better hold the system to account and to receive the services that they need in order to thrive, rather than just survive.³⁹

415. The Committee notes there is currently no mention of Parliament having a role in scrutinising the Charter. During an [evidence session with the Delegated Powers and Law Reform \(DPLR\) Committee](#), the Minister for Mental Wellbeing and Social Care was asked whether there was scope for the Parliament to have a reinforced role in ratifying the Charter and proposing amendments at the 5-yearly review stage. In response, the Minister advised that he would "reflect on that and consider how we might be able to improve the scrutiny of that as we move forward".⁸³

416. Witnesses were content that the Charter be reviewed every five years. Isla Davie from the Faculty of Advocates felt that if a Charter were to be put together with the right foundations, a review every five years should be adequate.³³

417. In her letter to the Committee of 6 December 2023, the Minister for Social Care, Mental Wellbeing and Sport indicated that the Scottish Government was considering what amendments might be required to those sections of the Bill as introduced related to the Charter as a consequence of the new consensus agreement with COSLA on shared legal accountability. Along with subsequent provisions related to independent advocacy and complaints, the Minister explained:

” These provisions, as introduced, place a number of requirements on the Scottish Ministers and consideration is being given as to whether these requirements still appropriately sit with the Scottish Ministers only, or whether those provisions will now apply to new governance arrangements i.e. the National Board. Stage 2 amendments are therefore likely to be brought forward to clarify this.³²

418. In that same letter, the Minister went on to reaffirm the Scottish Government's commitment to “co-design the detail of these policies with people with lived experience of accessing and delivering care support” and indicated that this co-design process “is progressing at pace”. On the Charter, the Minister's letter concluded:

” The sensemaking phase of co-design on the Charter alone has included views from over 260 people and groups and we are taking time to analyse this fully and apply what people have told us. An early draft of the Charter will be provided to the committee in early 2024, before going through the final ‘agreeing’ phase of co-design. My officials would be happy to meet with the Committee to discuss the draft Charter when the draft is shared if this would be helpful.³²

419. The Committee is sympathetic to the view expressed by many stakeholders that the creation of a Charter offers an important opportunity to give practical effect to the principles underpinning the proposed National Care Service. The Committee therefore calls for the sections of the Bill governing the creation of a National Care Service Charter to be amended to make provision that the Charter is to reflect the proposed National Care Service principles.^{lxv}
420. The Committee acknowledges the Scottish Government's approach, in making provision for a National Care Service Charter, of following the model of the Charter of Patient Rights and Responsibilities, which stipulates that "nothing in the Charter is to give rise to any new rights, impose any new responsibilities, or alter (in any way) an existing right or responsibility". At the same time, following the model of the Patient Rights (Scotland) Act 2011 and to give clarity to those in receipt of social care services, it calls on the Scottish Government to consider the inclusion of a statement of pre-existing rights on the face of the Bill.^{lxvi}
421. The Committee supports the five year review period in relation to the National Care Service Charter, since this reflects review provisions with respect to the Social Security Charter and the Charter of Patient Rights and Responsibilities.^{lxvii}
422. The Committee will reserve final judgement on those sections of the Bill related to the proposed National Care Service Charter until it has seen the detail of any relevant amendments the Scottish Government intends to bring forward. At the same time, it already takes the view that, if the intention behind those amendments is to transfer those duties currently conferred on Scottish Ministers with respect to the Charter to the newly proposed National Care Service Board, these provisions should be accompanied by a reinforced role for the Parliament in undertaking ongoing scrutiny of the Charter.^{lxviii}
423. In this context, it believes a reinforced scrutiny role for the Parliament would be best achieved by following the model of the Social Security (Scotland) Act 2018 where the creation of the first Charter and any subsequent review is subject to approval by resolution of the Scottish Parliament. The Bill should also ensure sufficient time is given to Parliamentary scrutiny of the Charter.^{lxix}
424. The Committee has heard evidence of concerns with what is meant by co-design in relation to the Charter and who exactly would be involved. The Committee notes the Minister's update in her most recent correspondence regarding progress in the process of co-design related specifically to the Charter. It welcomes the Minister's undertaking to share a draft of the Charter with the Committee once available. As part of a reinforced process of scrutiny of the Bill at Stage 2, the Committee will seek an update from relevant stakeholders to ascertain to what extent they are satisfied with the outcome of the co-design process related to the development of the Charter.^{lxx}

^{lxv} Sandesh Gulhane and Tess White dissent from this recommendation.

^{lxvi} Sandesh Gulhane and Tess White dissent from this recommendation.

^{lxvii} Sandesh Gulhane and Tess White dissent from this recommendation.

^{lxviii} Sandesh Gulhane and Tess White dissent from this recommendation.

^{lxix} Sandesh Gulhane and Tess White dissent from this recommendation.

Independent advocacy

425. In relation to independent advocacy, the [Policy Memorandum](#) states:

” While there are a number of existing provisions relating to independent advocacy for services that will form part of the NCS remit, it will be important to develop and implement a coherent, consolidated and consistent approach to independent advocacy services across the range of NCS services. Consistent with the human rights based approach to the development of the NCS, determining how independent advocacy services should be provided will be done through codesign with people with lived or living experience of accessing services.²

It further states that section 13 provides for regulations to be made in respect of independent advocacy, which will allow for the results of the co-design process to be implemented and for the policy to be adapted in future to meet new and emerging advocacy needs.

426. The [Explanatory Notes](#) advise "Those regulations will be subject to the affirmative procedure and may modify other enactments".⁸⁴

427. The Committee's [Digital Engagement Summary](#) shows that 88% of respondents were in favour of this provision with 0% opposed and 12% unsure and requiring more information.

The comments on this provision suggested general agreement on the need for independent, sustainably funded advocacy, describing it as "indispensable" with a particular emphasis on the need for advocacy for young people.

Contributors raised queries around where funding will come from with one comment arguing: "We have four advocacy workers for the whole of one city! It isn't enough and people aren't being heard, so how will centralising everything help the people we support".⁶

428. In oral evidence, Rhona Wilder from the Scottish Independent Advocacy Alliance (SIAA) raised concerns that neither a definition of independent advocacy nor a right to access or a duty to provide independent advocacy appear on the face of the Bill as introduced:

” We feel that that does not have any teeth, and that framework legislation in this form means that it is unclear how independent advocacy will work in practice...We have three particular concerns around that. First, there is not currently a definition of 'independent advocacy' in the bill; secondly, the right of access to independent advocacy is not in the bill; and, thirdly, there is no duty to provide independent advocacy. We are concerned that all of that will fall to secondary legislation, which would narrow scrutiny...Having the right to independent advocacy clearly stated in primary legislation is incredibly important to how independent advocacy operates in practice.³⁵

429. The ALLIANCE also made the case for a definition of independent advocacy to be

included on the face of the Bill. Its written submission recommended the legislation "should use the definition of independent advocacy as offered by the Scottish Independent Advocacy Alliance (SIAA)".¹⁹ Hannah Tweed from the ALLIANCE expanded on this during oral evidence and noted a definition would "enable regulation and guidance to be much more robust, and therefore the implementation to be much more meaningful and easier, albeit with some sweating from the legal team in the meantime."³⁵

430. Support in Mind Scotland raised similar concerns around the optionality of Ministers making regulations related to independent advocacy, noting "... we believe that the use of 'may' undermines the importance and need for improving independent advocacy for people using social care services".⁸⁵

431. In its [written submission](#), the Scottish Commission for People with Learning Disabilities (SCLD) described Section 13 of the Bill as "weak and insubstantial" before making the case for dedicated funding to be provided in support of independent advocacy provision:

” ... independent advocacy services need dedicated investment to become the kind of support recommended by Feeley and described in the Policy Memorandum.⁸⁶

432. In written follow-up after providing oral evidence, SIAA recommended several changes to the Bill to ensure independent advocacy provision is strengthened and provided consistently across Scotland, concluding:

” Leaving independent advocacy detail to secondary legislation would set the course to create further confusion over independent advocacy access, provision and funding. Ultimately, this would mean people's rights are not upheld and views not consistently considered in provision of their social care. SIAA strongly recommend that independent advocacy is clearly defined and robust rights are created to access it within this primary legislation.⁸⁷

433. Skye and Lochalsh Access Panel's written submission highlighted concerns about poor availability and accessibility of independent advocacy in remote and rural areas:

” Independent Advocates are rare in remote rural areas so how will this be overcome? In addition, people forced to use independent advocates outwith their area means that they will generally not understand the realities of remote rural living and what this entails. How will the Scottish Government ensure that people will be able to access independent advocacy within their remote rural areas?⁸⁸

434. The ALLIANCE told the Committee it believed there should be a legislative duty to ensure that every local care board makes adequate provision for independent advocacy services within their geographical area, accompanied by sustainable funding.¹⁹

435. The [Financial Memorandum](#) makes no reference to independent advocacy. The written submission from West Dunbartonshire Council concluded: "As there is no detail within the Financial Memorandum in respect of how this service will be funded

there is little confidence, at this juncture, that this element of the Bill will [be] implemented effectively." ⁸⁹

436. Several witnesses noted the need for investment and that this should be included in the Financial Memorandum. NHS Ayrshire and Arran's written submission argued that, for the regulations "to provide the desired improvement, investment is needed in this crucial area." ⁶⁹ Dr Nolan from Inclusion Scotland supported this view, concluding "That could be in the financial memorandum. It should be an on-going investment." ³⁵
437. As outlined in the preceding section of this report, the Minister for Social Care, Mental Wellbeing and Sport's letter of 6 December 2023 indicated that the Scottish Government was considering consequential amendments to the section of the Bill governing independent advocacy to reflect the revised governance arrangements for the proposed National Care Service. The letter indicates these amendments could potentially transfer responsibility in this area from Scottish Ministers to the new proposed National Care Service Board. ³²

438. The Committee will reserve final judgement on section 13 of the Bill until it has seen the detail of any amendments the Scottish Government intends to bring forward. It notes that the regulation-making powers conferred on Scottish Ministers by this section of the Bill are currently subject to the affirmative procedure. Depending on the detail of those amendments, the Committee may wish to see the scrutiny role of the Parliament with respect to the exercise of these powers further reinforced through the use of a different procedure. ^{lxxi}
439. The Committee has heard a range of concerns that the provisions of the Bill relating to independent advocacy are insufficiently clear and robust to deliver the "coherent, consolidated and consistent approach" promised by the Policy Memorandum. In an effort to strengthen these provisions in the current Bill, the Committee recommends that the Scottish Government refers to the corresponding provisions of the Social Security (Scotland) Act 2018 as a potential template for the independent advocacy provisions of the Bill, in particular, the right to advocacy, the definition of "advocacy services" and the development of advocacy service standards provided by that Act.
440. The Committee requires more detailed costings related to independent advocacy in the Financial Memorandum accompanying the Bill. Before proceeding to Stage 2 of scrutiny of the Bill, the Committee calls for the Scottish Government to bring forward further details regarding estimated costs for the delivery of independent advocacy and how it intends this will be funded.

Complaints

441. Complaints regarding local authority social care services are currently managed at local authority level, following a [model complaints handling procedure](#) developed by

^{lxxi} Sandesh Gulhane and Tess White dissent from this recommendation.

the [Scottish Public Services Ombudsman \(SPSO\)](#). The model complaints handling procedure is intended to ensure a consistent approach to complaint management across local authorities.

442. The SPSO deals with complaints about care, service failure or treatment from individuals, once the person has made a complaint about a public service through the relevant public body, if they are unhappy with the outcome or resolution offered. The Ombudsman then investigates how the complaint was dealt with. One outcome of this process is that public bodies learn from these complaints and findings feed into a continuous improvement programme.
443. The [Policy Memorandum](#) states that sections 14 and 15 of the Bill as introduced aim to strengthen complaints and redress systems for the NCS and wider social care services. The provisions would do this through a range of measures, including:
- Placing an obligation on the Scottish Ministers to ensure that there is a single point of access for complaints in relation to NCS services and that complaints made through this portal are passed on to those best placed to deal with them. This would make it easier for service users, who may be unsure to which body their complaint should be directed, to register complaints and should result in complaints being addressed more promptly by the appropriate body.
 - A power for the Scottish Ministers to make regulations in relation to the handling of complaints about NCS services and/or wider social care services.²
444. The Bill as introduced contains an overarching power to make provision by secondary legislation. The Policy Memorandum advises this is because the Scottish Government will co-design the complaints system together with those with lived experience.
445. Section 15 would give the Scottish Ministers power to make provision in regulations about the handling of complaints about services provided by the National Care Service and other social services within the meaning of section 46 of the Public Services Reform (Scotland) Act 2010.
446. The [Delegated Powers Memorandum](#) accompanying the NCS Bill provides the following justification for allocating responsibility for establishing a complaints system to Scottish Ministers:

” Section 14 provides for a single point of access for any complaints about NCS services, with complaints to be allocated to the appropriate body to address them. This will benefit those who wish to make complaints, but are unsure of how to make a complaint or which body should deal with the complaint.

Section 15 enables the Scottish Ministers to establish a comprehensive complaints process by secondary legislation, following discussion with stakeholders. This may include the NCS at national level and local care boards playing a role in assessing and dealing with complaints about services which fall under the wider NCS scope, but may not necessarily be undertaken solely or directly by the NCS. Regulations under section 15 may also provide for other public sector bodies to have a role in any NCS complaints structure, reflecting that the remit and scope of NCS services may develop and evolve over time.

The Scottish Ministers intend to ensure that service users, carers, social services staff and service providers can meaningfully participate and contribute to discussions and decisions about the complaints system. The Scottish Ministers will use the power to make arrangements for the creation or adjustment of a complaints system following appropriate discussions.⁹⁰

447. In relation to dealing with complaints, the [Digital Engagement Summary](#) noted:

- 63% were in favour of this provision with the other 37% being unsure and required more information:
- Of the 16 responses to this provision, two expressed support while emphasising the benefits of using the process of co-design to develop alternative systems for dealing with complaints. However, there were a number of contributors who responded with further questions around:
 - how those complaining would be supported;
 - how there will be a “local understanding of complaints”; and
 - whether this system would be additional to current processes.⁶

448. The ALLIANCE highlighted the importance of independent complaint handling, and emphasised the value of a complaints system that facilitates transparency and leads to improvements in practice, concluding that the proposed National Care Service:

” ... should aim to build a complaints system that enables reflective learning for social care and social work staff, where complaints can be seen as an opportunity for growth and improvement – as well as providing redress to people who have had poor experiences of services.¹⁹

449. This view was supported by many witnesses. Mhairi Wylie from the Highland Third Sector Interface and TSI Scotland Network agreed with the need for more independence, noting “We need a more independent pathway, and we need more independence in investigating what has happened. That should be a primary tier, not a secondary tier, in the complaints process. We need to encourage individuals to tell us when something is not working right.”³⁵

450. Witnesses also questioned whether a national level complaints service was the most appropriate approach and whether an additional complaints procedure would lead to confusion. Community Integrated Care advised there would always be value in "complaints being dealt with at a local level ... the addition of an additional national complaints procedure might present there is a risk that there will be confusion as to where to go with a complaint." ⁵⁸
451. During oral evidence, Karen Sheridan from Community Integrated Care advised service users expressed a strong view that there should be a localised element to the complaints process. She suggested that, in these circumstances, service users felt they were heard and the process was easier when speaking with someone local who would be more likely to know them, their family and the community in which they live. ³⁵
452. Rosemary Agnew, the Scottish Public Services Ombudsman, expressed concern that the Bill's proposals for complaint handling could duplicate the work of the SPSO, and lead to further complexity in the management of complaints related to social care:
- ” My view is that that is incongruent with the powers that Parliament has already given to the SPSO, and it runs the risk of creating different systems for different parts of public services. ³⁷
453. The Care Inspectorate advised in its [written submission](#) that it believed current arrangements for complaints about registered care services function well:
- ” Managing complaints is a unique feature for a statutory regulator and means we have a clear role and processes in place as the central regulatory point for raising concerns. In addition to this, it is extremely important that the Care Inspectorate retains the ability to quickly and effectively gather intelligence and learn from complaints, as this is crucial to informing our scrutiny, assurance and quality improvement work. ⁷¹
454. The [Policy memorandum](#) advises that the Bill as introduced also makes provision for regulations to be able to create penalties in relation to complaints processes. ²
455. Community Integrated Care noted the new ability to create penalties and asked for further details on "how this might be implemented and greater transparency about how that would work to improve the current status quo". ⁵⁸
456. [Inclusion Scotland and the People Led Policy Panel](#) called for specific means of legal redress when people are victims of service failure. ²⁷ [Scottish Care](#) and a number of other respondents raised concerns that there are no means of redress written into the Bill in relation to the Charter and complaints process. ⁹¹ Don Williamson from Shared Care Scotland advised that "carers are frustrated because they do not seem to have any means of redress when their rights or what they might expect to flow from that legislation do not materialise." ³⁵
457. During oral evidence, the Minister for Mental Wellbeing and Social Care advised:

” We also need to look at where things do not go right so that we can see what the complaint is and what redress there can be for the individual and their family. That is why we have committed to establishing, for the national care service, a complaints and redress service that will provide a fair, effective and consistent approach to complaints and redress. We will identify opportunities to improve how complaints are handled. The issue is not just that folk are not getting access but that, when they complain, they feel that they are not listened to. We need to change that. ³⁹

458. In a [follow-up letter](#), the Minister wrote:

” Alongside the Charter of Rights and Responsibilities and Independent Advocacy, the aim is to establish a complaints service that will empower people; deliver accessible recourse and greater accountability of service providers when rights are not met. We are proposing to establish a complaints and redress service for the NCS that...provides a clearer pathway to make complaining easier and to minimise complaints being directed to the wrong organisation. ³¹

459. The Explanatory Notes say that the Scottish Government may by regulations, amend the remit of one or more of the Commissioners listed under schedule 6 of the Public Services Reform Act, to handle NCS complaints. Those Commissioners are:

- Commissioner for Ethical Standards in Public Life in Scotland
- Commissioner for Children and Young People in Scotland
- Scottish Biometrics Commissioner
- Scottish Commission for Human Rights
- Scottish Information Commissioner
- Scottish Public Services Ombudsman
- Standards Commission for Scotland ⁸⁴

460. In a written submission to the Committee, the Presiding Officer of the Scottish Parliament, representing the Scottish Parliamentary Corporate Body (SPCB), raised concerns that the Bill as introduced contained provisions that would impact on the SPCB. It advised that, if used to add functions to any officeholder (for example, the Scottish Public Services Ombudsman), regulation-making powers to confer, modify or remove functions from SPCB supported officeholders would have a financial impact on the SPCB. It described the inclusion in the Bill of regulation-making powers that would directly impact the statutory functions of the SPCB as "inappropriate".

The submission concluded:

” We consider that any measures proposed by the Scottish Ministers which have the potential to affect the SPCB in any aspect of the exercise of its functions (including financial and governance support of office holders) should therefore follow a legislative route which affords proper scrutiny and ensures parliamentary approval, otherwise such a proposal could potentially be ultra vires the powers of the Scottish Ministers.⁹²

461. Normally, when additional functions are added to a SPCB supported body, this is implemented through primary legislation which is scrutinised by the Parliament, or alternatively via regulation-making powers within the primary legislation.

462. In an [oral evidence session](#) with the Delegated Powers and Law Reform Committee, the Minister for Mental Wellbeing and Social Care advised that under section 15(4), the regulation-making power would require the Scottish ministers to:

” ... secure the Scottish Parliamentary Corporate Body's consent before laying any draft regulations that would modify or remove functions of an SPCB-sponsored body. That is similar, although not identical, to a provision under section 19 of the Public Services Reform (Scotland) Act 2010. The key difference is that, under that act, the provision must first be requested by the SPCB ... It is considered an appropriate balance for the control and scrutiny of the NCS complaints system that the Scottish ministers should be able to propose appropriate provisions following co-design. If it wishes to, the SPCB will have the power to veto those through withholding consent. Subject to consent, detailed provision would be set out in subordinate legislation, which would be subject to parliamentary scrutiny through the affirmative procedure.⁸³

463. Rosemary Agnew also raised concerns that reducing the accountability of some of her primary functions as the Scottish Public Services Ombudsman could have unintended consequences. This related to the SPSO's ability to consider the merits of some decisions. After significant consultation and through the super-affirmative procedure, the SPSO was given social work powers in 2017, which allows it to look at the merits of professional decisions that are made by social workers and social services.

464. Daren Fitzhenry, the Scottish Information Commissioner, raised concerns in relation to the expansive definition of the authorities to which ministers would be given the power to make regulations. He pointed out that this definition would relate to many office-holders, including the Scottish Information Commissioner, and that Scottish Ministers would be given "Henry VIII powers to impose duties, but also to remove functions from the bodies"^{lxxii}.³⁷

465. In a [letter](#) to the Delegated Powers and Law Reform Committee, the Minister for Mental Wellbeing and Social Care explained that he did not believe there were sufficient powers currently available to allow for the development of a complaint process for the National Care Service. He stated:

^{lxxii} Henry VIII provisions are provisions in a Bill or Act that enable ministers to amend or repeal provisions in an Act using secondary legislation, which is subject to varying degrees of parliamentary scrutiny.

” The complaints system that is required to be delivered by the Scottish Ministers under section 14(1) will be driven by the outcomes of meaningful co-design with people with lived experience of a complaints and redress system. Depending on the outcome of that codesign process, section 15 may be required to reform complaints in a way that is not possible under existing powers. It is therefore not yet possible to say what legislative reform may be needed to establish the system that emerges from the co-design process.⁹³

466. In [follow-up correspondence](#) with the Health, Social Care and Sport Committee, the Minister noted he was cognisant of good practice in dealing with complaints in a number of areas and of the important role of independent oversight bodies such as the Care Inspectorate and the SPSO. The Minister advised "The Scottish Government will work with these bodies, and other relevant stakeholders, to ensure their existing functions are taken into account when undertaking the co-design and implementation process to develop a service that builds on good practice already in place while delivering on the outcomes of co-design."³¹

467. As already referenced in relation to the preceding sections of the Bill covering the Charter and independent advocacy, the Minister for Social Care, Mental Wellbeing and Sport's letter of 6 December 2023 suggests the Scottish Government is likely to bring forward amendments at Stage 2 which would transfer those responsibilities related to complaints currently conferred on Scottish Ministers to the new proposed National Care Service Board.³²

468. The Committee has heard evidence of the key features stakeholders would like to see reflected in any complaints system supporting the proposed National Care Service, namely:

- It enables complaints to be resolved locally wherever possible and only to be escalated to a national system if no local resolution can be found;
- It should be independent;
- It should make suitable provision for penalties and redress in the event a complaint is upheld;
- It provides access to appropriate support for people making a complaint.

The Committee calls on the Scottish Government to ensure that any such complaints system reflects these key features in its design.

469. The Committee shares stakeholder concerns about the regulation-making powers conferred by section 15 of the Bill, particularly in light of their direct impact on the statutory functions of the Scottish Parliamentary Corporate Body.

470. The Committee recommends that these provisions be made subject to a procedure that would enable a further enhanced level of parliamentary scrutiny than is offered by use of the affirmative procedure.

Scottish Ministers' powers to intervene

471. The Bill as introduced:

” ... requires a care board to comply with Directions which may be issued by Ministers, which will give the Ministers the powers they need to ensure care boards are delivering for people who access care and support and for the workforce.¹

472. The Policy Memorandum explains that this is to allow:

” ... Scottish Ministers to be able to take appropriate action in the event that things go wrong. This includes the power to hold an inquiry into a care board and remove its members. Ministers will also be able to direct that any social care function within the remit of the NCS is delivered by another care board or by the Scottish Ministers themselves in the event of an emergency or service failure (in practice, this would be through the new part of Government that will form the NCS at national level).²

473. In her letter to the Committee of 6 December 2023, the Minister for Social Care, Mental Wellbeing and Sport confirmed that, further to the agreement of a revised approach to governance of the proposed National Care Service based on shared legal accountability, consequential amendments would be required to Chapter 4 of the Bill as introduced, which deals with Scottish Ministers' powers to intervene.³²

474. Specifically, the letters states:

” Throughout our consensus discussions there has been a clear focus on improving quality, consistency and outcomes for people. We have agreed that we require more focussed attention on implementing good practice, improvement support and enhanced support where it is necessary. We have therefore agreed to bring forward amendments to support an Improvement, Support and Escalation framework, which is first and foremost focused on support and improvement. As part of this framework it may be that intervention is required, as a last resort. For that reason, it is the Scottish Government's position that the Ministerial powers of direction over local authorities, health boards and local integration authorities should be retained as per the Public Bodies (Joint Working) (Scotland) Act 2014. Subject to the status of the National Care Service Board, discussed below, our planning assumption is that the Ministerial powers of intervention as set out in the Bill as introduced should transfer to the National Care Service Board. This would allow the Board to invoke those powers as a last resort and would ensure the Board had substantive levers to drive and support performance and take material action when required.³²

475. In line with this change of approach, it is assumed that the powers conferred by Chapter 4 of the Bill as introduced that relate to local care boards would no longer exist as originally envisaged given that the Scottish Government no longer plans to abolish integration joint boards or to set up local care boards. It is less clear to what extent the powers in relation to care boards set out in sections 16, 17, 18 and 19 of the Bill would instead be conferred on the proposed National Care Service Board to

enable that body to intervene in a similar way with respect to local integration authorities.

476. In line with concerns about the extent of ministerial power and control over care boards, many local authority stakeholders submitting evidence to the Committee were critical of these intervention powers being accorded to Scottish Ministers, comparing these unfavourably with operational arrangements as set out in the Police and Fire Reform (Scotland) Act 2012 which they argue are designed to "protect the independence of the Chief Constable of the Police Service of Scotland and to ensure no political interference in the Service's operational matters". They concluded:

” The powers provided to politicians and government to intervene in local operational matters are significantly different to the protections afforded to policing.⁶⁸

477. COSLA questioned the power of Ministers to remove people appointed to local care boards, particularly as this could relate to local government representatives. It concluded that the power conferred on Scottish Ministers to remove “a democratically elected member, appointed by their council” from a care board:

” ... appears to lack the necessary checks and balances which would limit power of government Ministers to intervene in operational issues.¹¹

478. Age Scotland argued that section 18 of the Bill should include a definition of what constitutes an emergency for the purposes of removing care board members, noting:

” During the COVID 19 pandemic many older people in Scotland who were reliant on Social Care services experienced related rights-violations, and the introduction of the National Care Service should serve to prevent this happening again in future.⁹⁴

479. Glasgow City Council called for greater clarity in the Bill in defining what might constitute a failure in performance requiring an emergency intervention. It added:

” It is unclear how functions would be transferred in these circumstances and what would happen to staff, properties, liabilities etc, even on a temporary basis.⁶⁶

480. Alzheimer Scotland argued that the process by which Ministers would determine that a care board was failing and required emergency intervention were too broadly defined, concluding:

” Guidance in respect of exercising these powers must be stringent and free from ambiguity to ensure that a transparent process can be adopted to support governance and accountability.⁸¹

481. Giving oral evidence to the Committee, Hannah Tweed from the Health and Social Care Alliance Scotland suggested additional conditions should be incorporated into this Chapter of the Bill in cases where Scottish Ministers chose to enact the emergency intervention powers conferred on them:

” In the event that emergency intervention ... is necessary, is there a duty on ministers for that to be as time limited as possible? Is there a duty on them to pay due attention to the principles that are outlined in the Charter? ... Making that explicit in the bill would ensure that those accountability structures would be prioritised... ³⁵

482. Leonard Cheshire in Scotland suggested:

” The Scottish Government must put effective mechanisms and systems in place which can ensure potential transfers of care board’s functions in an emergency, or the removal of care board members, are not seen to be politically motivated. ⁶³

483. In common with many other local government stakeholders, COSLA raised concerns that the emergency intervention powers accorded to Ministers by the Bill appeared “excessive” and would be broader and more far-reaching than currently exist with respect to NHS services. ¹¹

484. Community Integrated Care expressed concern that these provisions of the Bill appeared “unnecessarily punitive”, concluding:

” There are measures being suggested to punish failure but little detail outlining what good performance looks like or what steps would be taken to help or guide care boards or contractors towards positive outcomes. ⁵⁸

485. Glasgow City Health and Social Care Partnership agreed with this viewpoint and further warned:

” There is a risk that this could create a fear and blame culture which GCHSCP has been trying to remove from health and social care services for years. ⁵⁵

486. Glasgow City Integration Joint Board acknowledged that ministerial powers of intervention already exist but also highlighted that the powers in the Bill would go further than these:

” The part that is new in the Bill is ministerial intervention in contracted services, which cuts across the existing role of the care inspectorate and the contract management function within local authorities. ⁵⁷

487. Glasgow City Integration Joint Board underlined the importance of maintaining a clear separation between the inspection of services and their delivery and expressed concerns that the ministerial powers provided by this Chapter of the Bill as introduced may blur the lines between these two responsibilities:

” The current care inspectorate sits outside the delivery mechanism for those services and the mechanism for inspection should be entirely separate from government and from whoever is delivering services. GCIJB would like to see this addressed, and responded to, by Ministers. ⁵⁷

488. Support in Mind Scotland argued that there should be stronger provisions within the Bill to safeguard the needs of those in receipt of care in cases where Scottish Ministers decided to make an emergency intervention. It concluded:

” There should be a legal duty placed on the Ministers to ensure that if an intervention occurs service users have access to the support they require and there [are] minimal interruptions to any support being received.⁸⁵

489. The Law Society of Scotland noted the wide-ranging nature of the powers conferred on Scottish Ministers to intervene with contractors and questioned the need for such extensive powers in this area as well as the potential adverse impacts that may arise from using them:

” ... failures by contractors including care providers are currently commonly dealt with under contractual provisions and there is a risk that an additional court process may simply add further regulation and the potential for delay. It is not clear how the intervention powers will interact with existing contractual provisions, and the normal law of contract.⁸

490. In reference to section 22 of the Bill (Variation and revocation of emergency intervention order), Scotland Excel noted that, under the terms of the Bill, an emergency intervention order may only be extended once and for no more than an additional six month period, but regretted the lack of detail as regards contingency planning:

” ... it is unclear if the provider/care boards/NCS would be required to create, maintain and enact a contingency plan should the emergency remain after the period. Greater clarity is required around this to enable effective planning and risk management within care boards.⁹⁵

491. Challenged about the powers conferred by the Bill for Ministers to appoint and dismiss care board members, the Minister for Mental Wellbeing and Social Care said:

” It has been thrown at me that the bill itself means that I or my successors could appoint and discard care board members at will. That is not the case—many of the powers that we are talking about in the bill are for NHS boards, and such powers are used extremely sparingly indeed.³⁹

492. The Committee will reserve final judgement on Chapter 4 of Part 1 of the Bill until it has seen the detail of any amendments the Scottish Government brings forward, including as these relate to the development of an Improvement, Support and Escalation framework.^{lxxiii}

493. At this stage of the Committee's scrutiny, it remains unclear whether and to what extent the Scottish Government intends to transfer those powers currently conferred on Scottish Ministers under Chapter 4 to the newly proposed National Care Service Board. The Committee nonetheless wishes to highlight widespread concerns it has heard during its scrutiny of the Bill to date regarding the nature and extent of those powers.

494. The Committee calls on the Scottish Government to ensure these concerns are

suitably addressed in the detail of any relevant amendments the Scottish Government brings forward.

Functions connected to the provision of care

495. Chapter 5 of Part 1 of the Bill contains provisions regarding research (section 23), training (section 24), support for other activities (section 25), and compulsory purchase (section 26).
496. In relation to the provisions contained in Chapter 5, the letter from the Minister for Social Care, Mental Wellbeing and Sport of 6 December 2023 advises:

” Chapter 5 of Part 1 of the NCS Bill sets out relevant powers that will support the delivery of NCS services. These powers relate to research, training, funding of activities related to NCS services, and compulsory purchase of land. Under the NCS Bill as introduced, these powers were set out for the Scottish Ministers and for local care boards.

Subject to the decision on the status of the National Care Service Board, it is our policy intent that the new Board should have all the necessary powers to support the delivery of NCS services. This will include supporting research, providing for training courses, and providing financial assistance to organisations for activities related to the NCS.³²

Research and training

497. According to the [Explanatory Notes](#) accompanying the Bill as introduced, section 23 “makes clear that the Scottish Ministers and care boards can carry out research relevant to the services that the National Care Service provides and can assist others (including financially) in doing so” while section 24 “makes clear that the Scottish Ministers and care boards can do things to support training relevant to the work of the National Care Service” which “may mean providing courses themselves, financially supporting other training providers with grants or giving financial aid to those undertaking training courses”.⁸⁴
498. The [Policy Memorandum](#) notes that “all of these provisions reflect existing powers that Ministers have under the [Social Work \(Scotland\) Act 1968](#) in relation to social care, but they have been modified to reflect the fact that Ministers will have the overall responsibility for delivery of social care”.²
499. The Committee received a lot of evidence expressing general support for the research and training provisions of the Bill as introduced on the basis of the opportunities these provisions offer to improve the quality and consistency of social services in Scotland. Nonetheless, many submitting evidence also argue that the language in these sections of the Bill should be strengthened to ensure they fulfil that opportunity.
500. Specifically, regarding research, Unite the Union Edinburgh Not for Profit Branch argued that, instead of being an option, there should be an obligation in section 23 to undertake or commission research relevant to the services provided by the National Care Service. They argued:

” [Section 23] says that Scottish Ministers may conduct research including, in particular, collection of data on [needs] for social care, [including] unmet [needs]. This will be crucial in justified increases in resourcing for the NCS (as [waiting lists] for the NHS). There should be a duty to undertake research on the impact of working conditions on the health, safety and welfare of social care staff (and to take action to [address] the already known problems for which there are known solutions).²⁰

501. However, another respondent to the Committee's call for written evidence expressed concern that allotting too much money to research would divert resources from re-establishing basic services and, therefore, urged moderation in utilising the provisions set out in section 23. She asserted:

” [I am] concerned [that] too much public money is being directed to multiple research projects when there is a need to [re-establish] basic services. [It] should be done in moderation.⁹⁶

502. Regarding training, witnesses and respondents also suggested that the language of section 24 should be strengthened by making the provision of training mandatory. In particular, Common Weal argued:

” Availability of training for staff should be enshrined as a basic workers' right. The Bill should read “Scottish Ministers and care board **MUST** provide training courses for staff sufficient to equip them to do the jobs they are employed to do”.⁶⁴

503. In written follow-up, the Care Inspectorate emphasised:

” A well-trained, skilled, supported, and valued workforce is crucial to people experiencing good care and outcomes.⁹⁷

504. In addition to calls for the training and research provisions of the Bill to be made mandatory, the evidence submitted to the Committee also called for the establishment of a clear and robust framework and standards to ensure research and training deliver positive outcomes for service users and the social work and social care professions.

505. Those contributing evidence to the Committee argued these provisions should include a requirement to commission training from recognised professional bodies to ensure it meets the required standard. In a written follow-up to the Committee, the Allied Health Professions Federation (AHPF) said:

” Ministers and care boards will not have the expertise in all areas covered by care boards. They may not be aware of the breadth and depth of work staff undertake and level of knowledge skills and experiences required for different levels or types of work. Ministers will need to be guided by professional bodies, who hold the expertise of their profession, in all those decisions.⁸⁰

506. In common with many contributing evidence to the Committee, the Scottish Association for Mental Health (SAMH) argued in its written submission that the provisions in this Chapter related to training should be primarily focused on communicating "consistent minimum standards on training and development"

before concluding:

” ...it should be for specialist social care providers to determine the suitable Continuing Professional Development (CPD) training required for their own workforce, based on their own knowledge and expertise concerning the people they support. ²⁸

507. Unions also argued for strengthening the provisions of the Bill about training, and called for greater recognition of the role of unions in helping identify and agree adequate training for staff. GMB Scotland further argued:

” The Scottish Government via the [NCS] must commit to forming a robust training and development programme for all social care workers in conjunction with trade unions and professional bodies and guarantee that all staff will either undertake training on employers’ paid time or that the NCS will provide a guaranteed hourly rate of pay for any training undertaken by workers and cover all additional expenses incurred. Unless this is provided, staff who are already underpaid will find it difficult to turn down shifts to take on training which will improve service provision. ⁹⁸

508. Many submitting evidence made the case for clearer provisions in the Bill establishing an overarching framework overseen by a single body to guide training decisions. Suggestions from evidence in this area included:

- Clear and robust governance to ensure consistent quality and standards of training, ⁹⁹ including escalation processes. ¹⁰⁰
- Overall responsibility for training and development requirements should sit with a single agency.
- Training opportunities should be aligned with workforce planning, including workforce development ⁴⁰ and with the Advance Practice Framework that the Office of the Chief Social Work Adviser is currently developing. ¹⁰¹
- Independent professional associations should be strongly linked to all decision-making on education and training so they can feed in the views and experiences of their members. ¹⁰¹
- Whoever delivers or oversees training should work closely with SSSC as the body responsible for setting the qualification and continuous professional learning (CPL) requirements for the sector. ¹⁰²

509. Implemented effectively alongside a national approach to terms and conditions, SASW argued that a training framework developed in accordance with the suggestions outlined above would help to embed fair work principles into the social care sector and improve the value of the social work professions and staff retention, concluding:

” It could be the basis of effective and fair remuneration which in turn makes social work a more attractive career prospect and sustains those already working in social work. ¹⁰¹

510. Many witnesses and respondents outlined the benefits a national, overarching framework on training sanctioned in the Bill could have by ensuring coherence and consistency, and helping address the current lack of industry-wide and consistent training. Tracey Dalling (Regional Secretary, UNISON Scotland) told the Committee:

” The current system is wholly inadequate. There is no sector wide identification of sector skill needs. No process to discuss and agree the provision of learning and skills opportunities. There is no link between skills acquisition and grading or pay. As a consequence there are no consistent and reliable career pathways in care and that omission makes care an unattractive career option, undermines recruitment and retention and degrades care quality. ⁴⁰

511. Consistent with this view, witnesses and respondents highlighted the importance of establishing a framework that incorporates a system of sanctions for providers who fail to meet consistent standards while being wrapped in a coherent strategy and delivery plan that makes training accessible to all workers. Cara Stevenson (Organiser for the Women’s Campaign Unit, GMB Scotland) told the Committee:

” The proposals on training and development are welcome, but there needs to be regulation around that to ensure that everyone receives the same standard of training and development, and there must be consequences if they do not. ⁴⁰

In a written follow-up, the Care Inspectorate added:

” A more coherent strategy and delivery plan [is needed] to ensure the justice social work workforce can access training opportunities as and when required [through] a strategic approach to workforce development via a national training pathway. ⁹⁷

512. To embed comprehensive and consistent training into practices and address the heterogeneity of the professional requirements within the social workforce, especially for those employed by third-sector organisations, SASW called for training requirements to be embedded into commissioning and procurement practices, including:

” ... costs and capacity for training reflecting staffing levels and affording the release of staff for learning and training as well [as] backfill capacity. ¹⁸

513. The Scottish Social Services Council (SSSC) argued that, while employers are responsible for ensuring that their staff have the skills and training required for their role, ¹⁰² current pressures on the social care sector, including staff shortages, poor staff retention, and low pay, mean that staff often forego training to avoid losing out on income. ⁴⁹

514. To ensure staff can and do take proper advantage of training opportunities, SASW and Allied Health Professions Federation argued that systems would additionally be needed to:

- Ensure that employers have enough trained staff with reasonable caseloads to allow for training and learning activities for staff.

- Recognise the importance of backfilling posts where people are attending training to ensure the well-being of the remaining staff.
- Enable the development of local workforces and training programmes that would allow access to fair and diverse training opportunities for people without the need to travel or compromise income.
- Establish appropriate work plans that would allow staff to develop in all pillars of practice (clinical, leadership, supervision, research). ^{101 103}

515. In addition, to help embed values and rights further into the system, Glasgow Disability Alliance recommended involving the Disabled People-led organisations (DPOs) in the delivery of disability equality and independent living training to NCS leadership and staff. ¹⁴
516. Witnesses and respondents also highlighted the need for the framework to provide clarification as to what training would entail. They suggested that the Bill as introduced would otherwise create uncertainty regarding what training would consist of and whether it would cover pre-employment training, continuous professional development (CPD), undergraduate studies, or pathways for the future addressing some of the critical workforce issues affecting the profession. They also argued that this framework would equally need to address how interdisciplinary training or cross-agency training would be supported to take place across the NCS, NHS, and local authorities. ^{104 105 20 80}
517. Several witnesses and respondents suggested that the Bill should include a requirement for compulsory, fundamental, cross-agency, interdisciplinary training that all staff members of the NCS must complete at any grade focusing on outcomes for individuals. ^{105 19} They suggested that the detail would include things such as—
- Awareness training, human rights, and stigma training. ^{106 19}
 - Sensory loss. ¹⁹
 - Autism awareness training. ⁷⁷
 - Mental health. ^{28 19}
 - Identifying people experiencing or at risk of malnutrition. ¹⁹
 - Human rights. ¹⁹
 - Sighted guide and visual impairment awareness. ¹⁰⁶
 - IT and data systems training to ensure that "all parts of the system can communicate effectively and efficiently [and] enable better collaborative working". ⁹⁷

518. To monitor the effectiveness of training to deliver better outcomes consistent with the NCS principles, several respondents called for data to be generated and used

to give insight into key issues in social care affecting people who use and deliver services.^{91 11}

519. The Committee acknowledges the Scottish Government's stated intention, via amendments, to transfer the research and training functions set out in sections 23 and 24 of the Bill as introduced to the proposed National Care Service Board. It will reserve final judgement on these sections of the Bill until it has seen the detail of these amendments.^{lxxiv}
520. The Committee seeks further clarity concerning the degree to which those functions currently attributed to care boards in these sections of the Bill will be transferred to integration authorities under the revised governance structure now envisaged for the proposed National Care Service.
521. The Committee acknowledges the widespread support for the provisions of the Bill relating to research (section 23) and training (section 24) as well as strong support for these provisions to be further strengthened. With particular regard to section 24, the Committee supports making the provision of training and training grants mandatory, such as may be required to enable members of the workforce to fulfil their roles to a suitably high standard. The Committee further believes that the additional associated costs of training need to be reflected in the Financial Memorandum accompanying the Bill.^{lxxv}
522. The Committee has heard extensive evidence in support of the development of a comprehensive framework underpinning the training provisions of the Bill and overseen by a single body. This evidence suggests such a framework should include:
- Clear and robust governance arrangements
 - Clear provisions setting out what categories of training are or are not covered and are mandatory or part of continuous professional development
 - Clear alignment of training plans with workforce development and planning
 - Clear alignment with the Advance Practice Framework for social work
 - Close involvement of independent professional associations in decision-making
 - A requirement to work closely with the SSSC as the body responsible for setting qualification and CPL requirements for the social care sector
 - A system of sanctions with respect to providers that fail to meet agreed training standards
 - Provision for data gathering to help inform continuous improvement in training outcomes.^{lxxvi}

^{lxxiv} Sandesh Gulhane and Tess White dissent from this recommendation.

^{lxxv} Sandesh Gulhane and Tess White dissent from this recommendation.

^{lxxvi} Sandesh Gulhane and Tess White dissent from this recommendation.

523. As outlined earlier in this report, the Committee believes the provisions set out in section 24 should be matched with a requirement for a comprehensive training plan to be prepared as part of the strategic planning process set out in Chapter 2 of Part 1 of the Bill.^{lxxvii}
524. The Committee would also like to see further provision made with respect to section 24 of the Bill to ensure members of the workforce are adequately supported to be able to participate in relevant training in a way that does not financially disadvantage them or otherwise impinge on their normal working hours.^{lxxviii}
525. The Committee would like to see the wording of section 24 amended to ensure any such training is appropriately commissioned from suitably qualified and experienced professionals.^{lxxix}

Support for Other Activities

526. According to the [Explanatory Notes](#), section 25 "makes clear that the Scottish Ministers can financially assist anyone engaged in an activity connected to services that the National Care Service provides".⁸⁴
527. During the Committee's initial scrutiny of the Bill as introduced, witnesses and respondents highlighted the need for section 25 to be clearer on what activities may be funded through this provision and who may qualify for funding. The Royal College of Occupational Therapists (RCOT) concluded:
- ” RCOT is unclear what is meant by the wording “to provide financial assistance to undertake other activities connected to services provided to individual by the NCS”. This requires further explanation.¹⁰⁵
- Glasgow City Health and Social Care Partnership similarly sought additional clarity on the wording of this section of the Bill:
- ” This section could be [interpreted] in a number of ways and a definition of ‘person’ and ‘activity connected to services’ may be required to be provided. It is not clear if this is broad enough to cover existing rules and guidance in relation to cost recovery in relation to residential care, which permits recovery of debt through charging orders.⁵⁵
528. Witnesses and respondents also raised concerns about the lack of clarity regarding the interest rates of loans awarded under this provision and argued for the provision of guidance on rates of interest to be applied to loans and how these would be managed. Glasgow City Health and Social Care Partnership argued:

^{lxxvii} Sandesh Gulhane and Tess White dissent from this recommendation.

^{lxxviii} Sandesh Gulhane and Tess White dissent from this recommendation.

^{lxxix} Sandesh Gulhane and Tess White dissent from this recommendation.

- ” If loans are to be offered, national guidance will be required to be provided in relation to what rate of interest will be applied. GCHSCP presume that Scottish Ministers will have the power to offer loans and record them as a liability on the Scottish Government's Balance Sheet? All loans are governed by FCA regulations and it would therefore be incumbent [on] the Scottish Government to ensure they fully comply with these.⁵⁵

529. As for the previous sections of the Bill, the Committee acknowledges the Scottish Government's intention, via amendments, to transfer the functions set out in section 25 of the Bill as introduced from Scottish Ministers to the proposed National Care Service Board. Again, it will reserve final judgement on this section of the Bill until it has seen the detail of those amendments.^{lxxx}
530. To help further inform the process of drafting these amendments, the Committee draws the Scottish Government's attention to evidence it has received arguing that this section of the Bill would equally benefit from amendment to clarify what activities may be funded through this provision and who may qualify for funding.^{lxxxi}
531. The Committee also seeks assurances from the Scottish Government that, if loans are to be issued as part of the financial assistance provided for by this section, it will issue clear guidance setting out rates of interest for loans and how these will be managed.

Compulsory Purchase

532. According to the [Explanatory Notes](#), section 26 "allows the Scottish Ministers and care boards to compulsorily purchase land in connection with their National Care Service functions" while "Schedule 4 adds compulsory purchases under section 24 to the list of compulsory purchase powers in section 1(1) of the [Acquisition of Land \(Authorisation Procedure\) \(Scotland\) Act 1947](#). This means that any compulsory purchase under section 24 will require to be authorised by a compulsory purchase order through the process set out in schedule 1 of the 1947 Act".⁸⁴
533. With specific reference to section 26 of the Bill as introduced, the Minister for Social Care, Mental Wellbeing and Sport's letter of 6 December 2023 indicates:
- ” We are giving further consideration to whether or not powers for compulsory purchase of land remain necessary, in light of the role the National Care Service Board will fulfil for any complex and specialist services to be commissioned at a national level.³²
534. Witnesses and respondents raised concerns about the lack of clarity regarding what NCS functions these compulsory purchase provisions would relate to and conversely which functions may be excluded. Community Integrated Care

^{lxxx} Sandesh Gulhane and Tess White dissent from this recommendation.

^{lxxxi} Sandesh Gulhane and Tess White dissent from this recommendation.

requested:

- ” We would ask for more information on the section pertaining to the compulsory purchase of land and whether that is in relation to the establishment of care boards or delivery of services - what relevant function does the compulsory purchase of land serve? ⁵⁸

Aberdeenshire Council raised the following query:

- ” We would question if compulsory purchasing for all NCS functions is needed and that this should be clearer on what it would involve. The Council would like to see further consideration given to the possibility of Scottish Government intervention being targeted and focussed on the areas or services where it is needed, such as in workforce planning and setting minimum standards. ⁵⁶

Stirling Council took a similar position:

- ” We think the function of compulsory purchase orders needs more explanation and analysis. We appreciate the consultation process on offer here, but think more consultation with local communities will be required if/when compulsory purchasing takes place. ¹⁰⁷

535. The Faculty of Advocates advised the Committee that, in its view, the drafting of section 26(4)(b)(ii) was unclear. It recommended that this provision should read *"references to acquiring land includes a servitude or other right in or over land necessary for use of the land acquired under section 26(1) "* instead of its current wording whereby *"references to acquiring land includes a servitude or other right in or over land by the creation of a new right "*. ¹⁰
536. Witnesses and respondents also highlighted that compulsory purchase should be a last resort and made the case for reinforced safeguards to ensure the provision would be applied in this way while ensuring improved transparency. ¹⁰⁸

Alzheimer Scotland stated:

- ” Alzheimer Scotland agrees to providing the Scottish Ministers and care boards with the right to purchase land or buildings needed for the delivery of services. It is important, however, that any such purchase be subject to a clear and transparent process of procurement. All other avenues should be explored and investigated before considering the process of compulsory purchase, and this should be used as a last, and final, resort. ⁸¹

Angus Council and the Society of Local Authority Lawyers & Administrators in Scotland (SOLAR) both raised concerns about a potential conflict of interest between the different functions of Scottish Ministers with respect to compulsory purchase. SOLAR stated:

- ” We do question the competency of the same body making the application and then consenting to the application. We would not expect there to be a need for wide or frequent use of these compulsory purchase powers. ¹⁰⁹

537. In addition, NHS Board Chief Executives and Chairs also argued that the provision

on compulsory purchase should include an appeal process and suggested that, before making an application for compulsory purchase, there should be an expectation to consult with local partners to ensure the best use was being made of existing public assets. They concluded:

” In line with the Christie Commission principles it may be beneficial to require a Care Board to collaborate with local partners to maximise current public assets in advance of pursuing a compulsory purchase. The Bill does not currently include a requirement to create / use a related appeal process, which may be beneficial.²⁹

538. The Committee notes concerns that the wording of section 26 should be amended to provide stronger safeguards that the powers it confers will only be used as a last resort. The Committee notes suggestions this should include a requirement to collaborate with local partners to fully explore other options for making best use of existing public assets before this power can be exercised.
539. The Committee recognises that, based on provisions as originally set out in the Bill as introduced, there could have been a conflict of interest between Scottish Ministers having the power to authorise the compulsory purchase of land and to make the decision to compulsorily purchase land in the first place. The Committee will reserve final judgement on these provisions until it has seen the detail of any amendments the Scottish Government intends to bring forward. If the powers of compulsory purchase are to be retained in some form, in the broader interests of transparency, it believes that the exercise of these powers should be made subject to a process of appeal.^{lxxxii}

^{lxxxii} Sandesh Gulhane and Tess White dissent from this recommendation.

Allocation of care functions

540. Chapter 6 of Part 1 contains provisions regarding various transfers including the transfer of functions from local authorities to care boards (section 27), the power to bring aspects of healthcare into the NCS (section 28), the power to re-organise the NCS (section 29), the power to transfer children's and justice services (section 30), the power to transfer staff (section 31), and the power to transfer property and liabilities etc. (section 32).

541. In a letter to the Committee dated 12 July 2023, the Minister for Social Care, Mental Wellbeing and Sport advised:

” An initial consensus proposal between the Scottish Government and Cosla (on behalf of local government) has been formed on a partnership approach that will provide for shared legal accountability. This will improve the experience of people accessing services by introducing a new structure of national oversight to drive consistency of outcomes, whilst maximising the benefits of a reformed local service delivery. It would provide Scottish Ministers, local authorities and NHS boards with overarching shared accountability for the care system. Local Government will retain functions, staff and assets. ⁶⁰

542. In her subsequent letter of 6 December 2023, the Minister confirmed:

” These provisions will require to be amended given the shared accountability agreement. However, in discussion with partners there is consensus that it may be appropriate to enable the transfer of functions between statutory partners if there is a rationale and clear local agreement to do so. This may be helpful to support the emerging public sector reform landscape and innovations such as the Single Authority model. This will require further exploration and agreement with partners to frame an amendment appropriately. ⁶⁰

Powers to transfer functions

543. The [Explanatory Notes](#) explain the purpose of the provisions as set out in section 27 of the Bill as follows:

” Section 27 allows the Scottish Ministers to make regulations transferring functions from local authorities to themselves or to care boards. The power is limited to transferring functions conferred by one of the enactments listed in schedule 3. That is a list of the principal enactments from which local authorities derive their social care functions. Powers and duties in other enactments associated with a transferred social care function may be adapted in consequence of the transfer by ancillary regulations under section 45.

Section 46 provides for regulations under section 27 to be subject to the affirmative procedure and allows those regulations to modify Acts of the Scottish or the UK Parliament. This means that if, for example, a function were being transferred from a local authority to a care board for all purposes, regulations under section 27 could amend the Act that establishes the function to replace its references to a local authority with references to a care board. ⁸⁴

544. The [Policy Memorandum](#) describes the purpose of section 28 as being to give "the Scottish Ministers power to designate or transfer health functions to the NCS, in order to continue and build on the integration of health and social care services".²

545. The [Explanatory Notes](#) explain the purpose of section 29 as follows:

” Whereas sections 27 and 28 allow new functions to be conferred for the first time on a National Care Service institution, section 29 allows the Scottish Ministers by regulations to redistribute functions within the National Care Service. For example, they might decide that it would be better for a service that was being provided by local care boards to be provided on a national basis by a single special care board (or vice-versa).

Section 46 provides for regulations under section 29 to be subject to the affirmative procedure and allows those regulations to modify Acts of the Scottish or the UK Parliament for a similar reason to that discussed in paragraph 56 above.⁸⁴

546. In her letter to the Committee of 6 December 2023, the Minister for Social Care, Mental Wellbeing and Sport indicated that, as a result of the consensus agreement reached with COSLA on governance of the proposed National Care Service, based on a model of shared legal accountability, the powers conferred by sections 27 to 29 of the Bill as introduced would no longer be required.³²

547. While some respondents suggested that the powers to transfer functions envisaged in the Bill as introduced would offer an opportunity to streamline existing processes⁴⁰ and improve current arrangements¹¹⁰, many stakeholders raised a variety of concerns about the potential impact of transferring functions out of local authority control. These included:

- A lack of clarity regarding the precise scope of services that may or may not be transferred;
- That such transfers would undermine local accountability and existing joint working arrangements;
- That such transfers could conflict with certain statutory functions placed on local authorities by existing legislation;
- That such transfers would threaten local government's capacity to provide a range of support functions related to the provision of social care;
- That such transfers could result in significant disruption to the provision of social care services or in the fragmentation of services or professions; and
- That transfers may take place without prior consultation with those affected.

548. The Committee notes significant concerns raised by multiple stakeholders during its Stage 1 scrutiny of the Bill as introduced regarding the potential impact of the powers conferred by sections 27 to 29 – that is to transfer functions out of local government control - being exercised. It therefore welcomes confirmation from

the Scottish Government that, under the new consensus agreement with COSLA, local government will retain functions, staff and assets and, as a consequence, these provisions will no longer be required.

549. The Committee notes the Scottish Government's intention to make alternative provision for functions to be transferred between statutory partners if there is a rationale and clear local agreement to do so. However, it will reserve final judgement on this point until it has seen the full text of its amendments.^{lxxxiii}
550. In those circumstances where functions are to be transferred, the Committee also emphasises the importance of ensuring absolute clarity around the scope of functions to be transferred and of undertaking proper prior consultation with those potentially affected.^{lxxxiv}

Children's services and justice social work

551. The Education, Children and Young People Committee was designated as a secondary committee for scrutiny of the Bill at Stage 1. Its scrutiny was focused on implications of the Bill as introduced for children's services and, specifically, sections 27 and 30 and schedule 3 of the Bill.
552. Meanwhile, the Criminal Justice Committee undertook its own scrutiny of the Bill with a focus to "consider and report on the proposals in the Bill which allow the Scottish Ministers to carry out a statutory consultation on whether criminal justice social work services should be transferred from local government control, where they presently sit, to a new National Care Service (specifically section 30)".
553. According to the Policy Memorandum, the type of children's services potentially to be transferred to a National Care Service under section 27 of the Bill as introduced could include:
- Social work services for children and families and related social care services such as residential child care provision;
 - Provision of services which support families in the community to prevent children being brought into care;
 - Provision of services and supports to care experienced children and young people and their children;
 - Any service which provides support to children and young people and where there may be a change to a support service during the transition period from child to adult services and the young person requires ongoing support in respect of wellbeing needs (e.g. Disability, mental health, alcohol/substance use)

^{lxxxiii} Sandesh Gulhane and Tess White dissent from this recommendation.

^{lxxxiv} Sandesh Gulhane and Tess White dissent from this recommendation.

- Youth Justice services.²

554. Section 30 of the Bill as introduced sets out a consultation process which would have to take place before such a transfer could be made, with the results of such a consultation being required to be laid before the Scottish Parliament.

555. In her letter to the Health, Social Care and Sport Committee of 6 December 2023, the Minister for Social Care, Mental Wellbeing and Sport addressed the potential inclusion of children's services and justice social work within the scope of the proposed National Care Service as follows:

” The requirement to consult on the potential future inclusion of children's services and justice services within the scope of the NCS refers directly to the transfer of functions as laid out in section 27 of the Bill. As set out above, we are no longer pursuing the transfer of functions and it is our intention to remove section 27 and section 30 of the Bill.

If a decision is taken to include justice and/ or children's services within the scope of the proposed NCS, then such services would be subject to the shared accountability agreement and there would be no transfer of functions, assets or staff.

556. During their Stage 1 scrutiny of the Bill as introduced, both the Education, Children and Young People Committee and the Criminal Justice Committee, heard stakeholder concerns about the potential impact of transferring children's services and justice social work into the proposed National Care Service. The concerns included the potential cost of transferring these functions and that such restructuring was liable to divert attention from immediate priorities such as improving outcomes for those in receipt of these services or keeping The Promise.

557. Those submitting evidence were also concerned that the use of secondary legislation provided insufficient scope for effective scrutiny of such potentially far-reaching structural changes.

558. In its correspondence with the Health, Social Care and Sport Committee summarising the outcome of its scrutiny of the Bill at Stage 1, the Criminal Justice Committee concluded:

” It is clear from the evidence received that key stakeholders believe that there has been insufficient information available to them at this time to allow them to form a view on the merits of transferring criminal justice social works to a National Care Service. Consequently, based on the evidence we have received so far, the Committee is not yet convinced of the merits of transferring criminal justice social work services to a National Care Service.¹¹¹

559. In its report on the Bill, the Education, Children and Young People Committee concluded that, based on the evidence it had received, it was unable to “form a clear view on whether children and young people's services should be included under any future National Care Service.”⁵

560. On the subject of the future delivery of children's services, the Minister for Social Care, Mental Wellbeing and Sport's letter of 6 December concludes:

” CELCIS (The Centre for Excellence for Children’s Care and Protection) was commissioned to carry out independent research to inform the decision on the future of children’s services. The findings from the research in tandem with the outputs from engagement and co-design work with children, young people, families and the workforce will help to identify what is needed to ensure that children, young people, and families get the help they need, when they need it. We thank CELCIS for their research, which can be found on CELCIS’ website. CELCIS have carried out four Strands of research:

- Strand 1 – A Rapid Evidence Review of existing literature was published on 21 June 2023. Strand 2 – Six Case Studies of Transformational Reform Programmes was published on 28 June 2023.
- Strand 3 – Which explores the different approaches to integrated service delivery across Scotland’s 32 local authority areas and was published on 31 August 2023.
- Strand 4 – Which explores experiences of members of the Children’s Services workforce and was published on 15 November. Over 1,400 members of the workforces supporting children participated in the work which is brought together in this report.

CELCIS will also publish a final report which will pull all the strands together and provide an analysis of the findings as a whole, including comments and conclusions about the options available regarding the future delivery of children’s services in Scotland, due to be published on 13 December 2023.

We remain committed to ongoing consultation and engagement as we continue to work towards improving outcomes for children and families, and the workforce who care for them. We will also consider how best to ensure consistent delivery of high-quality services, especially to the most vulnerable children and families.³²

561. Subsequent to this letter being received, CELCIS published its [final report](#).
562. On the future delivery of justice social work, the Minister’s letter of 6 December 2023 continues:

” Similarly, we have worked closely with stakeholders to inform a decision about justice social work (JSW) being within the scope of the NCS. To date this work has included commissioned research, interviews, a reference group, workforce panel and a series of workshops hosted online and in person in different parts of Scotland. The independent research report by IPSOS affirms many of the anticipated strengths and challenges which exist within JSW services in Scotland and we thank the researchers and the workforce for their time in pulling together these robust findings.

Potential opportunities for JSW were identified within the work to develop a NCS, including a raised profile for a unified social work profession with clear national leadership complemented by a National Social Work Agency. The independent research is due to be published in early 2024.

We will continue to prioritise working with justice social work teams and people with lived experience, as we seek to understand how the Scottish Government can continue to support justice social work to deliver better outcomes for people and services across Scotland.³²

563. In light of the widespread concerns expressed to it and other committees taking evidence on the Bill at Stage 1 about potential implications of transferring children's services and justice social work into the proposed National Care Service, the Committee welcomes the Scottish Government's change of approach.

564. At the same time, the Committee will need to take further evidence from stakeholders as part of its further scrutiny of the Bill to determine the precise implications of this revised approach for the future delivery of children's services and justice social work, taking due account of any relevant amendments the Scottish Government brings forward.^{lxxxv}

Other services

565. The [Policy Memorandum](#) includes an overview of services that the Scottish Government intends to be transferred to the proposed National Care Service but that do not appear on the face of the Bill, namely:

- Adult support and protection
- Mental health
- Alcohol and drugs support.

566. In relation to adult support and protection, the [Policy Memorandum](#) makes it clear that "Schedule 3 includes provision for all Adult Support and Protection (ASP) functions and duties in the [Adult Support and Protection (Scotland) Act 2007]"

^{lxxxv} Sandesh Gulhane and Tess White dissent from this recommendation.

which Councils and Council Officers hold to transfer to the NCS and its officers.²
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567. Regarding mental health, the [Policy Memorandum](#) explains that "the intention is that the duties of social work and social care service for those with mental health requirements will transfer from local authorities to the NCS - to reflect the wider transfer of duties around social care and social work". It also provides a justification whereby "transferring relevant mental health services to the NCS will promote a more integrated and matched care approach to a range of mental health needs and has the potential to reduce inter-organisational boundaries between care providers".²
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568. Concerning alcohol and drugs support, the [Policy Memorandum](#) notes that "including alcohol and drugs provisions in the NCS was widely supported in the consultation. Any specific reforms as to how these services would be delivered would follow on from further engagement with stakeholders". It also adds that "the creation of the NCS provides an opportunity to reform how services are provided and commissioned – to help deliver on the National Mission and to save and improve lives".²
569. The Policy Memorandum also highlights homelessness in relation to which it notes, as part of the ongoing process of health and social care integration, functions "have been delegated [to integration authorities] in very few areas, and are considered to fit more appropriately with housing functions".²
570. As outline earlier in this report, the Scottish Government has subsequently taken a decision to retain integration joint boards and to deliver governance of the proposed National Care Service based on a model of shared legal accountability. In her letter of 6 December 2023, the Minister for Social Care, Mental Wellbeing and Sport addressed the question of the delegation of other services to integration authorities as follows:

” As previously referenced, one of the primary aims of the NCS is to enable people of all ages to access timely, consistent, equitable and fair, high-quality health and social care support across Scotland. Reformed Integration Joint Boards will be accountable to the new National Care Service Board, and the NCS Board will oversee systems performance reporting, securing delivery assurance on local strategic plans and responsibility for improvement and support primary and community healthcare and social care for all functions delegated to integration authorities.

We have not yet concluded our deliberations on the scope of the National Care Service and therefore on consistency of delegation of services to integration authorities. However Ministers are applying the following high level principles on delegation of functions:

- There will be no backtracking on achievements accomplished through the 2014 Act in terms of integration. Rather, reforms should build on what has already been achieved. There should be a presumption in favour of integration where there is currently inconsistency, in recognition of its benefits in providing greater continuity of care.
- There should be no ‘dis-integration’ based on the 2014 Act unless there is evidence to suggest that this would be advantageous i.e. in particular local government and primary and community health services which are currently delegated should remain so unless there is a clear rationale for change.
- Further clarity is required on the arrangements for specific services such as Drugs and Alcohol and Prison health and social care.
- Public and Population Health should have a clear role in the planning and delivery of primary and community health and social care support and services.
- Given the very variable delegation arrangements currently in place for social work, children’s services and community justice, further discussion is required with partners to seek agreement on arrangements to achieve improvement, including access to timely, consistent, equitable and fair, high-quality health and social care support.³²

571. The Minister then concluded:

” I am aware that the committee will wish to have certainty on delegation arrangements as soon as possible to assist in their scrutiny. Ministers will therefore write to the Committee with further information and decisions at the earliest opportunity in the new year.³²

572. A large number of witnesses and respondents expressed concerns regarding the proposed transfer of adult support and protection to the proposed National Care Service. In particular, there was widespread concern that the proposed transfer of this function was not evidence-based and seemed to conflate adult social care and adult support and protection which, many stakeholders argued, are substantially different from one another.

573. In its written submission, SOLACE Public Protection Working Group raised significant concerns at the prospect of adult support and protection being included within the scope of the proposed National Care Service, pointing out that this would go significantly beyond the original scope of the Independent Review of Adult Social Care:

” Significant risk is being introduced to the system of public protection because these proposals will change the public protection structures without any apparent evidence base to support a case for change. In fact, a contrary view is provided in the sections below where the case is made that it is leadership that is the critical factor in public protection arrangements. In the context of the Bill, there is no reference to how the risk of disaggregation of critical protecting people services from the wider preventative and universal service landscape will be managed.⁷²

574. Many witnesses also questioned the need for reform in this particular area with SOLACE Scotland highlighting evidence that current performance is good:

” We would also wish to draw the Committee's attention to the findings of the most recent set of Adult Support and Protection (ASP) inspections, which have highlighted ways in which local adult protection partnerships are currently delivering well. Arrangements are proactive, thorough, effective, professional, and inclusive of supported people and their families and carers.⁷²

575. Witnesses and respondents raised concerns about the lack of clarity regarding the precise extent of inclusion of mental health services within the proposed National Care Service and how these services would interact with NHS services.

Outlining these concerns, Kira McDiarmid from Change Mental Health also argued the importance of retaining the independence and impartiality of mental health officers in any future structure:

” ... there will need to be clear pathways and a joined-up approach between the national care service and the NHS; the possibility of having mental health officers under a national care service was considered. However, that would be a bit concerning. As they are the people who provide a medical opinion on whether somebody should be detained, they have to be a bit more impartial and should therefore not necessarily sit under a national care service.⁷⁵

576. The joint submission from Alcohol Focus Scotland, Crew 2000, Scottish Drugs Forum, Scottish Families Affected by Alcohol and Drugs, Scottish Health Action on Alcohol Problems and Scottish Recovery Consortium highlighted a lack of clarity within the Bill regarding how the proposed National Care Service would affect future delivery of drug and alcohol services. Based on the very limited reference to alcohol and drug services in the Policy Memorandum, it concluded:

” It is difficult to determine from this who would have responsibility for the planning and delivery of alcohol and drug services under these proposals, and what this would mean in practice.¹¹²

577. Giving oral evidence to the Committee, Elinor Jayne from Scottish Health Action on Alcohol Problems set out her hopes for potential improvements the National Care Service could bring to the delivery of alcohol and drug services:

” For instance, alcohol and drug services—or whatever replaces the partnerships—could be represented on the local care boards [...] there could be better consistency in service provision [...] and we could have a more joined-up approach between the services that are currently commissioned by ADPs and services provided by the national health service. That is what we are hoping for from the national care service.⁷⁵

578. At the same time, Elinor Jayne went on to emphasise that improvements to the delivery of drug and alcohol services are not dependent on the creation of a National Care Service nor should her organisation have to wait for the reforms envisaged by the Bill to be implemented for these services to be improved:

” ... all of that could be happening now, and we do not want to wait for the national care service to be up and running for those sorts of changes to be taken forward and for the needs of people with alcohol and drug problems to be genuinely met.⁷⁵

579. Although it is not envisaged that homelessness functions would be transferred to the proposed National Care Service, housing and homelessness associations nonetheless emphasised the importance of making provision for joined-up working between housing, health, and social care. To achieve this, the Scottish Federation of Housing Associations argued that housing and homelessness professionals and service providers would need to be included in local governance structures for the proposed National Care Service. It concluded:

” We do not propose that these services are included in the National Care Service but that there is provision to establish mechanisms to collaborate and for shared resources across housing, health, and social care to ensure best use of funding to deliver integrated services on the ground and tackle homelessness. This needs to be led nationally and SFHA would like to see a commitment to greater alignment with Housing, Homelessness and Housing Support in legislation or guidance.⁵²

580. The Chartered Institute of Housing Scotland similarly supported the need for an integrated approach towards tackling homelessness and for this to be factored into the design of a National Care Service, arguing:

” ... we encourage the Scottish Government to make it clear that homelessness is not just a housing issue – ending homelessness requires input and partnership working across public sector organisations and with the third sector.⁶¹

581. Crisis suggested a collaborative, joined-up approach to tackling homelessness could be achieved through the strategic planning provisions of the Bill by introducing a requirement:

” ... for Scottish Ministers and local care boards to set out how they will integrate their functions with local homelessness and housing services and [help] people live successfully in their own homes, including [preventing] homelessness, through joint strategic planning and service level delivery.⁷⁶

582. During its scrutiny of the Bill, the Committee heard evidence from many stakeholders highlighting a lack of clarity as to how the planned transfer of adult support and protection and mental health services into the proposed National Care Service would be managed. It notes similar concerns with respect to alcohol and drugs support and homelessness services and wishes to highlight evidence of the risks potentially posed to the continuity of service provision in these areas as well as to effective integration with other related services if such transfers are not carefully managed.
583. In light of these concerns, the Committee broadly welcomes the change of approach to proposed governance structures in reducing the risk of disruption to ongoing delivery of these other services but will again reserve final judgement until it has seen the detail of relevant amendments.^{lxxxvi}
584. The Committee further notes the Minister's commitment to share with it further details of delegation arrangements for other services early in 2024 and intends to use this additional information to further inform its final conclusions with respect to the Bill as it relates to those other services.^{lxxxvii}

Transfer of staff, property and liabilities etc.

585. The [Explanatory Notes](#) explain the purpose of the provisions as set out in section 31 of the Bill as follows:

” Where a function is transferred from one institution to another by regulations under any of sections 27 to 29, it may be appropriate to transfer the staff who were performing the function too. Section 31 enables the Scottish Ministers to do so by regulations. Subsection (4) ensures that any staff who are transferred in that way enjoy the protections of the Transfer of Undertakings (Protection of Employment) Regulations 2006. Regulations under section 31 are subject to the negative procedure (see section 46).

The power to transfer staff is limited by subsection (2), which prevents the staff of a health board or a special health board being transferred into the employment of a National Care Service institution.⁸⁴

586. Meanwhile, the [Explanatory Notes](#) outline the aim of the provisions as set out in section 32 of the Bill as follows:

” Just as it may be appropriate to transfer staff in consequence of a transfer of a function to a National Care Service institution, so too it might be appropriate to transfer property and liabilities associated with the function. Section 32 allows the Scottish Ministers to do that by regulations. Regulations under section 32 are subject to the negative procedure (see section 46).⁸⁴

587. During the course of the Committee's Stage 1 scrutiny, local government

^{lxxxvi} Sandesh Gulhane and Tess White dissent from this recommendation.

^{lxxxvii} Sandesh Gulhane and Tess White dissent from this recommendation.

stakeholders in particular raised a range of concerns about the potential transfer of staff from local authorities to the proposed National Care Service. These included:

- The potential negative impact on workforce relations;
- The potential impact on terms and conditions of the workforce;
- Associated potential legal risks for employers;
- A lack of engagement with the workforce on these matters prior to the Bill being introduced; and
- Wider implications for UK employment law and, in particular, the Transfer of Undertakings (Protection of Employment) Regulations 2006.

588. In relation to the powers to transfer properties and liabilities etc. conferred by section 32 of the Bill, local government stakeholders again raised a range of concerns including:

- The broad extent of these powers and the extent to which they might be considered proportionate;
- A lack of clarity concerning the circumstances in which they might be used; and
- The potential legal complexity and unintended consequences of exercising these powers.

589. As outlined in previous sections of this report, subsequent to the Committee's initial evidence gathering on the Bill as introduced, the Scottish Government reached a consensus agreement that legal accountability for the proposed National Care Service would be shared between it and local government.

590. As part of this agreement, the Minister for Social Care, Mental Wellbeing and Sport confirmed in her letter of 12 July 2023 that, with respect to the provision of those services currently delegated to local government and integration authorities:

” Local Government will retain functions, staff and assets.”⁶⁰

591. In her letter of 6 December 2023, the Minister for Social Care, Mental Wellbeing and Sport also indicated that, as a consequence of the consensus agreement with COSLA on shared legal accountability, “The powers in sections 31 and 32 are also unlikely to be required”.³²

592. During its initial scrutiny, the Committee heard concerns raised by many stakeholders concerning the implications of transferring staff, property and liabilities from local government to the proposed National Care Service, as originally provided for in the Bill as introduced. In this context, it acknowledges the Scottish Government's significant change of approach towards governance and accountability and the reassurance this should hopefully provide, particularly to staff currently working within the sector.^{lxxxviii}

^{lxxxviii} Sandesh Gulhane and Tess White dissent from this recommendation.

593. At the same time, the Committee will reserve final judgement on these sections of the Bill until it sees the detail of relevant amendments brought forward by the Scottish Government and has an opportunity to take further evidence from relevant stakeholders as part of its further scrutiny of the Bill.^{lxxxix}

^{lxxxix} Sandesh Gulhane and Tess White dissent from this recommendation.

National Social Work Agency (NSWA)

594. The [Policy Memorandum](#) accompanying the Bill as introduced states that "A National Social Work Agency (NSWA) will be established as part of the NCS at national level... Since the policy intention is for the NSWA to be established within Government as part of the NCS structure, no separate provision within the Bill is necessary".²
595. The [Policy Memorandum](#) describes the objectives of the NSWA as being "to contribute to meeting the Scottish Ministers' duties to provide a national care service, reflecting its principles and human rights based approach, and to monitor and improve the quality of the services that the NCS provides, since those services are expected to include social work as well as social care" on the one hand, and on the other "to support and invest in the social work profession by providing national leadership, and overseeing and supporting social work in the following areas:
- Education (pre- and post-qualifying)
 - improvement (by establishing a Centre of Excellence) and scaling up good practice
 - workforce planning
 - training and development
 - social work terms and conditions (including pay)".²
596. In its letter of 7 November 2023, the Committee asked the Minister for Social Care, Mental Wellbeing and Sport whether it was still the Scottish Government's intention "to establish a national social work agency within Government rather than making separate provision for it on the face of the Bill?"⁴⁵. The Minister responded:
- ” The Scottish Government is committed to establishing a National Social Work Agency (NSWA). COSLA Leaders have agreed to work with the Scottish Government and our key stakeholders regarding the structure and governance of the NSWA. We will provide further clarity on the NSWA's establishment when we provide Stage 2 information in the advance of formal Stage 2 amendment consideration. Our partners and stakeholders are supportive of establishing a NSWA and are fully engaged in its development. A NSWA will work with and support the social work profession, by providing national leadership and overseeing social work education, improvement, workforce planning, training, development. It will support the wellbeing of the workforce and improve the conditions in which they operate.³²
597. Proposals for a National Social Work Agency were broadly supported by many stakeholders submitting evidence to the Committee during its initial Stage 1 scrutiny. In oral evidence, Alison Bavidge (National Director, Scottish Association of Social Work) outlined the potential benefits it could bring:

” Such an agency is particularly important in giving overarching support and direction for positive and effective implementation of policy rather than having lots of different approaches, which we have at the moment—we have 32 local authorities, which can all take a policy and implement it in their own ways.⁴⁰

598. At the same time, witnesses and respondents raised a number of specific concerns about the proposal for a National Social Work Agency. These related variously to the scope of the NSWA and its relationship with existing regulators, its proposed status as a department of the Scottish Government, and a failure to address how this may affect the role of Chief Social Work Officers within local authorities.

599. Several stakeholders raised concerns that proposals for an NSWA were premature, being presented before the [Social Care: Independent Review of Inspection, Scrutiny and Regulation in Scotland](#) led by Dame Sue Bruce had reached a conclusion. Maree Allison (Acting Chief Executive, Scottish Social Services Council) commented:

” It is certainly complicated for the independent review, because it has been asked to consider how to scrutinise all aspects of the national care service when the extent of that service has not yet been fully decided.³⁷

600. Subsequent to taking this evidence, the Independent Review of Inspection, Scrutiny and Regulation published its [recommendation report](#) on 27 September 2023.

601. A number of witnesses and respondents emphasised the importance of avoiding duplication of existing roles already fulfilled by other agencies and the need for a National Social Work Agency to provide genuine added value in this context. Kevin Mitchell representing the Care Inspectorate commented:

” The national social work agency must be in addition to—not instead of—that representation and must be able to consolidate progress in a number of agencies that work with social work.³⁷

602. In particular, evidence submitted to the Committee highlighted the need to take account of the existing role of certain agencies and indicated general support in particular for:

- The SSSC retaining its responsibility for setting standards of education and training for the social work profession,⁹⁷ continuous professional learning (CPL) requirements, and setting training and development requirements for the wider social care workforce¹⁰² with the NSWA additionally fulfilling a coordinating role.¹¹
- The HCPC retaining its role as the regulator of professional conduct and training for AHP professions.¹⁰³
- Giving due consideration to the role of the Skills Council for Social Care in its capacity as the sector skills council for persons working in adult social work and social care in the UK, and its role in monitoring training standards and quality in line with the Caldicott principles.⁶⁹

603. While the Scottish Association of Social Work was, perhaps for understandable reasons, supportive of having an agency that is, as a priority, focused on the social work profession, other stakeholders questioned why the scope of the agency would be restricted to that specific profession within the wider social care sector. These concerns were raised with particular reference to the importance of the fair work agenda to the wider social care workforce, [as outlined earlier in this report](#). In written follow-up, the Allied Health Professions Federation Scotland argued:

” The proposal of a National Social Work Agency risks being divisive, and we question why we are focusing on one profession rather than all professions involved in care delivery.

We support the creation of a national agency but believe that this should have a broader remit to cover all staff working in the new integrated NCS. This would ensure a more equal approach to workforce planning and continuous professional development (CPD) and support the cultural shift to a model based on rehabilitation, reablement and early intervention. ¹⁰³

604. Many stakeholders submitting evidence to the Committee raised concerns that the Policy Memorandum accompanying the Bill as introduced indicated it would be the Scottish Government's intention to create the National Social Work Agency within one of its own departments rather than making provision for it on the face of the Bill as a body independent of Government. In its written submission, COSLA concluded:

” The National Social Work Agency as referenced in the Policy Memorandum appears to be a department which would sit within Government, and not an ‘agency’ with structural independence. It is also noted that a NSW Agency would “contribute to meeting the Scottish Ministers’ duties to provide a national care service...” There are questions therefore, as to how such an organisation would effectively operate with professional independence while being expected to contribute to the delivery of Ministers’ political priorities. ¹¹

605. While the Care Inspectorate expressed a view that "If the National Social Work Agency is to play a role in overseeing and supporting the development of the workforce needed to meet the country's social care needs, sitting within the National Care Service would be helpful", it went on to emphasise in written follow-up to the Committee:

” However, it would be essential for the agency to have independence to successfully promote social work. ⁹⁷

606. At the same time, several witnesses and respondents raised concerns about a perceived lack of clarity as to how the existing role of Chief Social Work Officer within local authorities would interact with that of the proposed National Social Work Agency and the National Care Service more broadly. ⁹⁷ Suzanne McGuinness (Executive Director of Social Work, Mental Welfare Commission for Scotland) emphasised the importance of aligning the role of the Chief Social Work Officer in each local authority with the NSW Agency and the need to include it on the face of the Bill “along with the clear role of leadership and accountability that the chief social work officer in each partnership area brings”. ³⁷

607. Given that the proposed remit of a National Social Work Agency, as described in the Policy Memorandum, is to include responsibilities to "monitor and improve the quality of the services that the NCS provides" and to oversee and support education, improvement and scaling up of good practice, workforce planning, training and development and terms and conditions including pay, the Committee requests clarification from the Scottish Government as to why its scope is limited to the social work profession rather than addressing these important issues with respect to the wider social care workforce.
608. The Committee recognises stakeholders' concerns that, if it is set up as currently proposed as a department within the Scottish Government, the NSW Agency will lack the requisite operational independence to be able to fulfil its role effectively.
609. The Committee therefore calls on the Scottish Government to undertake further engagement with relevant professionals to explore:
- what scope there might be for such an agency to assume responsibilities beyond the social work profession to include the wider social care workforce;
 - how the operational independence of such an agency can be assured to enable it to fulfil its role effectively; and
 - how the future role of Chief Social Work Officers and their ongoing relationship with this agency will be addressed and managed.
610. The Committee further calls on the Scottish Government to set out to what extent and in what ways the ongoing development of its proposals for the establishment of a NSW Agency have taken account of the concluding recommendations of the Independent Review of Inspection, Scrutiny and Regulation in Scotland.

Health and social care information

611. Part 2 of the Bill as introduced relates to health and social care information. Section 36 gives the Scottish Ministers power to establish a scheme for sharing information to improve the efficiency and effectiveness of NCS and NHS services. It gives the Scottish Ministers' powers to make records about people's health and social care more consistent and better integrated. Regulations under section 36 will be subject to the affirmative procedure.
612. Section 37 makes provision about information standards. The Explanatory Notes advise "An information standard is a document setting out how certain information is to be processed, which includes how it is stored, formatted, indexed and so forth".⁸⁴ Section 37 creates a duty for National Care Service and National Health Service institutions to abide by information standards and to require their contractors to do so too.
613. The [January 2022 Audit Scotland Social Care Briefing](#) highlighted various issues with data in social care. These included an inability to share data between organisations and major gaps in information needed to inform improvements in social care. In the [Adult social care 2022 to 2023: Joint Statement of Intent and Next Steps](#), the Scottish Government and COSLA advise "we are committed to improving data and digital to deliver broader benefits in order to inform improvements and decision-making."
614. The [Policy Memorandum](#) accompanying the Bill as introduced states:
- ” The Scottish Government's NCS consultation noted that although a great deal of social care data currently exists, it is not always easily accessible or used to best effect. The consultation posited the creation of a nationally-consistent, integrated and accessible electronic social care and health record (“the record”) that could be used and seen by all those who provide health and care support, with appropriate permissions put in place to control who can see what information. This would provide a national framework that allows for person-centred data and information to be shared safely and securely.²
615. The IRASC noted that gaps in information sharing and data management have led to frustration for social care users and carers, who find themselves repeating their stories to multiple care providers. The review recommended that a NCS should seek to address these gaps:
- ” The National Care Service should address gaps in national provision for social care and social work in relation to workforce planning and development, data and research, IT and, as appropriate, national and regional service planning.⁴⁸
616. The Scottish Government has been developing a [national digital platform](#) which is intended to bring together cloud-based digital components and services. In 2018, in the [Digital Health and Care Strategy](#), the Scottish Government said:

” We will begin work now to deliver a Scottish health and care 'national digital platform' through which relevant real-time data and information from health and care records, and the tools and services they use, is available to those who need it, when they need, wherever they are, in a secure and safe way. ¹¹³

A [refreshed strategy](#) was published in October 2021.

617. In a [letter to the Committee in January 2022](#), the Minister for Mental Wellbeing and Social Care, informed the Committee the Scottish Government was commissioning work in three areas:

- What digital approaches, services and products have enabled similar services outside of Scotland and what lessons can be learned from both successful and unsuccessful digital projects and programmes. This will focus on the technical and practical elements of work rather than the policy drivers.
- User research to explore how people experience interacting with services in Scotland, and is particularly focused on what data is important to them.
- A review of the technology, service and digital architectural landscape across the public, private and third sector organisations who are involved in the delivery of social care services in Scotland to understand what will and will not work in the system. ³¹

618. In June 2022, the Scottish Government published a [National Care Service: data protection impact assessment](#).

619. The [NCS Statement of benefits](#) advises the development of a National Care Record will ensure that people's necessary data and information moves with them across sectors, in line with data protection laws, from prevention and early intervention to acute and specialist provision.

620. The [analysis of the Scottish Government's consultation](#) reported:

” A large majority of respondents agreed that there should be an integrated and accessible social care and health care record (86%) and that information about an individual's health and care needs should be shared across the services that support them (86%). There was support for legislation to ensure that care services and other parties provide information in line with common data standards. Concerns were raised by some in relation to data security and GDPR, cybersecurity; and the implementation risks of large national IT systems. ¹¹⁴

621. This was echoed in the responses to the Committee's call for views. Many respondents were broadly supportive of the introduction of a single electronic health and social care record in principle. Public Health Scotland said:

” PHS supports this approach. A single care record that follows a citizen throughout their care experience enables greater consistency of understanding about individual circumstances. It also makes it easier for service recipients to have control over their own records and who sees what. ⁹⁹

622. The [Digital Engagement Summary](#) accompanying the bill as introduced notes 81% were in favour of this provision, 4% were opposed and 15% were unsure about the provision and required more information:

The majority of comments supported the need for information sharing and defined this provision as a "sensible" approach to enable "professionals [to] get the information that helps safeguard people at risk". One contributor stated: "Experience of some of our members of our board with social work backgrounds have witnessed poor service delivery when sharing information is absent." ⁶

While generally supportive of the provision, some contributors also highlighted the need for safe and secure processes to be part of what will be a "very complex system to design and implement" ⁶ and called for clarity on how security systems that hold personal data would be implemented.

623. During oral evidence, Beth Lawton from the University of Strathclyde noted there would undoubtedly be benefits for the individual and at the public health level in the holding of a single health record or the ability to access the data from a single place. However, she argued this would not require a single system to hold all the data, suggesting instead:

” ... we need to have a way in which that data can be collated so that there is no need for repetition ... Citizens should be able to present the information only once ... it is important to be able to access an individual's information from the beginning to the end of their journey through the system, and to have the information held in one place ... From a digital perspective, my preference, would be to build an information aggregation point so that information can be extracted from those systems and held centrally. The national digital platform might provide a basis for that. ³⁷

624. Regulations under section 36 of the Bill as introduced would be subject to the affirmative procedure. The policy memorandum advises "Primary legislation is not required to create the record, but secondary legislation is required to enable information sharing and ensure consistent information standards." The [Delegated Powers Memorandum](#) advises:

” The power conferred by section 36 is broad. It deals with the sharing of individuals' most sensitive personal information. And it allows for the creation of new requirements to be imposed on any person with civil or criminal sanctions attached to defaults. The seriousness of these matters are such that the Government considers that the affirmative procedure is most appropriate. ⁹⁰

625. Witnesses had some concerns about secondary legislation being used to implement these provisions of the Bill. Beth Lawton from Strathclyde University advised there was not enough detail in the primary legislation to be able to envisage what the "nuts and bolts" of the system would look like. She concluded:

” My concern relates not to the direction of travel but to the lack of clarity, given that the end point will be left to secondary legislation. ³⁷

Data security

626. In response to both the Scottish Government consultation and the Committee's call for views, some respondents expressed concerns regarding the security of shared health and social care records. Concerns were raised around the possibility of data breaches, the use of data by private companies and the privacy of data.

627. Stirling Council highlighted the need to be mindful of potential public opposition as a result of security concerns as well as the potential cost of introducing and maintaining a new information system. It concluded:

” There are numerous examples of where the rollout of such systems has not taken place as expected. We think a phased launch of the scheme would help to avoid potential issues. ¹⁰⁷

628. The [National Care Service: data protection impact assessment](#) noted:

” The National Care Service will require a number of administrative systems, however, no decision has been made on whether existing systems will be used or new/modified system will be required. Any systems that National Care Service uses to store personal data will require to meet or exceed security standards required for health systems used in Scotland including adequate encryption, secure monitoring at all times, secure access and an audit/log. ¹¹⁵

It further noted:

” It is not possible to carry out a risk assessment against Data Protection legislation at this early stage of development. However, we will continue to liaise with the ICO as we develop the Regulations that will enable information sharing as part of the National Care Service and a risk assessment will be undertaken as soon as the detail of the regulations is known. We will update this DPIA of the proposed National Care Service Bill to include the outcome of the assessment. ¹¹⁵

629. SOLAR questioned whether the Bill's information sharing proposals would be necessary, arguing that local authorities already have information sharing agreements in place, and expressed concern about the impact of the proposed measures on the rights of data subjects. It concluded that the new requirement introduced by the Bill to make it mandatory that information should be shared under direction from Ministers:

” ... creates scope for potential infringement of the rights of data subjects and the latitude for discretion on the part of data controllers of what can be shared, until this is clear then our view is that a proper assessment of data protection impact cannot be undertaken. ¹⁰⁹

630. During oral evidence Ken Macdonald from the Information Commissioner's Office noted its interest in data protection in particular and suggested the ICO would:

” ... support anything that improves health and social care services for individual patients as long as it is done proportionately and securely and that everything starts from the perspective of privacy by design and default. In other words, the privacy of the patient or service receiver should be paramount, and the system should be built around that. Under the UK general data protection regulation, it is a requirement to start from that premise.³⁷

631. Ken Macdonald also advised that under article 36(4) of the GDPR, there is a requirement to consult the UK ICO before developing legislation that involves the processing of personal data. Therefore, in relation to each regulation that ministers make, they should consult the ICO, so the ICO gets the opportunity to properly scrutinise it from a data protection perspective and to work with officials to see where improvements might be needed. Although there is no fixed timeframe in which consultation should take place, it is recommended that policy leads allow a minimum of 12 weeks from initial contact with the ICO to finalisation of their policy proposals.³⁷

Information sharing

632. Concerns were raised with the Committee on how information would be shared with all key delivery partners, in particular with the third sector. Glasgow Council for the Voluntary Sector (GCVS) noted:

” The sector is a key delivery partner within the context of the NCS – it should (with individual permission) be able to access NHS/ Care records and history when supporting an individual or family, often at a point of real crisis in their lives. Effective, safe data sharing can be critical in these settings. This should be acknowledged on the face of this Bill.¹¹⁶

633. Witnesses argued that any record sharing system should ensure people only had access to the information they need to see and not the whole record. Dr Kenneth Meechan of SOLAR advised that managing the level of federated access across the number of staff who are involved in the care sector would be difficult. Dr Meechan also noted:

” Just because you can access a system for one reason does not mean that you should have access to everything that is in there; you should have access only to the information that is relevant to the function that you are carrying out.³⁷

634. Concerns were also highlighted about people 'owning' their own records and health data. This included concerns around giving individuals the right to exclude certain information from their record if they didn't want to pass it on, or to request that particular elements of their history be removed, as well as concerns relating to statutory protection issues. The Society of Local Authority Lawyers and Administrators in Scotland noted:

” ... some professionals absolutely need visibility of those records, but most of them would not. Even within a single organisation, the level of information that a child protection social worker will need to have access to will be totally different from the amount of information that the home carer who goes out to provide home services will need. There is a vast amount of complexity in ensuring that access.³⁷

635. This was seen by some witnesses as a serious concern in relation to mental health records. Paula Fraser from Voices of Experience Scotland advised:

” At the moment, those records are closed. Many of our members are very concerned about the possibility of their mental health records being available to everybody across the NHS and social care. Part of that is to do with the stigma and judgment that many of our members have experienced from staff and the possibility that that data could end up being shared more widely.³⁷

Implementation risks

636. The Committee heard evidence that the integration of health and social care records has been a key ambition for many years. However, the transition process required to move from one system to another was noted as being significant, extremely challenging and resource intensive.

637. Comhairle nan Eilean Siar stated:

” Across Scotland there is a plethora of different health and social care systems and previous attempts at developing a single system have failed for a variety of reasons. The single record is a step in the right direction, but this needs to be built upon and a national approach to the development of health and social care data infrastructure, grafting on users as existing contractual arrangements terminate should be applied in a similar fashion and approach to the development and expansion of the SEEMIS system in Education. This would support improved data sharing and support the transportability of the health and social care records across different areas.¹¹⁷

638. Mydex CIC questioned the Scottish Government's ability to create an integrated social care and health record when data is kept in separate departmental and organisational database silos. It concluded that "this proposal has not been thought through in practical terms, legally or technically".¹¹⁸

639. Issues around workforce training for successful implementation were also raised in a number of submissions. ENRICH Scotland emphasised:

” ... it is essential that this is accompanied by adequate resources and infrastructure to allow collection of data without imposing additional burdens on social care staff. It is essential that any increase in requirements eg for data to evidence improvement, is accompanied with appropriate resourcing of staff including the necessary technology (computers, wifi, links to online servers) and training (database skills, data management, quality improvement methodology, teaching and training), and that this is done in a supportive and non-blaming culture, with improvement and regulation having distinct input.¹¹⁹

Ownership and control of data

640. The Bill as introduced does not currently include specific provision for social care users to have access to their care record, although the Policy Memorandum states the single electronic care record would "also empower people around their own care and data and address the concerns in the IRASC around service users having to tell their story to multiple providers...".
641. Paula Fraser from Voices of Experience Scotland noted many of their members were frustrated by difficulties in accessing their own records and concluded: "They have repeatedly found it really difficult to access their records. They have needed to ask for them over and over again, and sometimes they do not receive the information. They want to have informed consent in relation to particular parts of their records." ³⁷
642. COSLA commented on the DPIA, noting it made no mention that people should have control of their own information: "It is essential that a health and care record ensures people have control over what data is included and those who can access this information." ¹¹
643. The Glasgow Disability Alliance said:
- ” GDA members felt it was equally important that the service user, is included in regulations to be able to access information held about them, shared between the National Care Service and the National Health Service, as provisions lay out in section 36. ¹⁴
644. The ALLIANCE also emphasised the importance for social care users having access to and control over their care records, and appropriate training being provided for staff and care users:
- ” If implemented properly, a single planning process with integrated record keeping would enable better conversations about people's care and support planning and a more compassionate approach. However, it is essential that the person accessing support has control over and access to their own records, and that there are clear methods and pathways available for them to request corrections if information has not been recorded properly. If people accessing social care are to be able to access and manage their care records then funding should also be dedicated to ensuring equitable access and appropriate training where required. Similarly, full training should also be provided for all staff who are required to access care records. ¹⁹
645. This discussion demonstrates the complexities of access, location, and ownership with regard to shared care records, and highlights that when people talk about a 'shared care record', they may be talking about and concerned about different things.

Information standard

646. The [Explanatory Notes](#) advise that section 37 would give Scottish Ministers the power to set information standards, (covering data and digital) which would set out how certain information is to be processed and would be made publicly available. They state: "Setting out standards in this way will allow technical detail to be

included and to be updated more flexibly as required compared to setting the standards themselves in legislation"

They further advise:

” Setting information standards is important to improve equality for service users, and also to improve the quality of data used for secondary purposes such as national and regional oversight, planning, commissioning and procurement, regulation, research and national reporting. There will be links to standards that already exist, such as the Scottish Approach to Service Design. Where standards do not exist at present they will be developed through close working with organisations that hold data, people who access care and support, their carers and families, and health and social care professionals.⁸⁴

647. Many witnesses supported the introduction of an information standard, especially if it were to improve delivery of social care for people. Alzheimer Scotland recognised the importance of information and data in informing the delivery of health and social care services, and as a tool to drive improvement in developing and delivering those services. It noted it would be important to establish "a safe and secure approach to gathering, storing and using data that is applied consistently across all health and social care services."⁸¹

648. On the need for consistent, quality data the Minister for Mental Wellbeing and Social Care said:

” You will know, having seen it at this committee, that, often, data is caveated, sometimes quite heavily, so it does not necessarily give us the true picture. Mr O’Kane talked about comparing apples with oranges; I often feel that that is what we are doing, when we look at comparative data. We absolutely need to get better at that. The national health and care record will go a long way in helping us on that front. Again, even before the NCS, we must continue to refine what data we collect, how we collect it and the impacts of that on people.³⁹

Funding

649. The [Financial Memorandum](#) accompanying the Bill as introduced states that an accurate cost estimate will be produced in response to the co-design process informing the development of shared health and social care records. It reflects that the NCS consultation noted that improvements to data and digital would require additional investment in data and digital systems locally and nationally. This is expected to cover infrastructure, staffing, training and development costs.

650. The Financial Memorandum goes on to say:

” At this early stage it is not possible to provide an exact position on the total cost of investment or how the costs will be phased. Through this co-design process and wider work to develop the evidence base it will be possible to robustly estimate costs. Supporting business cases and appropriate assurance will be created where significant investment will be required. The final costs will depend on user engagement to finalise scope and specification, and the outcomes of any future competitive tender processes to deliver those requirements to ensure optimal public value. There will also be work to develop digital services to underpin and enable the NCS as well as investment in people to make sure they have the right skills to use digital platforms and analyse data. Again, more investigation and co-design is required to define this. All options will be subject to rigorous assessment to ensure value for money and affordability.¹²⁰

651. Some respondents raised questions about funding for the development of shared health and social care records. The ALLIANCE argued the financial memorandum must accommodate costs for third and independent sector providers to comply with the information standards and data sharing elements of the Bill.¹⁹ COSLA noted:

” All of this will require enormous funding not only to upgrade legacy systems but for some third and independent social care organisations... COSLA is therefore disappointed that no cost estimate has been included in the Financial Memorandum.¹¹

652. Community Integrated Care noted "There are no costings in the financial memorandum for this exercise, especially in reference to the digitization of care records which will impact everyone in the sector considerably. We would like to have a more detailed conversation about how this would happen".⁵⁸

653. In a [letter](#) to the Finance and Public Administration Committee the Minister for Mental Wellbeing and Social Care advised "The information sharing regulations will support the integrated record, but not create it. The costs have therefore not been included in the Financial Memorandum as discussed...The integrated social care and health record will be subject to a formal, dedicated business case".

654. In evidence to the Finance and Public Administration Committee, Audit Scotland stated that "none of the figures is exact, so ... that is not a justification for not providing an indication of the range of costs that are likely to be associated with those areas."¹²¹

655. In its [report](#) on the Financial Memorandum, the FPA Committee recommended:

” Given the potential for significant financial impact from, and the risk of, cost overruns of IT projects, the Committee expected that an indicative figure would have been included in the Financial Memorandum, even in the context of considerable uncertainties. This is particularly so given indicative costings for IT systems have been included in previous FMs, such as the one for the Social Security (Scotland) Bill.

It also asked the Scottish Government to "provide a range of cost estimates based on its previous experience of implementing small, medium and large IT projects to

enable an assessment of the level of costs that could arise."

656. The Committee believes that a single electronic health and care record is fundamental to the success of the proposed National Care Service and calls on the Scottish Government to complete this as a matter of urgency.^{xc}
657. A majority of witnesses submitting evidence to the Committee agreed with the need for a single electronic record, but concerns were also raised about various aspects, including data security, access to and ownership of data, and cost. Ahead of Stage 2, the Committee calls on the Scottish Government to provide:
- a secondary Data Protection Impact Assessment (DPIA) which looks beyond just the framework, to show how it is taking into consideration the privacy risks which could result from the exchange of personal data;
 - confirmation of who will be able to access, view and update health and care records;
 - details of how federated access to the care record will be achieved; and
 - clarification of who will have ownership of the data recorded.
658. The need for enormous investment to achieve Part 2 of the Bill was highlighted to the Committee along with concerns that even an estimate of costings was omitted from the Financial Memorandum accompanying the Bill as introduced. The Committee agrees with the Finance and Public Administration Committee that indicative costs for implementation of Part 2 of the Bill need to be included in the Financial Memorandum and calls on the Scottish Government to provide these in advance of Stage 2.
659. In light of the considerable concerns raised by a broad range of stakeholders about the many implications of implementation of the data and information provisions of the Bill, the Committee believes that the regulation-making powers conferred by section 36 must be subject to a further reinforced process of parliamentary scrutiny than is currently afforded by use of the affirmative procedure.

Monitoring and evaluation

660. The [Policy Memorandum](#) notes recommendations from the IRASC that the NCS should address gaps in national provision for social care and social work in relation to workforce planning, data and research, IT and (as appropriate) service planning, as well as concluding:

” Improved data and digital infrastructure are critical to helping people live fulfilling, independent lives; enabling professionals to support those people; facilitate ethical and collaborative commissioning; underpin regulation and improvement programmes; support workforce planning; and facilitate research and intelligence.

^{xc} Sandesh Gulhane and Tess White dissent from this recommendation.

661. In its report on [Social Care](#), published in January 2022, Audit Scotland reported one of the challenges facing social work as being:

” An inability or unwillingness to share information, along with a lack of relevant data, means that there are major gaps in the information needed to inform improvements in social care.

The Audit Scotland report further noted: "The lack of relevant data, or analysis of primary, community and social care data, has been a common theme across a range of our reports. Good data and analysis will be essential for implementing social care reform".

662. Current limitations of social care data include:

- No individual has a social care record in the same way that each member of society has an NHS record. This makes it difficult to assess whether social care is meeting people's needs.
- No consistent method for recording unmet need. A person may be assessed as needing social care support but may not meet the eligibility criteria in place. This makes it difficult to assess the level of unmet need and therefore what more is required to deliver a person-centred, human-rights approach to social care.
- No coordinated approach to anticipating future demand for and costs of delivering services. Although some individual health and social care partnerships base their strategic plans on data for the prevalence of conditions in their area, for example heart disease, there is limited evidence of this being used in budget decisions.

663. Data collection on social care services is not covered anywhere in the Bill as introduced; there is no requirement for those responsible for governance of the proposed National Care Service to collect data or to report on performance. In connection with this, a number of respondents and witnesses highlighted the importance of data in supporting the monitoring and evaluation of the National Care Service. SASW highlighted the risk of failing to address data collection, especially in relation to unmet need:

” An important omission from the Bill is that Scottish Ministers or care boards are not required to collect data on all unmet care needs to inform budget decisions. The care boards should be able to advise Scottish Ministers on resource allocation for their area. If budget decisions take a ‘top down’ approach, then it is difficult to see how funding challenges faced now will be any different in the NCS. ¹²²

664. In its [submission](#), the Alliance noted: " ... as with any legislation, implementation and robust accountability mechanisms, including evaluation measures, are key to ensuring the success (or otherwise) of the proposals."

665. Age Scotland supported specific reference being made in the Bill to the monitoring of social care:

” We would like to see specific intersectionally (sic) disaggregated data collection, analysis and target setting commitments within the Bill, along with expectations and timeframes for publication of this information. This is one way through which the human rights and equality commitments and approach can be made tangible and measured over time. This is also essential for the accountability and responsibility for service delivery as outlined within sections 2 and 3 of this Bill ... Consistency of data requirements across Scotland is key.
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666. Public Health Scotland highlighted the opportunity the Bill offers to develop integrated national data sets before concluding:

” ... the practical application of the legislation should have regard to the importance of evaluation questions agreed at design stage so that there is clarity over the outcomes being sought and a clear means by which those outcomes will be monitored and then measured for effectiveness over time. 123

667. The Scottish Association of Social Workers argued that data would play a significant part in measuring how well the NCS is performing. But it also noted "... measuring cause, input and outcomes may be difficult with so many variables, which include disadvantage, poverty, geography and so on. We will need a vision of success for the National Care service in order to describe what success looks like. The NCS will need analysts who are expert in taking raw data and understanding what it might mean in reality." 124

668. Many witnesses noted the need for further clarity in relation to independent oversight of monitoring and evaluation of the proposed NCS. Witnesses were asked how the implementation of the national care service, and the associated legislation, should be monitored and evaluated. Some witnesses spoke of the requirement to be clear about what population level data is required, to assess unmet need for example. Oxfam expressed support for the inclusion of a new outcome in the National Performance Framework related to care, with accompanying indicators that could be used in measuring performance, through the national campaign – "[A Scotland that cares](#)".

According to the campaign, this new national outcome would be expressed as follows: "We fully value and invest in those experiencing care and all those providing it". The campaign, led by the University of the West of Scotland and Oxfam also proposes a [set of 'Beacon' indicators and sub-indicators](#) to allow success in achieving the national outcome to be effectively measured.

669. Currently, the NPF includes only one indicator related to health, that "[we are healthy and active](#)", although wellbeing runs through a number of the other outcomes. The indicators for this outcome cover: healthy life expectancy, mental wellbeing, healthy weight, health risk behaviours, physical activity, active travel, work related ill health, premature mortality and quality of GP care experience. [According to the Scottish Government's website](#), reporting against all of the NPF indicators is collated and easily accessible.

670. The NPF was due to be reviewed by September 2023, with consultation by the Scottish Government early in 2023. Consultation has now been delayed until 2024. Those behind the "A Scotland that cares" campaign are keen to see the inclusion of

this new outcome as part of this process.

671. RCN Scotland argued that workforce data and projections should be included in the strategic plans, covered in Chapter 2 of Part 1, as well as to inform the data sharing scheme. Furthermore, they suggested the Bill would present an opportunity to improve data gathering and sharing to improve all aspects of social care such as commissioning and planning.⁷⁴
672. In a [follow-up submission](#), Public Health Scotland advised there was a need to strengthen and integrate the capture of outcomes-based information "where data about 'what happened next' and the views of individuals who have experienced a health and care journey are necessary for making continuous improvement to quality of care and service provided. This will enable the NCS to continue to provide high quality care and service."

Additionally, it highlighted:

- ” Public Health Scotland has a team of experts in Evaluation who can be commissioned to provide evidence-based evaluation of the NCS at agreed intervals, using a model in use for the current evaluation of Scotland's national Minimum Unit Pricing policy for alcohol.
673. Healthcare Improvement Scotland indicated it would be keen to continue to build on existing partnership working and joint inspection arrangements, including with the Care Inspectorate, to play its full part in scrutinising services provided under the National Care Service, to provide public assurance, drive ongoing improvements in quality of care and support better outcomes for people. By strengthening existing statutory duties of co-operation through the measures outlined in the Bill, it suggested there may be scope to gain further efficiency, effectiveness and economy by strengthening obligations for public bodies to co-operate to deliver change and improvement.¹²⁵
674. The Mental Welfare Commission for Scotland highlighted the Independent Review of Inspection, Scrutiny and Regulation led by Dame Sue Bruce which, in its view, might address the national oversight and monitoring of the NCS structures. However, it also noted: "of particular significance is ensuring that the implementation gap and cultural shift required is addressed from the outset of the NCS, with clear monitoring and evaluation methodologies in place."¹²⁶
675. Daren Fitzhenry, the Scottish Information Commissioner, argued that the openness and transparency that freedom of information can provide to the system would allow for "increased accountability and monitoring—particularly if it is tied in with information standards—which would mean that we have a consistent approach between bodies, as I mentioned. For example, it would mean that different care boards could be compared like with like."³⁷
676. When asked about monitoring and evaluation while giving evidence to the Committee in December 2022, the Minister for Mental Wellbeing and Social Care advised:

” We also need to consider outcomes a lot more—what is working for people and what is not. Although we have a fair amount of information, it is still not enough. As we move forward, we must become more adept at garnering data in order that we are able to monitor the situation properly. Beyond that, we need to continue to listen to the voices of lived experience, as we continue on the journey.³⁹

677. The Committee believes that a comprehensive process for the monitoring and evaluation of the National Care Service is a fundamental prerequisite for measuring the extent to which it has successfully achieved its objectives. It is also going to be vital in enabling the Scottish Parliament to effectively fulfil its role in undertaking ongoing scrutiny of the implementation of proposals for a National Care Service.
678. Ahead of Stage 2, the Committee calls on the Scottish Government to bring forward amendments to the Bill making appropriate provision for effective monitoring and evaluation of the National Care Service. This should include provisions enabling the Scottish Government to keep the Scottish Parliament regularly updated on implementation of the Bill and operation of the proposed National Care Service.

Reforms connected to delivery and regulation of care

679. Part 3 of the Bill as introduced contains provisions on rights to breaks for carers (sections 38-39), visits to or by care home residents, known as "Anne's Law" (section 40), procurement (section 41) and the regulation of social services (sections 42-43).

Carers

680. Sections 38 and 39 of the Bill as introduced propose to amend the [Carers \(Scotland\) Act 2016](#) (the 2016 Act) to provide a right to breaks for unpaid carers. Under the 2016 Act, unpaid carers have rights to a personalised plan, known as an Adult Carer Support Plan (ACSP) or Young Carer Statement (YCS), which identifies their support needs. As part of this process, local authorities must consider whether that support should include a break from caring, according to locally set eligibility criteria.
681. The Scottish Government has produced an informal [Keeling schedule](#) to aid understanding of how sections 38 and 39 of the Bill, on rights to breaks for carers and other minor modifications, would change the 2016 Act.
682. The [Independent Review of Adult Social Care in Scotland](#) (referred to as IRASC or the Feeley review^{xcj}) reported that access to respite was identified as a priority on many occasions and should be viewed as integral to carer support. The review recommended:
- ” Carers need better, more consistent support to carry out their caring role well and to take a break from caring with regular access to quality respite provision. Carers should be given a right to respite with an amendment to the Carers (Scotland) Act 2016 as required, and a range of options for respite and short breaks should be developed.
683. The [Policy Memorandum](#) acknowledges that very few unpaid carers (around 3%) currently receive respite breaks under ACSPs or YCSs.
684. Respondents to the Committee's call for views and witnesses giving oral evidence were generally supportive of the proposals for the right to breaks for carers. However, issues were raised in relation to:
- funding,
 - definitions and eligibility criteria,
 - flexibility, and

^{xcj} [The Independent Review of Adult Social Care in Scotland](#) is also known as the 'Feeley Review' as it was led by Derek Feeley, a former Scottish Government Director General for Health and Social Care and Chief Executive of NHS Scotland.

- resourcing the provision of appropriate breaks.

685. The [Financial Memorandum](#) accompanying the Bill as introduced sets out costs of applying this right to a break as rising from between £8m to £13m in 2025 up to between £82m to £133m in 2034-35. Combining information in table 9 and 10 in the Financial Memorandum suggests that, by 2034-35, around 10% of the estimated 839,000 unpaid adult carers are expected to exercise their right to a break under the provisions in this Bill.

686. In evidence to the Finance and Public Administration Committee on 25 October 2022, Sarah Watters from COSLA commented that, in her view, timescales to deliver rights to breaks to carers, as set out in the financial memorandum were not realistic:

” Against the context of all the other changes, it could be really challenging. I note from looking at the table that the upper and lower estimates for the costs of easy access breaks flatline from 2029- 30. That is not realistic in any context—costs increase, pay increases and demand increases. ¹²⁷

687. The [Explanatory Notes](#) state that "Subsection (8) places a new duty on local authorities to provide the support that a carer needs to enable the carer to take sufficient breaks from providing care for the cared-for person. Subsections (6) and (7) ensure that this duty is not subject to local or national eligibility criteria."

688. The Committee heard evidence in both formal and informal evidence sessions about eligibility criteria and definitions in terms of rights to breaks for carers. Some stakeholders supported the removal of eligibility criteria while others were opposed.

689. During his evidence, Don Williamson from Shared Care Scotland noted that often eligibility criteria were "set in such a way that people have to be at breaking point or in critical need before they are able to receive that statutory support to access a break." ³⁵ Mark Hazelwood from the Scottish Partnership for Palliative Care also noted the challenges around strictness and consistency of eligibility criteria, stating:

” An example might be the fact that a carer who provides 24/7 care has respite care needs but the eligibility criteria for giving that person a break are becoming more and more rigorous and inconsistent across Scotland. ⁷⁵

690. A number of written submissions, from Integration Joint Boards and Health and Social Care Partnerships, raised concerns about the removal of eligibility criteria. The Argyll & Bute Integration Joint Board (IJB) stated in its submission:

” There are some concerns that the unpaid carer right to a short break involves the removal of any eligibility criteria. Whilst we fully recognise the role of unpaid carers the resources to offer short breaks with no funding limitations is concerning, this needs clarified. It is not clear if legislation will be amended. ¹²⁸

691. Many stakeholders raised further questions in relation to the terminology used in this section of the Bill, particularly around the use of the term ‘sufficient’ and what is meant by a ‘break’. A number argued that such definitions could be open to interpretation, potentially giving rise to inconsistencies of application and legal dispute.

692. During formal evidence, Don Williamson from Shared Care Scotland highlighted the need for a robust definition of the term "sufficient":

” Having a clear definition of “sufficient” would strengthen the position of the right holders—unpaid carers—and it would give them a level of accountability and provide for scrutiny. Most importantly, it would avoid the potential situation of carers finding themselves in some kind of dispute with local authorities or care boards, which will eventually take on responsibility for this, about whether they are getting sufficient breaks from caring. The term “sufficient” can be looked at in a number of ways. Does it mean sufficient breaks to stop a carer reaching breaking point and going over the edge, or does it mean sufficient to enable them to have good health and wellbeing and live the best life that they can? It could be interpreted in either of those ways or in some way in between, so it is important that the term is properly defined. In the absence of a clear definition, there is always the possibility of there being a proxy form of eligibility criteria, which is what we are trying to avoid. ³⁵

693. Stakeholders also expressed concerns around what would constitute a break under the terms of the Bill as introduced. The Committee heard a range of evidence that this is a complex landscape and that for the policy intent within this section of the Bill to be successful, it would need to be flexible and responsive to people’s needs. For example, the Committee heard that some ethnic minority communities have had culturally appropriate breaks denied as they were outside the norm ¹²⁹. It heard that those living with clinically complex conditions or at the end of life, might not want a break away from the cared-for person. ⁷⁵

694. In its submission, Age Scotland’s About Dementia project cited some feedback they had received as part of their National Care Service Twitter Takeover in Autumn 2021:

” Outwith a general reluctance to fully believe meaningful change could happen in a timely fashion during their own caring journey, carers stressed the need for any care breaks to be personalised. Many unpaid carers and professionals have had negative experiences accessing previous respite services, with traumatic stories of family members going into hospital or care home settings whilst respite was occurring. Unpaid carers often spoke of “still being on alert” when they are on care breaks, and this should be considered in any future design for breaks from caring. ⁹⁴

695. A number of organisations also highlighted the lack of suitable provision for carers to be able to access breaks. Angus Health and Social Care Partnership argued that providing breaks for carers in rural locations and with intensive caring roles could prove challenging in practice due to the lack of local provision. Don Williamson from Shared Care Scotland also told the Committee:

” ... our main concern about the meaningful implementation of the right to a break is that that is completely contingent on there being sufficient availability of short breaks provision for carers. Carers will tell us that it is rather meaningless to have the right to a break if there is insufficient range, choice and volume of provision available to them. ³⁵

696. The Committee strongly supports the personalisation agenda, whereby individuals have choice and control over their care and support. We recommend the Scottish Government should include further detail on the definitions included in this section, particularly in relation to what constitutes "sufficient breaks" as well as how it plans to ensure any such provision can be flexible, person centred and accessible, and aligned to the principles as set out in section 1.
697. The Committee welcomes provisions in the Bill detailing the rights to breaks for carers, but remains concerned these implementation gaps will persist unless the right to breaks is matched by action to:
- increase appropriate respite (and supportive) care provision and associated funding, and
 - improve flexibility and responsiveness to individual needs and circumstances.
698. The Committee asks the Scottish Government to provide clarity on how the right to breaks for carers will be funded and what steps it will take to ensure any associated implementation gap is avoided.

Care homes

699. Section 40 of the Bill as introduced amends the [Public Services Reform \(Scotland\) Act 2010](#) to give Scottish Ministers the power to require providers of care home services to comply with any direction (named a "visiting direction") Ministers make about visits to and by residents of care home accommodation. New section 78(2B) requires Ministers to consult with Public Health Scotland and any other person Ministers consider appropriate before issuing a visiting direction. Ministers would also have power to vary or revoke a visiting direction.
700. This section of the Bill is commonly known as Anne's Law and was developed in response to Scottish Parliament petition [PE01841: Allow a designated visitor into care homes](#). The petition was lodged by Natasha Hamilton, who was unable to see her mother, Anne Duke, during the first year of the COVID-19 pandemic. The petition called on the Scottish Parliament to "urge the Scottish Government to allow a designated visitor into care homes to support loved ones."
701. The [Policy Memorandum](#) recognises the vital role of social connections for the health and wellbeing of people living in care homes and their friends and family. It states:
- ” The Scottish Government’s policy objective for Anne’s Law (as part of the Bill) is to ensure that providers and public health teams give effect to visiting rights and to remove variation in practice in the sector including the use of blanket visiting bans by care home providers. In practice this will mean visiting will always be supported in line with directions issued by the Scottish Ministers.
702. On 1 March 2022 the Minister for Mental Wellbeing and Social Care [wrote to the Committee](#) highlighting the consultation analysis relating to Anne’s Law and the

Health and Social Care Standards, setting out almost unanimous support for Anne's Law. Anne's Law was put into practical effect at the end of March 2022 through the Scottish Government's introduction of two new [Health and Social Care Standards for Care Homes](#):

- ” • If I am an adult living in a care home and restrictions to routine visiting are needed to prevent infection, I can nominate relatives/friends (and substitutes) to visit me. My nominated relatives/friends will be supported by the care home to see me in person day-to-day and to be directly involved in providing my care and support if that is what I want
- If I am an adult living in a care home, I can nominate relatives/friends (and substitutes), who will be supported by the care home to be directly involved in providing my day-to-day care and support if that is what I want

The Scottish Government noted these standards were introduced to ensure that Anne's Law was introduced as quickly as possible while the National Care Service Bill was in development.

703. The National Care Service [Statement of Benefits](#) sets out how the Bill would supplement existing guidance by allowing Ministers to issue directions about visiting care homes:

” Current Scottish Government guidance and the strengthened Health and Social Care Standards has promoted and encouraged care homes to increase opportunities for meaningful contact both in and away from the care home with the adoption of protective measures. The NCS Bill will go further and allow Scottish Ministers to exercise a new power to require care home service providers to comply with Directions issued by the Ministers. This will help ensure that the rights of residents and friends and family are restricted only where justified as necessary and in a way that is proportionate and non-discriminatory and in accordance with human rights law.

704. The inclusion of Anne's Law in the Bill was broadly welcomed by respondents to the Committee's call for views. However the Committee also heard a variety of views, with some describing the inclusion as vital, some describing the provisions in the Bill as inadequate, some calling for the powers in the Bill to be implemented urgently and others questioning whether they were needed at all.

705. In its submission, the Health and Social Care Alliance Scotland (the ALLIANCE) set out its support for Anne's Law and a human rights based approach to care:

” The ALLIANCE supports Anne's Law and a human rights based approach to care, including learning from the pandemic about people's experiences of restrictions to care home visits. We strongly recommend that learning from the COVID-19 pandemic should be carried throughout all National Care Service work, with particular attention to examples where people's human rights were breached, to ensure such is not repeated in the future. We also suggest that this section of the Bill should make explicit reference to Article 26 of the UNCRPD (habilitation and rehabilitation).¹⁹

706. Giving evidence on 13 December 2022, Alison Leitch and Cathie Russell from Care Home Relatives Scotland spoke to the Committee in support of the inclusion of

Anne's Law in the Bill, with Alison stating that "to ensure that such a situation is never allowed to happen again and that there is accountability for decisions... the introduction of Anne's law will give ministers the power to set directions, with the default position being that visits should always take place." ⁷⁵

707. Suzanne McGuinness from the Mental Welfare Commission for Scotland also spoke in support of these provisions of the Bill from a rights perspective:

” Throughout the Covid pandemic, the commission was inundated with concerns from families about the impact of the policy of no visits to care homes. The commission's view is that everybody has a right to private and family life, which includes visits when a care home is somebody's home. We fully support Anne's law, in relation to both visits to and visits out of care homes. If we do not allow visits out of care homes, we are essentially talking about detention, which is a whole other ball game. ³⁷

708. Frank Jarvis from the Scottish Human Rights Commission challenged the adequacy of the provisions contained in the Bill as these relate to human rights, highlighting the risk of an implementation gap and a lack of detail on actions for redress should these rights not be realised:

” There is, perhaps, insufficient understanding of what caused the problems in the first place. What if the problem is not lack of rights, but that the rights that people already hold have not been respected and protected? That goes back to my perennial refrain about accountability. Placing visiting rights on an explicit statutory footing will bring benefits in visibility and, perhaps, public awareness, but on its own it will not improve the adequacy and accessibility of mechanisms for review or for challenging the decisions of what one does when one is prevented from seeing an elderly relative. How would passing Anne's law change that? I suspect that we would still face the same problem with enforcement of rights, so we need to see something that addresses accountability, for instance, in the complaints process. ³³

709. Concerns were also raised about the importance of balancing human rights of staff, visitors and residents. Evidence from Frank Jarvis suggested the proposed legislation might benefit from further nuance:

” The problem is that, across the care sector, vastly differing situations and circumstances exist, such that it is possible for a prohibition on visiting to be, in specific circumstances, a permissible interference in that human right, because it is a justifiable and proportionate measure when factoring in the staff's right to life and the interests of the wider public. It is about recognising that the blanket approach to such a situation—either a blanket prohibition or blanket visits—is probably not a sufficiently sophisticated and nuanced tool for realising everyone's human rights when they are all in the balance. ³³

710. In its submission, COSLA also argued consideration should be given to safeguarding and the role of public health advisers:

- ” In implementing Anne’s Law, consideration must be given to the safeguarding of residents and staff. The health, safety and wellbeing of staff and residents should always be accounted for. Furthermore, there is also the need to underline the important role of clinical decision-making by public health professionals who may make judgements regarding access arrangements. ¹¹
711. In follow-up correspondence following Karen Sheridan's appearance before the Committee on 5 December 2022, Community Integrated Care suggested:
- ” There should be a guidance framework that explores these risks from every perspective to avoid this becoming a subjective decision by care home managers. There needs to be support to ensure transparent, intelligent and consistent decisions in this respect. ¹³⁰
712. In follow-up correspondence after giving oral evidence to the Committee on 20 December 2022, the Minister for Mental Wellbeing and Social Care made a commitment to share with the Committee the finalised directions related to Anne's Law:
- ” Work is ongoing to finalise the Directions for Anne’s Law and they are subject to further engagement with the sector including members of Care Home Relatives Scotland, care home providers, Public Health Scotland and a detailed clinical and legal assessment. It is my intention to share the final Directions with the committee at the earliest opportunity so that they can be properly considered by members. ³¹
713. Aside from these considerations, some respondents also felt disappointment in the way Anne's Law had been incorporated into the Bill as introduced and advocated a broader approach that would not only address visits to or by care home residents. In its written submission, Age Scotland's About Dementia Project said:
- ” Overall, some members of About Dementia felt there had been a missed opportunity to realise the potential of Anne’s Law, this was eloquently put by an unpaid carer with nursing experience:
- “Personally, I see Anne’s Law as much more than allowing essential visits in a pandemic. It’s about a right to advocacy and POA (Power of Attorney) rights for both named relative and resident, as part of safeguarding and ensuring adequate care is provided. I think Anne’s law should be written into the Residency Agreement for everyone who enters a care home”. ¹³¹
714. In its follow up letter to the Committee, Care Home Relatives Scotland noted its dissatisfaction with the way Anne's Law had been incorporated into the Bill, arguing that more detail should be provided on the face of the Bill:

” Section 38 refers to Rights to breaks for Carers. We believe Section 40 should state Rights of Care Home Residents to visits in or out of the care home which would reflect the First Ministers commitment ‘to allow families and friends the same access rights to care home residents as staff’ (September 2021)

[...] We were happy with the last draft directions we were shown but are extremely aware these directions can be changed at any time. Our loved ones cannot survive without human contact - it is not too much to ask that some of that contact is with their own husbands, wives, son, daughter, mother or father or another essential visitor.¹³²

715. Throughout the Committee's scrutiny, there was discussion of whether Anne's Law should also be extended to other health and care settings, such as hospitals and mental health units. In follow-up correspondence with the Committee, Community Integrated Care expressed support for extending the principles of Anne's Law beyond care home residents:

” We would also advocate that the same principles are extended to other care settings such as supported living who seen the same challenges through the pandemic. Every individual within the social care system should have the right to visits and meaningful time with loved ones.¹³⁰

716. After Paula Fraser gave oral evidence on 22 November 2022, Voices of Experience (VOX) indicated in follow-up correspondence that opinions were mixed about the merits or otherwise of the rights conferred by Anne's Law, depending on the particular setting of the question:

” The majority of member participants were supportive of Anne's Law and the principles behind it. Many members also thought that the same rights and protections regarding visitors and visiting should be afforded to patients in psychiatric wards. Most members supporting Anne's Law and the same principles for those in mental health units, also expressed the need to balance those rights with ensuring the safety of patients and staff ... Some members felt on balance that safeguarding from virulent diseases can sometimes be more of a priority, and therefore Anne's Law and the idea of similar rights for psychiatric patients may not be the right course of action.¹³³

717. Lynsey Cleland from Healthcare Improvement Scotland made the following additional observations about extending these provisions to other healthcare settings:

” ... there is a range of important considerations around infection prevention and control, particularly in acute hospital environments and particularly where there might be people who are very vulnerable and immunocompromised. At various points throughout the pandemic, NHS services have had to make adjustments to visiting to take account of some of those considerations. For example, when there has been an outbreak in a particular ward, services have looked to restrict visiting in order to contain that outbreak, while recognising the importance of people being able to have contact with family and friends and the vital role that that plays in their overall health and wellbeing, as well as in their recovery, particularly if someone has to be in hospital for a period of time.³⁷

718. During evidence to the Committee, some questioned whether enshrining Anne's Law in legislation was strictly necessary, given it had already been effectively introduced via two new national care and support standards. In relation to this specific point, in its follow up letter to the Committee, Community Integrated Care asked "what benefit would this confer that isn't already achievable at an operational level?".¹³⁰ In its written submission, Angus Council also questioned why Anne's Law had been written into legislation primarily intended to create a National Care Service:

” The enactment of Anne's Law is not reliant upon the creation of the NCS and, therefore, it is unclear why it forms part of this legislation. Scottish Ministers should be obliged to consult the Care Inspectorate and the relevant local Care Board/Health and Social Care Partnership for a complete picture before making a requirement of an individual care home.¹⁰⁸

719. Despite the introduction of the new national care and support standards, the Committee heard fears about what might subsequently happen in the event of a new pandemic, with some suggesting the provisions in the Bill were not sufficiently explicit about giving the nominated 'essential contact person' for someone in receipt of care the same access rights as staff. Henry Simmons from Alzheimer Scotland told the Committee:

” The most important thing is that we place the right level of weighting on the impact on the individual and on their carer, alongside the risk management issues that are associated with infection control. To date, risk management and infection control issues have always won out, but we are now in a different world and we have different measures in place. We must campaign to get person-centred practice, and consideration of the humane issues and impact, to be on the same level as that aspect. Those in public health should be held to account when making decisions about the impact of that assessment. I know that they will consider that aspect, but the consideration is nothing like as strong as it should be.⁷⁵

720. The Committee also heard criticisms that implementation of Anne's Law was not taking place quickly enough. Dr Manji from Age Scotland's About Dementia Project stated:

” The pace of change is too slow. We know that lockdowns are, in effect, still happening. Just two weeks ago, a member of the about dementia forum told us that her mother, who lives in a care home in East Ayrshire, was in lockdown again because there was an outbreak of norovirus. Norovirus has been around for a very long time and there are well-established mechanisms for treating it and for infection control. In that situation, there is absolutely no need for an entire unit in a care home to be under lockdown. It is incredibly concerning that that is still happening. It speaks to the urgency of the issue.⁷⁵

721. Suzanne McGuinness from the Mental Welfare Commission for Scotland emphasised the need for urgency in implementing Anne's Law:

- ” Should the NCS bill be paused or delayed for any reason, we suggest that Anne’s law should be included in any relevant legislation in order to avoid its being delayed, because it is fundamental in upholding people’s rights and ensuring that they have the right to family life. ³⁷

722. The Committee welcomes the commitment to Anne's Law and considers it should be fully implemented as soon as possible to ensure a human rights-based approach to care.
723. The Committee further calls on the Scottish Government to consider bringing forward amendments to these provisions of the Bill to address the following:
- Provisions covering redress and a complaint process should these rights not be realised in practice.
 - Development of a guidance framework to ensure transparency and consistent decision making across all settings.
 - Potential extension of Anne's Law to include wider health and care settings.

Procurement and commissioning

724. Commissioning and procurement are part of the same process. Commissioning is the strategic way organisations decide what services are needed. Procurement describes the process of how organisations buy those services, usually through tendering . More detailed explanation of these terms can be found in a [SPICe blog](#) on the same topic.
725. The Bill as introduced makes some provision relating to procurement, as this relates to reserving the right to participate in procurement by type of organisation, under Part 3 of the Bill. This part of the report will also detail the Committee's scrutiny of ethical commissioning in relation to the Bill.
726. During evidence, the Committee heard from various stakeholders that, in their view, the Bill as introduced did not adequately address ethical commissioning and procurement, or the reform that is generally accepted to be needed within social care commissioning. In its submission to the Committee's written call for evidence, Quarriers concisely summed up this sentiment as follows:

- ” Government’s proposals make broad allusions to ethical commissioning, but there is no serious attempt to review existing procurement law and even less focus on understanding the cultural change that needs to happen to shift from transactional commissioning. ¹³⁴

Ethical commissioning

727. Ethical commissioning is referred to in the Bill under the following provisions of Chapter 2 (Strategic Planning) of Part 1:

- Section 6 (3) (e) - The Scottish Ministers' strategic plan is a document setting out, amongst other things, their ethical commissioning strategy in relation to the service for the period of the plan.
- Section 7 (2) (f) - A care board's strategic plan is a document setting out, amongst other things, the board's ethical commissioning strategy in relation to those services for the period of the plan (as defined in section 9(2)).
- Section 10 - Meaning of ethical commissioning strategy: "References in this Chapter to a person's ethical commissioning strategy in relation to a service is to the person's strategy for ensuring that the person's arrangements for providing the service best reflect the National Care Service principles."

728. The [Policy Memorandum](#) states that the proposed National Care Service would:

- ” Create a Structure of Standards and Processes for ethical commissioning and procurement to support the principles and other important priorities, such as decarbonisation and the circular economy.

729. As part of strategic plans under the Bill as introduced, each care board, and Scottish Ministers for national level services, would be required to have an ethical commissioning strategy setting out arrangements for providing services. These must be open to public consultation and be publicly accessible. Ministers would also be required to approve these strategies and would have a power to direct care boards in the exercise of their functions. Once approved, care boards would have a legal duty to deliver services in accordance with the strategy. The policy memorandum also states that "care boards will have responsibility for the majority of social care procurement. It is proposed that the NCS should arrange specialist and complex services which could require input from a range of public sector organisations, nationally and on a 'once for Scotland' basis."

730. The [Policy Memorandum](#) states that guidance in relation to ethical commissioning would form part of the Scottish Government's co-design process :

- ” The Scottish Government proposes that the NCS will (separately to the Bill process) develop and manage guidance in the form of a National Structure of Standards and Processes for ethical commissioning and procuring of social care services and supports. This Structure of Standards and Processes will apply the NCS principles to commissioning and procurement decision making. This will ensure a consistent approach to the way commissioning and procurement delivers a person centred, human rights based approach that supports the outcomes and needs of the individual, meets minimum quality standards established for social care services, ensures Fair Work, promotes sustainability and ensures consistent implementation and equitable quality of service throughout Scotland. The Scottish Government is committed to developing this Structure of Standards and Processes together with people who access social care support, care workers and unpaid carers and other stakeholders and delivery partners.

731. A [factsheet](#) published by the Scottish Government on 15 December 2022, informed by the Scottish Government's four National Care Service Bill engagement sessions in Summer 2022, provided more detail on what ethical commissioning is intended to mean in relation to the Bill as introduced. It stated:

- ” • Ethical commissioning and ethical procurement will become a cornerstone that the National Care Service will use to shape all commissioning and procurement decision making. An ethical commissioning and procurement approach will ensure full engagement with those who access social care support, those who support people to access social care support, families and friends, unpaid carers, the workforce and providers.
- Ethical standards will ensure we value and recognise the workforce by developing minimum fair work standards, terms and conditions and will contribute to climate resilience/climate change adaptation in future by taking account of the irreversible impacts of climate change.
- The National Care Service approach to ethical commissioning will support the standardisation and implementation of fair work requirements and practices, ensuring these are agreed and set at a national level and delivered locally across the country.
- Our approach to ethical commissioning will be co-designed with partners, the providers and representative users and is reliant on other related work stream areas in the National Care Service program and will be co-designed alongside access to services and their design.

732. In its letter of 7 November 2023, the Committee asked the Minister for Social Care, Mental Wellbeing and Sport whether, as part of proposed Stage 2 amendments to the Bill as introduced, the Scottish Government intends to “modify or expand those provisions of the Bill related to procurement and ethical commissioning?”.⁴⁵ In her letter of 6 December 2023, while also indicating that the Scottish Government was considering a Stage 2 amendment to section 41 of the Bill (covered in more detail below), the Minister responded:

” ... we are considering, in discussion with COSLA and NHS as part of the tripartite discussions, how operational commissioning and procurement should be delivered at a local and national level.³²

733. During evidence, a number of witnesses questioned what ethical commissioning means in practice. In its follow up letter to the Committee, the Health and Social Care Alliance Scotland called for a clear definition of ethical commissioning:

” At present there are a wide variety of interpretations of what “ethical commissioning” entails. If a clear definition is not provided in primary legislation, Scotland is likely to see inconsistent delivery of ethical commissioning – leading to the perpetuation of ongoing problems with varied delivery of services across different care boards and areas.

Primary legislation should clearly define what is meant by ethical commissioning, beginning with the additional information laid out in the policy memorandum for the Bill and the recommendations of the Independent Review of Adult Social Care.¹³⁵

734. Commissioning and procurement practices were referred to many times during evidence as being the fundamental key to reform, on the understanding that they would be the intended mechanism to implement fair work principles, [as discussed](#)

[earlier in this report.](#)

735. In oral evidence, Derek Feeley argued: "Redesign of commissioning is absolutely necessary. There were very few things that everybody we spoke to absolutely agreed on: they all agreed that the existing system of commissioning and procurement is not working for anybody." ³⁶
736. The Committee heard evidence that competitive tendering is widely used across social care commissioning and procurement in Scotland. Rachel Cackett from the Coalition of Care and Support Providers in Scotland (CCPS) told the Social Justice and Social Security Committee:
- ” The bill contains provisions on ethical commissioning and provisions on reserved contracts, which are interlinked. The detail on ethical commissioning is very thin. If the bill continues, we would like that to be strengthened considerably, because ethical commissioning should be at the heart of a radically reformed service. Competitive tendering is not a good way forward. ¹³⁶
737. The Committee heard evidence that following a model of competitive tendering in social care has a number of negative consequences including:
- Lowering costs by cutting staff salaries, preventing improvements in terms and conditions and inhibiting employers being able to fulfil fair work principles.
 - Creating tightly controlled contracts that default to a ‘time and task’ approach to delivering social care
 - Stifling local innovation and delivery of care that is person-centred and focused on outcomes.
738. Many stakeholders argued that commissioning and procurement need to be refocused towards achieving outcomes for people, based on collaboration rather than competition where budgets, price and administration become the main determining factors that inform purchasing decisions. Sandra Macleod from Aberdeen City Health and Social Care Partnership told the Committee:
- ” It is really important that there is mutual respect and trust, where bodies come together and have the belief that we are here to provide outcomes for people, rather than have a race to the bottom on time-and-task commissioning and trying to save funding. All that does is create problems in the longer term. ³⁴
739. In its follow up letter to the Committee, Scottish Care stated:

” The symbiotic relationship between commissioning and procurement has meant that commissioning decisions are often affected by procurement practices. This is also impacted by the false construction of a competitive market in social care. With a monopsony there is an unfair dynamic of power and fiscal realities which undermine good commissioning practice by forcing providers to ‘race to the bottom’ where social care value is defined by short-term cost implications rather than the more sustainable and human rights-based approach of long-term impact. This distortion in the market has led to compromise in provision and yet it could be solved through better commissioning practices. ¹³⁷

740. Informally, the Committee also heard arguments that the principles of self-directed support (SDS) should form the basis of ethical commissioning, with SDS itself described as an ethical commissioning model. Rachel Cackett from CCPS highlighted this link:

” the far more radical approach is to say that social care is an issue of relationships, and those relationships happen at the front line between the people who require care and support, their carers and the people who deliver that care and support. As much as possible should happen at the front line, which is why the self-directed support legislation, which we have still not implemented fully, is really important. There is an important point to consider about the link between SDS and ethical commissioning. ³⁴

741. A number of witnesses commented that reference to Self-Directed Support (SDS) is missing from the Bill. Many have spoken positively about the policy intent behind the [Social Care \(Self-directed Support\) \(Scotland\) Act 2013](#) and the principles underlying the legislation which should mean that individuals have choice and control and are involved in decisions about their care and how they receive care and support. However, many have also commented that the legislation is not well implemented in practice. In that context, Frank McKillop argued that SDS, and its principles should be a key part of the National Care Service:

” As I said, self-directed support must be at the heart of the care model that is developed and delivered through a national care system to a consistent standard across Scotland. As we see it, the sign above the door says the right thing, but when people go through the door, they do not get what they expect. That has been the experience of a lot of people. The SDS legislation that is in place is excellent; it is fantastic. However, that is not being realised.

... Perhaps the national care service legislation can fill out the foundations to make that a reality for everyone who wants to access SDS, with that becoming the core model for social care in Scotland. ³⁵

742. In a follow up letter, following oral evidence from Rachel Cackett on 29 November 2022, CCPS reiterated the importance of giving greater choice and control through self directed support, plurality of service delivery and improved commissioning practices:

” Social care is, fundamentally, rooted in the choice and control of those requiring care and support in order to meet rights, such as the right to independent living. Choice can only take place where there is plurality of provider. Over many years, third sector charitable providers have emerged - and continue to emerge - to meet identified needs within geographic communities and communities of interest. These organisations will have different aims and objectives, different cultures, different ways of working. It is in this very plurality that individuals benefit from diversity of choice in provider. Indeed, this is the very basis of the self-directed support policy which Scotland has championed. ¹³⁸

743. The Committee visited the Granite Care Consortium in Aberdeen as part of its evidence gathering for Stage 1 scrutiny of the Bill as introduced. It heard how this consortium, made up of local third and private sector providers with experience delivering health and social care services collectively, have collaborated effectively to deliver a range of social care services. Sandra MacLeod from Aberdeen City Health and Social Care Partnership told the Committee:

” The Granite Care Consortium was definitely born from a solid understanding of what it is like to be on both sides of the fence, from both the commissioning and procurement points of view. It also involves a lot of trust and a lot of relationship building. Those things are key in developing anything, because we need that equality in the procurement process. ³⁴

744. Representing the Granite Care Consortium, Nick Price spoke about its operation, and how the changes it has made have given freedom and autonomy to staff to plan care based on outcomes instead of financial and resource constraints:

” The Granite Care Consortium has taken the approach of a more focused view on early intervention. Through the contract, providers have the autonomy to step up and step down packages of care when they deem it necessary. For example, if someone is going through a period of crisis due to an infection or something else and they need a higher level of care, that can be put in place for one, two or three weeks—whatever is required—and, if they improve, it can be stepped back. However, that has been achieved only through taking a step away from a time-and-task model to a purely outcomes-focused personalised model of care delivery. ³⁴

745. The Committee has also heard evidence of the critical importance of staff autonomy to effective decision making can be key. Margaret McCarthy from Crossroads Caring Scotland shared her positive experiences of delivering social care during the pandemic, where frontline staff had autonomy to make decisions about a person's care based on need, rather than adhering to system constraints:

” At the end of the day, I see our staff on the front line having autonomy, because they are working with clients every day and I am not, so they should have autonomy to make decisions. We give that autonomy, but how much autonomy we can give staff is restricted by contracts and the time-and-task approach. Front-line staff should be able to make decisions such as whether a person will shower today or tomorrow, if they think that today is not the best day to do it.

What also helped was the fact that some local authorities had more understanding, and the fact that they paid not on actual hours but on planned hours took a lot of pressure off organisations. Whereas, previously, we had CM2000^{xcii} and we had to clock in and clock out, all of that was stopped. The fact that we were allowed to look at stepping up and stepping down on time and task gave a lot more autonomy to providers. I hope that the pandemic proved to authorities that, as providers that deliver the service, we are able to make those decisions and that we do not need someone telling us, “This is a half-hour call and you can’t do any more than that.” We can be given X hours that we have to deliver for clients and can figure out with the client when that is delivered to them. I think that the pandemic brought that more to light.³⁴

746. During his oral evidence to the Committee in December 2022, the Minister for Mental Wellbeing and Social Care noted the importance of giving staff freedom and autonomy:

” In some areas, freedom and autonomy are already being given to front-line staff, who are the folk who recognise whether Mrs Smith is becoming frailer or is improving. In my home city of Aberdeen, the front-line staff at the Granite Care Consortium have the ability to step up and step down care. Obviously, that must be done in consultation with the person receiving care and support and their family, and there is of course more stepping up of care than stepping down, but the ability of the staff to do that puts the person front and centre. Beyond that, the best way to stop delayed discharge, for instance, is to prevent folk from going in the front door of a hospital in the first place. By stepping up Mrs Smith’s care, are we saving a journey to accident and emergency and perhaps a lengthy stay in hospital? I reckon that we are doing that in a lot of cases. We need to change that situation with autonomy, freedom and independence for frontline staff, which largely do not exist in many places, because of contracts. We are trying to change that in the here and now. I do not want to wait for the NCS if we can get some flexibility in that regard in the here and now, which would be brilliant. That would be good not only for health and social care partnerships and local authorities; it would be very good for people... We need to see more of that, and I want to see more of it before the NCS, although the NCS gives us that complete opportunity with ethical procurement.³⁹

However, the Minister provided no indication whether those provisions of the Bill related to ethical commissioning and procurement processes would remove competitive tendering or address limitations on contracts associated with competitive tendering.

747. As set out [earlier in this report](#) in relation to fair work, many stakeholders told the

^{xcii} CM2000 is a care management system

Committee that, in their view, ethical commissioning should be the mechanism for embedding fair work principles within the National Care Service.

748. This is reflected in evidence Derek Feeley gave to the Committee, setting out a main finding of the IRASC review:

” “We identified a potential vehicle for fair work in the rethinking of the commissioning and procurement process and in the introduction of the idea of ethical commissioning, which came from one of the trade unions. The bill refers to fair pay and ethical commissioning. We need to ensure that we keep on the table the connection between those two things. We ought to use the redesigned commissioning and procuring process as a vehicle for fair pay. Essentially, we would be saying to care providers that, if they are going to receive public money, they will have to follow a set of expectations that we have of them.” ³⁶

749. Trade union representatives agreed that the approach to ethical commissioning would need to include fair work. However, a number of concerns were raised around what was meant by ethical commissioning in the Bill, how this was to be implemented and monitored, and who would be accountable. Roz Foyer from the STUC noted concerns over the commissioning system that the Bill as introduced proposes to set up:

” Our fear is that the sort of commissioning system that is being set up will neither address nor take forward fair work and collective bargaining issues in a way that gives us any surety, and that it will address neither the fact that profiteers are still sucking profits out of our care system nor the issue of local accountability. ⁴⁰

750. Tracey Dalling expressed a view that oversight in commissioning would be key:

” It is about enforcement. The contracts for the work, and therefore for the staff who will populate the service, need to be crystal clear that they are based on fair work ...

Therefore, if there is going to be ministerial oversight, fair work has to be at the heart of the system. There is currently local oversight in councils, or certainly within IJBs. It is one thing for a provider to say what it is going to do and another thing for it to be monitored to ensure that it does that, and for there to be consequences if it does not. If a provider does not pay the Scottish living wage, it should not be in a position to bid for a contract and have it awarded. That should be out of the question—it should be out of the market.

... Frankly, if someone breaches the ethical commissioning, tendering and procurement process, they should never be allowed to darken the social care door again, unless they go away, rehabilitate themselves and come back to show that they can do things fairly and squarely. There is no place in care for some of those practices, which have a huge impact on the workforce and, therefore, on the recipients of care. ⁴⁰

751. The Committee also heard from Karen Hedge of Scottish Care that this area could be subject to another form of 'implementation gap', where laudable values and intentions are added into ethical commissioning strategies without the resource

necessary to implement them:

” I really want to reinforce the points that have been made about the gap between commissioning ideology and what happens in procurement when financial—or other—resources that are available to enact services are taken into account. For example, some areas require providers to sign up to the fair work Charter, as should happen; as we know, if people’s terms and conditions are aligned with fair work, they are more likely, among other things, to be happy in their work and to stay in their workplace. The problem, however, is that in the areas where providers have signed the fair work Charter, people are not getting paid sustainable rates to enable the fair work principles to be put into action. There is a huge question there about whether you can just throw something into a contract and then require a provider to deliver on it. If the provider is not able to do that, because they have not received enough resource or not enough resource has been allocated in the strategic planning context to create the conditions to enact the fair work provisions, where does responsibility lie? That is a big question that we need to consider when we think about ethical commissioning.³⁴

752. Professor Catherine Needham from the University of Birmingham and the Economic and Social Research Council’s centre for care highlighted the need for support and training to be provided to commissioners in order to make ethical commissioning a reality:

” It is also about linking the fair work agenda and ethical commissioning to the end goal of people flourishing and having a good life. That has to be about making ethical commissioning for outcomes. To do good commissioning for outcomes, there need to be high-trust relationships, flexible services and very skilled commissioners. How we train and skill commissioners as well as other parts of the social care workforce is an issue.⁴⁹

753. The Committee notes that discussions are ongoing with COSLA and the NHS to agree details of “how operational commissioning and procurement should be delivered at a local and national level”. It further notes that the outcome of these discussions will determine whether amendments will require to be brought forward to those provisions of the Bill related to procurement and ethical commissioning. The Committee will reserve final judgement on the relevant provisions of the Bill until it has been updated on those outcomes and the detail of any amendments.^{xciii}

754. The Committee is of the view that ethical commissioning is fundamental to the success of the National Care Service, as both the mechanism to deliver on fair work commitments and to address both workforce and service-delivery issues. However, the Committee is concerned that there is too little detail on ethical commissioning within the Bill as introduced.^{xciv}

755. The Committee acknowledges that ethical commissioning will form part of the Scottish Government’s planned co-design process. However, as already stated in

^{xciii} Sandesh Gulhane and Tess White dissent from this recommendation.

^{xciv} Sandesh Gulhane and Tess White dissent from this recommendation.

relation to strategic planning, the Committee calls for Chapter 1 of Part 1 of the Bill to include a clear and comprehensive definition of ethical commissioning. The Committee recommends that any definition of ethical commissioning must include fair work principles, including pay, terms and conditions and parity considerations.^{xcv}

756. The Committee agrees with views expressed by stakeholders that ethical commissioning should embody the personalisation agenda as established within self-directed support legislation, ensuring choice and control for individuals to ensure the best possible outcomes. The Committee commends the model embraced by the Granite Care Consortium and its outcomes-focused personalised approach to care delivery, its emphasis on providing freedom and autonomy for staff to plan care, and to offer plurality of provider to ensure that local care meets the needs and preferences of individuals. The Committee considers this and other alternative models could provide the basis for development of a best practice approach to the implementation of ethical commissioning practices. The Committee calls for further research into the development and delivery of these models to determine how they can be adapted to represent all providers in an area.
757. The Committee also agrees with stakeholders that oversight in commissioning is crucial to ensuring the legislation does not lead to further implementation gaps. As such, the Committee recommends:
- provisions for rectification should be included within the Bill, alongside a complaints and whistleblowing process, should ethical commissioning and fair work practices not be realised in practice;
 - national ethical commissioning guidance is developed to inform individual ethical commissioning strategies; and
 - the Bill should include a requirement for a review of ethical commissioning practices to take place, within 3 years of the relevant provisions coming into effect.^{xcvi}

Reserving right to participate in procurement by type of organisation

758. Section 41 of the Bill as introduced amends the [Public Contracts \(Scotland\) Regulations 2015](#) (the 2015 Regulations) to insert a new regulation 76A. The 2015 Regulations impose obligations on public bodies in relation to how they award public contracts for the execution of works, the supply of products and the provision of services. This amendment would allow, in certain circumstances, the list of bidders for a contract to be limited to those who meet a particular description.

^{xcv} Sandesh Gulhane and Tess White dissent from this recommendation.

^{xcvi} Sandesh Gulhane and Tess White dissent from this recommendation.

759. The [Policy Memorandum](#) sets out the Scottish Government's rationale:

” Voluntary and third sector organisations are a significant part of the social care market, and have a history and expertise in providing community health and social care services and support. The Scottish Government recognises the role this part of the social care market can offer alongside other sectors in supporting the NCS ambitions, and therefore see merits in providing the option to contracting authorities to reserve procurement processes to mutual organisations when contracting for social care provision.

760. In her letter of 6 December, the Minister for Social Care, Mental Wellbeing and Sport informed the Committee that, at Stage 2:

” We are considering an amendment to section 41 of the Bill (Reserving right to participate in procurement by type of organisation). The intention of the proposed amendment will be to modify the definition of qualifying organisation to support wider application to third sector bodies as per the policy intent. We are also considering amending the timeframes associated with this process. The aim of these amendments would be to ensure compatibility of the reserved process with wider policies to provide longer commitments to providers as appropriate, mitigating one of the issues identified in Independent Review of Adult Social Care.³²

761. Many organisations responding to the Committee's call for views supported this provision in principle. Deafblind Scotland articulated the general consensus in its submission stating this was particularly due to "support[ing] the further development of not for profit organisations that bring strong lived experience centred approaches".²⁶

762. However, many respondents were concerned over what this would mean in practice for both procurement and the social care sector. Community Pharmacy Scotland said it "feels that this section of the bill is ill conceived and limit competition and could affect the level of service provided", arguing there should be no need for such a provision in primary legislation and any detail could be included in each individual tendering document and process.¹³⁹

763. A range of organisations suggested that reserving contracts for certain organisations could limit competition and prevent experienced providers with significant capacity from participating in the Scottish social care market, or discourage new providers from entering the sector. Responses to the Committee raised questions about the definition of organisations to be included, and what this provision would mean in relation to:

- independent sector organisations and social enterprises,
- the role of local government in the provision of services [solace], and if local authorities would be included or excluded, and
- social work services.

764. Further concerns centred on the balance between local and national commissioning, with East Ayrshire Council and East Ayrshire Integration Joint Board, among others, questioning the impact on "local flexibility in procuring

services, local employability and third sector local provision" ¹⁴⁰, and Argyll & Bute Integration Joint Board commenting on the potential negative impact of centralisation on remote and rural communities. ¹⁴¹

765. Following oral evidence from Tracey Dalling on 15 November 2022, UNISON Scotland stated in written follow-up: "A key risk inherent in centralisation could be the loss of long-established provision in local areas" ¹⁴². This was a theme expressed in many of the written responses, with many questioning how this provision could affect sustainability in the future and how current contractual agreements would transition to the National Care Service. Highland Council also raised a concern that the provision could lead to inequity by creating preferential treatment or bias in the allocation of contracts.

766. In its written submission, Glasgow City Council queried the exclusion of local authorities as contractors under this provision:

” ... it would exclude local authorities from having a role as social care contractors. Should consideration instead be given to giving local authorities the opportunity to bid for such reservable contracts? Consideration would require to be given to the financial implications of this, emphasising the need for further detailed provisions and consideration of these proposals. ⁶⁶

767. While raising concerns about the impact of limiting procurement by organisation type in its written submission, Scottish Care also noted the inherent contradiction between the principles of ethical commissioning as forming part of strategic planning, and the process of bidding for contracts:

” It would be extremely problematic for this section to become a politicised issue in policy or practice, not least because to implement blanket exclusions of organisations could significantly destabilise social care at a national and local level and substantially limit the ability of citizens to exercise the legal choice they have under existing legislation such as the Self-directed Support Act.

Instead, procurement must be centred on what services and supports can best meet the needs of individuals and communities, informed by strategic plans and ethical commissioning approaches and premised on providing a mix and balance of provision that secures quality, sustainability and choice. Blanket approaches and restrictions cannot achieve this. ⁹¹

768. Rachel Cackett from the Coalition of Care and Support Providers Scotland (CCPS) strongly advocated the need for ethical commissioning and ethical procurement to go hand in hand and argued that to truly embrace ethical commissioning, ethical procurement practices needed to be in place:

” We often talk about ethical commissioning and then procurement, but we need to think about ethical procurement, too ... A lot has been said about the procurement process in the legislation, and I will just note three things about that. First, as we have said, a lot of ethical procurement can be carried out already, so the bill is not necessary for that. Secondly, although the bill has the potential to restrict contracts, it does not remove competitive tendering, which we think is a real issue. We need to look a great deal more at that area in the legislation. Thirdly, we think that the definition of “ethical commissioning” is very scant at the moment and needs to be stronger to ensure that everybody understands that endeavour...

It would be really good to see a clear intention to move to an ethical procurement process, but we should also remove competitive tendering from social care. Social care is about relationship based care and support, and that sort of thing should not be put into the competitive tendering space.³⁴

769. During an informal visit to the Granite Care Consortium in Aberdeen, the Committee heard examples of ethical procurement. The Granite Care Consortium is a group of providers who work closely with Aberdeen City Health and Social Care Partnership (HSCP) and each other to mitigate some of the negative effects of current commissioning and procurement practices which tend to result in providers having to compete for contracts. They told the Committee that in their case, the HSCP has handed over the budget for social care to them, and the Consortium fulfils a co-ordinating role to help identify the most appropriate care for people from amongst its members, without bidding or competition.

770. The Minister for Mental Wellbeing and Social Care emphasised the Scottish Government's commitment to ethical procurement as part of the Bill:

” ... there is, as I have said, an opportunity to use ethical procurement to change the way in which we do things, and I hope that that opportunity will be grasped.
39

771. In his follow up letter to the Committee, the Minister for Mental Wellbeing and Social Care set out further detail on the Scottish Government's approach to procurement, suggesting that tendering may not be the only route to establishing services in local areas:

” ... our approach to ethical commissioning and procurement will be co-designed with input from partners, providers and representative users. Where procurement is chosen, the Scottish Government is developing a set of Ethical Procurement Standards to support consistency of the ethical procurement of social care and support throughout Scotland. The Standards will be developed with input from the organisations which commission, procure and coordinate the delivery of care to ensure they can be implemented. Importantly, information and experiences shared with us through the wider co-design process from individuals who have experience of care, and those who care for people, will also be considered in the development of the Standards, so that procurement exercises ultimately result in services and support that meet the needs of people and their local communities.³¹

772. The Committee notes the Scottish Government is considering a potential amendment to section 41 of the Bill to modify the definition of qualifying organisation. It will reserve final judgement on this section of the Bill until it has seen the details of this amendment. It nonetheless calls on the Scottish Government to give due consideration to the points raised in this section of the report in determining its approach to amending this section of the Bill.^{xcvii}
773. The Committee has concerns that there is an inherent contradiction between reserving the right to participate in procurement by type of organisation, and the principles of ethical commissioning. The Committee heard evidence that competitive tendering, as reflected in the “call for competition” set out in the Bill by reserving rights to participate in procurement, is not compatible with ethical commissioning and that it promotes transactional procurement related to cost that, to date, has led to time and task approaches and unfair work practices in the provision of social care, irrespective of whatever guidance is in place.^{xcviii}
774. The Committee recommends the Scottish Government should undertake a review of procurement practices and develop a strategy to remove competitive tendering from social care procurement, in favour of a collaborative approach to commissioning and procurement which is underpinned by ethical commissioning principles. This should include a clear definition of ethical commissioning. The Scottish Government should further set out detail on how the Parliament will have an ongoing scrutiny role in this area.^{xcix}
775. Notwithstanding the Committee's concern as to whether this section is compatible with the Scottish Government's commitment to ethical commissioning, the Committee has heard further concerns over how this provision (reserving right to participate in procurement by type of organisation) would work in practice if enacted.^c
776. The Committee has concerns that reserving the right to participate in procurement by type of organisation implies a judgement on the types of organisations that provide quality care. We have further concerns that such a provision could unintentionally have a negative impact on outcomes for individuals, particularly in relation to already established and valued local provision and future sustainability of services. We also require further detail from the Scottish Government on the extent to which commissioning and procurement will be undertaken at either a national or local level or both, and how consistency of approach will be ensured while still allowing for local variation.^{ci}

^{xcvii} Sandesh Gulhane and Tess White dissent from this recommendation.

^{xcviii} Sandesh Gulhane and Tess White dissent from this recommendation.

^{xcix} Sandesh Gulhane and Tess White dissent from this recommendation.

^c Sandesh Gulhane and Tess White dissent from this recommendation.

^{ci} Sandesh Gulhane and Tess White dissent from this recommendation.

Regulation of social services

777. Part 3 of the Bill as introduced makes some provision relating to the regulation of social services.

Cancellation of care service registration

778. Section 42 of the Bill amends the [Public Services Reform \(Scotland\) Act 2010](#) (the 2010 Act) to enable the Scottish Ministers to make orders prescribing the circumstances in which the Care Inspectorate can propose to cancel a care service's registration without first issuing an improvement notice and waiting for the period specified in that notice to expire. The 2010 Act makes it a criminal offence to provide a care service without being registered with the Care Inspectorate.

779. Many respondents to the Committee's call for views were in agreement that improved inspection and regulation was welcome, agreed with this provision in principle, and agreed with the principle that the regulation and scrutiny functions should operate independently from a National Care Service. For example, Leonard Cheshire in Scotland described its rationale for supporting this provision as being that it would enable inadequate care services to be more quickly and effectively addressed:

” We welcome the ambition, set out within the Bill's Policy Memorandum, for the powers provided by Section 42 to enable the Care Inspectorate to “act more effectively and more quickly than at present to tackle consistently poorly performing and inadequate care services” (p7). It is vital that individuals receive consistent, good quality care and support. Sections 42 and 43 of the Bill will underpin efforts to maintain high standards and ensure that care providers are consistently providing an exemplary level of support which fully meets the needs of service users.⁶³

780. However, many respondents expressed concerns about the complexity of the current inspection and regulation landscape in health and social care, a perceived disparity in audit, scrutiny and support processes different service providers are currently subjected to, and the respective roles of the Care Inspectorate and Healthcare Improvement Scotland related to regulating the sector in practice. The Committee is aware of the complex landscape of regulatory bodies across the health and social care system. During informal evidence sessions with care providers, it also heard evidence of the burden multiple inspections can have in relation to staff capacity, and that providers can be subject to different inspections depending on the particular sector in which they operate.
781. An [Independent Review of Inspection, Scrutiny and Regulation](#) (IRISR) was recently completed to examine how social care services are regulated and inspected across social care support services in Scotland. The IRISR was also tasked with considering how regulation and inspection of social care and related services could deliver improved outcomes for people within a regulatory framework that meets the needs of the proposed National Care Service.
782. Specific concerns raised by stakeholders in relation to sections 42 and 43 of the Bill centred on:

- The potential for a care service registration to be cancelled without first

attempting improvement work,

- Potential lack of involvement of local decision-makers in cancellation decisions, and
- Responsibility for care provision following cancellation of a care service's registration, including capacity and resilience within the system to respond quickly in these situations.

783. The [policy memorandum](#) sets out some background context related to what section 42 is intended to achieve and the circumstances in which it would be used:

” Section 42 is intended to achieve that in cases where it is the professional judgement of the CI that the service/provider is not in a position to meet and sustain the requirements of an improvement notice, the CI will have the power to forgo the issue of an improvement notice. It would instead make an application to the Sheriff Court to cancel the registration, saving time and resource and achieving the desired and best outcome for users of the service more quickly. The basis on which it reaches this view regarding the provider may include criteria such as the fitness of the provider or past performance.

The new powers provided by section 42 would mean that the CI can act more effectively and more quickly than at present to tackle consistently poorly performing and inadequate care services. This is particularly important where it is thought that there may be a risk to life, health or wellbeing of residents if inadequate care services continue to be provided and will help the CI ensure that these individuals receive good quality of care.

784. A number of organisations expressed concerns in relation to powers conferred by the Bill as introduced to move directly to proposing to cancel a care service's registration without first issuing an improvement notice. These organisations called for further clarity on the circumstances that would lead to such action. In line with this response from SOLACE Scotland, many of the responses expressed a view that powers to cancel the registration of a care service should also involve care boards:

” Any implementation of powers to cancel the registration of a care service should involve the relevant Care Board. Currently, the Local Authority would act as provider of last resort. In the proposed arrangements, Councils would, where engaged, be redesignated as 'provider' status and we would then understand this duty will move to the Care Boards.⁷²

785. Scottish Care expressed disappointment in its written submission that the Bill's focus on regulation primarily relates to service closure. It argued that regulation can and should be focused on much more and the role of the Care Inspectorate should be re-examined in this regard:

” Whilst in rare examples of service failure it is paramount that the safety of those supported is protected, regulation exists to provide more than safety assurance in a handful of services but to support high quality care and continuous improvement and innovation across all regulated services. The Care Inspectorate has developed this approach over a number of years in collaboration with the sector and this focus represents a significant regression in progress in recent times, instead entrenching unhelpful elements of risk-aversion and compliance that have emerged during the pandemic rather than partnership-based practice. It also fails to recognise the multitude of factors that can contribute to service success or failure, many of which relate to wider environmental and contextual factors, that require a partnership approach to address.

Furthermore, the inclusion of this section of the Bill does not reflect the risk of significant harm to people’s wellbeing resulting from sudden service closure – for individuals and loved ones who rely on that service as well as the workforce. Instead, the focus should be on the Care Inspectorate and others’ role in providing assurance that all efforts are made consistently and continuously to ensure that services are of high quality, able to positively develop and adapt and that they are sustainable.⁹¹

786. Several witnesses pointed out that even where swift action to protect service users is required, there are still important factors to consider before implementing service closures. Angus Health and Social Care Partnership stated:

” We would also welcome clarity on whether the ‘circumstances’ include ensuring there is suitable, alternative provision for people to move to prior to such a decision being made, otherwise protection issues will remain.¹⁴³

COSLA also stated:

” If the amended Section 42 of the Bill allows for quicker closure time, or an ability to increase the amount of service closures, thought will need to be given to the current capacity within the system and the additional pressure this may add. Resilience planning will need to consider the availability of care homes, what facilities are on offer recognising clinical complexities, and whether there are trained staff available to ensure individual needs are met. All these factors will need to be funded to ensure services are adequately resourced.¹¹

787. A number of organisations thought the Bill did not go far enough. In relation to market oversight and the potential failure of services, Community Integrated Care argued:

” Organisationally we support scrutiny and are disappointed that the NCS has not gone so far as to include the same market oversight as is provided by the Care Quality Commission in England. The CQC is able to oversee providers’ risk in terms of financial sustainability, grades and pertinent factors such as overspending, and intervene if necessary and notify other parties. There is an extra level of confidence as a result of the ability to predict and avert market failure.⁵⁸

788. Proposing an alternative approach, the Common Weal advocated for reform of

social care regulation as part of the Bill:

” Sections 42 and 43 of the bill...are in our view a missed opportunity... What we believe the NCS Bill should do is amalgamate the regulatory functions of the SSCC and CI into a new merged regulatory body and transfer their other responsibilities, for supporting staff and services and workforce planning to the NCS nationally. It would be important that any review and strengthening of the powers of regulators, including our proposal that they be merged, incorporate an emphasis on the working conditions and health, safety and welfare of social care staff and the development of close linkage with other relevant regulators, in particular the Health and Safety Executive, Local Authority Environmental Health Departments and Public Health Scotland.⁶⁴

Assistance in inspections from Healthcare Improvement Scotland

789. Section 43 inserts a new section into the 2010 Act to authorise Healthcare Improvement Scotland to assist the Care Inspectorate in carrying out an inspection of a care service and to charge for any assistance provided.

790. The Mental Welfare Commission (MWC) queried this provision, disagreeing with the principle of public bodies charging a fee to support statutory functions. The Committee understands this reflects the provisions in Part 6 of the Public Services Reform (Scotland) Act, which sets out that HIS can charge fees for certain services to certain bodies, organisations and persons.

791. During evidence, Lynsey Cleland from Healthcare Improvement Scotland outlined the nature of her organisation's concerns about this provision:

” I clarify that we do not charge fees for our inspections. The provision in the bill concerns our being able, if we were asked to support the Care Inspectorate in inspection of care services, to charge that body for the cost of that. I give the example of our provision of support in care home inspections during the pandemic, when we drew on our expertise in infection prevention and control. We did that by redeploying existing inspection staff and drawing on their experience, knowledge and skills to support the work. We were able to do that because some of our other inspection programmes had been paused. Again, it would very much depend on the nature of the ask. If short-term support was requested, we would probably deploy staff and pause or rephase existing work programmes. Considerations around potential resource costs would arise if long-term support was requested. That would require us to think about how we could deliver the support in conjunction with the range of inspection and assurance functions that we currently carry out.³⁷

792. The Committee wishes to highlight stakeholder concerns around responsibility for care provision following cancellation of a care service's registration and that this could have negative consequences for individuals' outcomes if there is no capacity and resilience within the local social care system to respond quickly and to provide alternative, appropriate care in these situations.

793. The Committee requires further assurance in the legislation that every effort will be made to ensure a timely continuation of service delivery for those affected and

to minimise disruption in their care and that such decisions do not place undue pressure on other service providers in the marketplace. The Committee notes a suggestion from certain stakeholders that the Care Inspectorate should have a wider market oversight role, similar to that of the Care Quality Commission in England and asks the Scottish Government for its view on this suggestion and how it will ensure there are no oversight gaps.

794. The Committee also believes that there is a case for strengthening collaboration in relation to improvement work and sharing information, when there are concerns about the quality of care in advance of any service closure and in the registration of new services. The Committee would welcome further detail of this on the face of the Bill.
795. The Committee has heard evidence from stakeholders that the regulation landscape across health and social care is complex, with different systems in operation across different sectors and services. The Committee wishes to highlight stakeholder views that further consideration of regulation may be needed rather than only focusing on instances of service closure. We would welcome further detail on how the National Care Service will ensure consistent regulation and oversight across all services provided by and on behalf of the National Care Service.

Final provisions

796. Part 4 of the Bill as introduced contains provisions on health board and special health board definitions (section 44), and powers to make regulations and to amend existing legislation (sections 45 and 46).
797. Section 47 sets out that Part 4 of the Bill comes into force on the day after Royal Assent. However, the rest of the provisions would come into force on a future date, determined by secondary legislation as set out in the preceding sections. Section 48 sets out the short title of the Bill.

Ancillary provision and regulation-making powers

798. Section 45 of the Bill as introduced allows the Scottish Ministers to make various types of ancillary provision if these are found to be needed in order for the Bill to operate effectively. The [Explanatory Notes](#) state any such provision will be contained in regulations, which will be subject to the affirmative procedure if they amend an Act and negative procedure otherwise.
799. Section 46 of the Bill as introduced makes further provision about the regulation-making powers that the Bill confers on the Scottish Ministers. The [Explanatory Notes](#) state that provisions may not be made wholesale and different provisions may be enacted in different contexts:
- ” Subsection (1) makes clear that the powers can be used to make different provision for different purposes and also for different areas. For example, regulations under section 27 might transfer the function of providing a service from a local authority to a National Care Service institution in one set of circumstances but not another.
800. The [Explanatory Notes](#) state that there is a presumption that regulation making powers cannot usually be used to modify primary legislation; this needs to be done through primary legislation. However, regulations made under the following sections of this Bill may modify other pieces of legislation:
- Section 13 - Independent advocacy.
 - Section 15 - Dealing with complaints.
 - Chapter 6 of Part 1 - Powers to transfer functions.
 - Section 45 - Ancillary provision.
801. The Bill as introduced states that regulations under any of the following provisions are subject to the negative procedure^{cii}:
- Sections 31 and 32
 - Paragraph 15 of schedule 1
 - Section 41.

802. The Bill as introduced states that regulations under any of the following provisions are subject to the affirmative procedure^{ciii}:

- Section 4
- Section 13
- Section 15
- Sections 27 to 29
- Section 36.

803. Regulations under paragraph 11 of schedule 1, Appointment of members to care boards, would be subject to the affirmative procedure if no regulations had previously been made in exercise of the power, but otherwise, would be subject to the negative procedure.

804. As discussed [earlier in this report](#), regulations under section 38(9)(b) Support for carers to take sufficient breaks: further provision, amend the [Carers \(Scotland\) Act 2016](#) using the affirmative procedure. The [Delegated Powers Memorandum](#) states that the provision replaces an existing power in the Carers Act.

805. Section 45, again discussed [earlier in this report](#), relates to ancillary provision. Any regulation made under this section, which modifies primary legislation, will be subject to the affirmative procedure.

806. COSLA's written submission to the Committee argued that the regulation-making powers conferred by the Bill as introduced would be significant and that the potential impact of exercising these powers would require further scrutiny:

” The regulation-making powers set out in Section 46 of the Bill are wide-reaching and with significant implications for public services across Scotland, most notably Local Government. The potential impact of these proposals and powers requires detailed and robust impact assessment, scrutiny, debate and, crucially, clear timelines for commencement and implementation that are not adequately afforded through secondary legislation.¹¹

807. Isla Davie from the Faculty of Advocates (FoA) told the Committee that the FoA did not have concerns about the secondary legislation provisions in the Bill as introduced, or processes for scrutiny of that legislation:

cii The negative procedure, is defined by section 28 of the [Interpretation and Legislative Reform \(Scotland\) Act 2010](#). Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. This means they become law unless they are annulled by the Parliament.

ciii The affirmative procedure is defined by section 29 of the [Interpretation and Legislative Reform \(Scotland\) Act 2010](#). The affirmative procedure means that an instrument cannot be made and come into force unless the Parliament has approved it by resolution ([rule 10.6.1 of standing orders](#)).

” Secondary legislation will be used, but the authority that is given in the bill is for the affirmative process to be used in the vast majority of cases. The bill is careful about that, and it means, actually, that quite a lot of scrutiny could take place. We are talking about secondary legislation, but we should be careful to identify the scrutiny that happens there. There is quite a lot of it, and it is not as if it will all go through some sort of quiet route. There are a couple of occasions in the bill where the provisions specify the negative rather than the affirmative procedure, but the vast majority of secondary legislation will go through the affirmative route, which will mean that it will be placed before Parliament and that there will be time for scrutiny...we make no criticism of the secondary legislation mechanism being used as a matter of principle, because it will still allow for scrutiny.³³

808. However, the majority of respondents to the Committee's call for views expressed concerns over the lack of detail in the Bill and that too much of the detail was to be left to secondary legislation, which, while allowing for some scrutiny, would not be subject to the same level of scrutiny as primary legislation. Angus Health and Social Care Partnership stated its view that the use of secondary legislation was not appropriate for reforms of this scale:

” The enabling nature of the Bill with so much detail to follow in secondary legislation does not seem appropriate for a change of this magnitude particularly where the ability to scrutinise and change such provision is so limited. The pace at which that secondary legislation would require to be produced and enacted presents a significant risk to successful implementation and the safety of services during transition.¹⁴³

809. The Aberdeen City Chief Officers Group noted that "neither the use of the affirmative or negative procedure for secondary legislation allows proposed wording to be amended".¹⁴⁴ Highland Council stated its preference for more of the detail to be set out in primary legislation, suggesting that if left to secondary legislation, a more appropriate mechanism would be the use of the super affirmative procedure.¹⁴⁵

810. A number of organisations submitting evidence to the Committee's written call for views expressed concerns around the extent to which key stakeholders would be meaningfully consulted and engaged as part of the process of scrutiny of secondary legislation. Frank Jarvis from the Scottish Human Rights Commission also highlighted the additional funds and capacity individuals and organisations would require to engage, and contribute views effectively to the process of scrutiny of secondary legislation:

” Engagement by individuals and organisations always comes at a cost—a cost in time to people with lived experience and a cost in resources to organisations. Organisations that have engaged up to this stage have clear asks and recommendations for how the primary legislation should be amended, whether that is for humanrights or other reasons. Risks are associated with leaving things that have not been tackled at the primary legislation stage to get fixed in secondary legislation, through expecting the same people to invest the same resource in order to make the same points.³³

811. Community Pharmacy Scotland highlighted the potential benefits of using secondary legislation, yet also emphasised the importance of proper engagement before secondary legislation is enacted:

” Secondary legislation is (in relative terms) much more flexible and can be adapted as the needs of the country are better understood and services need to change. What is critical is that there is wide engagement when this secondary legislation is put forward. ¹³⁹

812. The Minister for Mental Wellbeing and Social Care addressed concerns around the extensive use of secondary legislation during his evidence to the Committee, highlighting the opportunity secondary legislation would offer to build flexibility and address any emerging challenges:

” Many people out there, and in here, always feel that everything has to be in primary legislation, but that does not allow for the flexibility that we often need for change. Self-directed support, which I mentioned earlier, is mostly in primary legislation, and we know that people are using the loopholes in that to avoid the spirit of that act. To close loopholes such as those, we have to go back to primary legislation, but it would be so much easier if things were in secondary legislation because, if we found loopholes or an implementation gap, we would have the ability to change that pretty quickly to get it right for people. I recognise that some folk do not like that, and if we were to make change we would, of course, consult people and listen to them. However, using secondary legislation is a major way to ensure that we have the flexibility to get all this right in the future. ³⁹

813. After giving evidence to the Delegated Powers and Law Reform Committee, the Minister for Mental Wellbeing and Social Care wrote to that Committee setting out how the co-design process would be used to inform the process of developing secondary legislation. Notably in this letter, the Minister made a commitment to engage with Scottish Parliament committees in the development of regulations:

” ... the majority of the delegated powers in the Bill are subject to affirmative procedure. This gives committees more opportunity to scrutinise the regulations before making a recommendation to the Parliament as to whether to approve or reject them. While the formal procedure does not allow for the Parliament to make amendments to secondary legislation, there are opportunities for members to set out their views if they are not content with what the Government has brought forward. I would also be happy to consider how Members of the Parliament and relevant Committees can be more engaged with the process of developing the regulations through the co-design approach. ¹⁴⁶

814. In its report, the [Delegated Powers and Law Reform Committee](#) stated its view that the Bill as introduced did not contain the necessary level of detail for the Committee "to assess whether it is appropriate that such a power is delegated, whether the level of scrutiny applied is appropriate and whether the power has been clearly drafted and goes no further than necessary to deliver the intended policy" and that the Bill should not progress in its current form.

815. In its letter of 7 November 2023, this Committee asked the Minister for Social Care,

Mental Wellbeing and Sport to indicate whether, as a consequence of the consensus agreement with COSLA on shared legal accountability, the Scottish Government intended to make any changes to the regulation-making powers conferred on Scottish Ministers by the Bill as introduced. As outlined elsewhere in this report, the Minister responded:

” This would rely on working through the detail of the proposed changes, though the powers contained in section 4 relating to the establishment of local and special care boards will be removed, as will the powers in sections 27 to 29. The powers in sections 31 and 32 are also unlikely to be required.³²

816. The Committee has heard significant concerns about the regulation-making powers conferred on Scottish Ministers by sections 4 (Establishment and abolition of care boards), 27 (Power to transfer functions from local authorities), 28 (Power to bring aspects of healthcare into the National Care Service), 29 (Power to re-organise the National Care Service), 31 (Transfers of staff) and 32 (Transfers of property and liabilities, etc.) of the Bill. It therefore welcomes indications from the Minister that, as a consequence of the consensus agreement with COSLA that legal accountability for the proposed National Care Service will be shared between the Scottish Government and local government, these powers will no longer be required and will be removed from the Bill via amendments at Stage 2.^{civ}
817. In some areas, particularly relating to technical provisions, the Committee is sympathetic to the Scottish Government’s view that using secondary legislation is a suitable mechanism to ensure flexibility and enable changes to be implemented as identified through an iterative process. However, we are concerned that an across-the-board approach, as set out in the Bill, is not appropriate and could reduce the scope for effective parliamentary scrutiny.
818. Given the lack of detail on how the key provisions in the Bill will work, as this is to be set out in future regulations, the Committee recommends the following changes to the regulation-making powers set out in section 46 of the Bill:
- The regulation-making powers in section 15 (Dealing with complaints) should be subject to review. In particular, the Committee highlights the recommendation in evidence from the Presiding Officer that “any measures proposed by the Scottish Ministers which have the potential to affect the SPCB in any aspect of the exercise of its functions” should “follow a legislative route which affords proper scrutiny and ensures parliamentary approval”.
 - Regulations in section 36 (Care records) should be subject to a further reinforced process of parliamentary scrutiny than that afforded by the affirmative procedure.
 - The regulation-making power in section 41 (Reserving right to participate in procurement by type of organisation) should be subject to review given the Committee’s view that section 41 is incompatible with the policy intent of

^{civ} Sandesh Gulhane and Tess White dissent from this recommendation.

ethical commissioning. We recommend the section, and hence the associated regulation-making power, is removed.^{cv}

819. The Committee urges the Scottish Government to bring forward the necessary amendments to give effect to these changes.^{cvi}

820. One of the challenges the Committee has faced with this Bill has been the lack of available detail at the start of our scrutiny. The Committee believes that should the Bill be enacted, post-legislative scrutiny of the Bill, including the regulation-making powers contained within it, will be essential. We ask the Scottish Government to mandate a review of the regulation-making powers of the Bill and of any regulations made using these powers, within 3 years of each of the corresponding provisions coming into effect.^{cvi}

^{cv} Sandesh Gulhane and Tess White dissent from this recommendation.

^{cvi} Sandesh Gulhane and Tess White dissent from this recommendation.

^{cvi} Sandesh Gulhane and Tess White dissent from this recommendation.

Recommendation on the general principles of the Bill

821. The Committee draws its conclusions and recommendations on the Bill to the attention of the Parliament.^{cviii}
822. As reflected by the Independent Review of Adult Social Care, the Committee recognises the case for reform in social care to address existing inconsistencies in access across local authorities, to ensure consistent application of guidance and legislation, to address ongoing challenges in workforce, including terms and conditions of employment, and capacity, to improve commissioning and procurement and, ultimately and most importantly, to improve outcomes for those in receipt of social care and support. It therefore welcomes the intentions underlying the Scottish Government's proposals for the creation of a National Care Service.^{cix}
823. However, the Committee has expressed concern that the Scottish Government has so far been unable to provide details of amendments which it will bring forward to clarify the details of its revised proposals. While the Committee understands that this is a framework Bill, the lack of detail at this stage on what that framework will look like is concerning, and has made the work of the Committee less effective as a consequence.
824. The Committee is also concerned that the Scottish Government has so far been unable to articulate and communicate a model of how the proposed National Care Service would operate. We understand that the Scottish Government intends to share this information prior to the Stage 1 debate and look forward to receiving it.
825. The Committee's recommendation therefore remains conditional on the Scottish Government addressing the concerns it has set out in this report and agreeing to facilitate significant further scrutiny of the Bill at Stage 2, ahead of the formal Stage 2 proceedings taking place.^{cx}
826. The Committee notes calls from a key stakeholder to establish an expert legislative advisory group for the Bill to help guide the co-design process and encourages the Scottish Government to fully explore this possibility and report to the Committee prior to Stage 2.^{cx}
827. To enable it to undertake effective ongoing scrutiny of the Bill, the Committee calls on the Scottish Government to publish:

^{cviii} Sandesh Gulhane and Tess White dissent from this recommendation.

^{cix} Sandesh Gulhane, Carol Mochan, Paul Sweeney and Tess White dissent from this recommendation; There was a division on this paragraph. For further details, see Annex B.

^{cx} Sandesh Gulhane, Carol Mochan, Paul Sweeney and Tess White dissent from this recommendation; There was a division on this paragraph. For further details, see Annex B.

^{cx} There was a division on this paragraph. For further details, see Annex B.

- the full text of any amendments it intends to lodge at Stage 2;
- a marked-up version of the Bill as introduced incorporating these amendments in a highlighted format; and
- an updated Policy Memorandum and Explanatory Notes.^{cxii}

828. The Committee further gives due notice that, subsequent to receiving the items outlined above, it will require additional time to take further oral and written evidence from key stakeholders prior to commencing the formal process of considering and disposing of amendments at Stage 2.^{cxiii}

829. That being the case, in order for the Committee to be in a position to conclude its Stage 2 scrutiny of the Bill in a timely manner, it calls on the Scottish Government to publish the documents outlined above ideally prior to 26 February 2024 and certainly no later than 29 March 2024.^{cxiv}

830. Subject to these conditions, the Committee recommends that the general principles of the Bill be agreed to.^{cxv}

^{cxii} Sandesh Gulhane and Tess White dissent from this recommendation; There was a division on this paragraph. For further details, see Annex B.

^{cxiii} Sandesh Gulhane, Carol Mochan, Paul Sweeney and Tess White dissent from this recommendation; There was a division on this paragraph. For further details, see Annex B.

^{cxiv} Sandesh Gulhane, Carol Mochan, Paul Sweeney and Tess White dissent from this recommendation; There was a division on this paragraph. For further details, see Annex B.

^{cxv} Sandesh Gulhane, Carol Mochan, Paul Sweeney and Tess White dissent from this recommendation; There were two divisions on this paragraph. For further details, see Annex B.

Annex A: Oral and written evidence

The Committee took oral evidence on the Bill at the following committee meetings-

29th meeting, 2022 (Session 6) Tuesday 25 October 2022

- [Agenda](#)
- [Minutes](#)
- [Official Report](#)

30th meeting, 2022 (Session 6) Tuesday 1 November 2022

- [Agenda](#)
- [Minutes](#)
- [Official Report](#)

31st meeting, 2022 (Session 6) Tuesday 8 November 2022

- [Agenda](#)
- [Minutes](#)
- [Official Report](#)

32nd meeting, 2022 (Session 6) Tuesday 15 November 2022

- [Agenda](#)
- [Minutes](#)
- [Official Report](#)

33rd meeting, 2022 (Session 6) Tuesday 22 November 2022

- [Agenda](#)
- [Minutes](#)
- [Official Report](#)

35th meeting, 2022 (Session 6) Tuesday 29 November 2022

- [Agenda](#)
- [Minutes](#)
- [Official Report](#)

36th meeting, 2022 (Session 6) Tuesday 5 December 2022

- [Agenda](#)

- [Minutes](#)
- [Official Report](#)

37th meeting, 2022 (Session 6) Tuesday 13 December 2022

- [Agenda](#)
- [Minutes](#)
- [Official Report](#)

38th meeting, 2022 (Session 6) Tuesday 20 December 2022

- [Agenda](#)
- [Minutes](#)
- [Official Report](#)

29th meeting, 2023 (Session 6) Tuesday 3 October 2023

- [Agenda](#)
- [Minutes](#)
- [Official Report](#)

30th meeting, 2023 (Session 6) Tuesday 24 October 2023

- [Agenda](#)
- [Minutes](#)
- [Official Report](#)

31st meeting, 2023 (Session 6) Tuesday 31 October 2023

- [Agenda](#)
- [Minutes](#)
- [Official Report](#)

The Committee took written evidence on the Bill-

Responses submitted to the Committee's call for views are published on [Citizen Space](#).

Additional written evidence, where publishable, is available on the [Health, Social Care and Sport Committee webpage](#).

Annex B: Record of divisions in private

At the Committee's meeting on 20 February 2024, the Committee agreed a revised draft of this report for publication. The item for consideration of the draft report was taken in private. This annex records the outcome of the divisions held during that item.

Division 1

The Convener proposed that the Committee should uphold its previous decision not to allow the inclusion of explanatory text in footnotes recording dissent by individual members.

The proposal was agreed to by division: For 6 (Clare Haughey, Emma Harper, Gillian Mackay, Ruth Maguire, Ivan McKee, David Torrance); Against 3 (Sandesh Gulhane, Carol Mochan, Tess White); Abstentions 1 (Paul Sweeney).

Division 2

Carol Mochan and Paul Sweeney proposed the deletion of the final sentence of paragraph 822.

The proposal was disagreed to by division: For 4 (Sandesh Gulhane, Carol Mochan, Paul Sweeney, Tess White); Against 6 (Clare Haughey, Emma Harper, Gillian Mackay, Ruth Maguire, Ivan McKee, David Torrance); Abstentions 0.

Division 3

Carol Mochan and Paul Sweeney proposed the replacement of paragraph 825 with the following:

"Given the many concerns highlighted in this report and the Scottish Government's substantial revised proposals, which have not been fully scrutinised by the Committee during Stage 1 proceedings, the Committee is unable to approve the general principles of the Bill as introduced, without sight of the Scottish Government's amendments prior to the completion of Stage 1."

The proposal was disagreed to by division: For 4 (Sandesh Gulhane, Carol Mochan, Paul Sweeney, Tess White); Against 6 (Clare Haughey, Emma Harper, Gillian Mackay, Ruth Maguire, Ivan McKee, David Torrance); Abstentions 0.

Division 4

Carol Mochan and Paul Sweeney proposed the replacement of paragraph 826 with the following:

"The Committee notes calls from a key stakeholder to establish an expert legislative advisory group for the Bill to help guide the co-design process and requires the Scottish Government to establish this body before the completion of Stage 1."

The proposal was disagreed to by division: For 4 (Sandesh Gulhane, Carol Mochan, Paul Sweeney, Tess White); Against 6 (Clare Haughey, Emma Harper, Gillian Mackay, Ruth Maguire, Ivan McKee, David Torrance); Abstentions 0.

Division 5

Carol Mochan and Paul Sweeney proposed the replacement of paragraph 827 with the following:

"In order for the Committee to be able to undertake effective ongoing scrutiny of the Bill, ensuring any proposed changes by the Scottish Government are in line with the general principles of the Bill as introduced, the Committee therefore calls on the Scottish Government to publish before the conclusion of Stage 1:

- the full text of any amendments it intends to lodge at Stage 2;
- a marked-up version of the Bill as introduced incorporating these amendments in a highlighted format; and
- an updated Policy Memorandum and Explanatory Notes."

The proposal was disagreed to by division: For 3 (Sandesh Gulhane, Carol Mochan, Paul Sweeney); Against 7 (Clare Haughey, Emma Harper, Gillian Mackay, Ruth Maguire, Ivan McKee, David Torrance, Tess White); Abstentions 0.

Division 6

Carol Mochan and Paul Sweeney proposed the replacement of paragraph 828 with the following:

"The Committee further gives due notice that, subsequent to receiving the items outlined above, it will require additional time to take further oral and written evidence from key stakeholders prior to completing Stage 1, and therefore calls on the Scottish Government and Scottish Parliament to extend the Stage 1 deadline."

The proposal was disagreed to by division: For 4 (Sandesh Gulhane, Carol Mochan, Paul Sweeney, Tess White); Against 6 (Clare Haughey, Emma Harper, Gillian Mackay, Ruth Maguire, Ivan McKee, David Torrance); Abstentions 0.

Division 7

Carol Mochan and Paul Sweeney proposed the replacement of paragraph 829 with the following:

"The Committee requires the Scottish Government to publish the documents outlined above in advance of completion of Stage 1."

The proposal was disagreed to by division: For 4 (Sandesh Gulhane, Carol Mochan, Paul Sweeney, Tess White); Against 6 (Clare Haughey, Emma Harper, Gillian Mackay, Ruth Maguire, Ivan McKee, David Torrance); Abstentions 0.

Division 8

Carol Mochan and Paul Sweeney proposed the replacement of paragraph 830 with the following:

"In the absence of sight of the Scottish Government's Stage 2 amendments in advance of completion of Stage 1, which has prevented the committee from undertaking full and proper scrutiny, and without the establishment of an Expert Legislative Advisory Group, the

Committee therefore does not recommend that the general principles of the Bill are agreed to."

The proposal was disagreed to by division: For 4 (Sandesh Gulhane, Carol Mochan, Paul Sweeney, Tess White); Against 6 (Clare Haughey, Emma Harper, Gillian Mackay, Ruth Maguire, Ivan McKee, David Torrance); Abstentions 0.

Division 9

Sandesh Gulhane and Tess White proposed the replacement of paragraph 830 with the following:

"The Committee recognises that social care needs to be put on a sustainable footing and that reform is required. However, it does not agree to the general principles of the Bill because the lack of detail about the revised proposals has not allowed for proper scrutiny at Stage 1."

The proposal was disagreed to by division: For 3 (Sandesh Gulhane, Paul Sweeney, Tess White); Against 6 (Clare Haughey, Emma Harper, Gillian Mackay, Ruth Maguire, Ivan McKee, David Torrance); Abstentions 1 (Carol Mochan).

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- [2] Scottish Government. (2022, June 20). National Care Service (Scotland) Bill Policy Memorandum. Retrieved from <https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/national-care-service-scotland-bill/introduced/policy-memorandum-accessible.pdf> [accessed 27 February 2023]
- [3] Delegated Powers and Law Reform Committee. (2023, February 3). Delegated powers provisions in the National Care Service (Scotland) Bill at Stage 1. Retrieved from <https://digitalpublications.parliament.scot/Committees/Report/DPLR/2023/2/3/b2d8c07f-a91a-45c5-b4b4-94c0aac1c342#1f15f01c-9376-4029-a81f-bd4037397367.dita> [accessed 27 February 2023]
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- [6] Health, Social Care and Sport Committee, Summary of digital engagement on the National Care Service (Scotland) Bill. (2022). Retrieved from <https://www.parliament.scot/-/media/files/committees/health-social-care-and-sport-committee/ncs-digital-engagement-summary.pdf> [accessed 6 April 2023]
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- [8] Law Society of Scotland. (2022). Response to the call for views on the National Care Service (Scotland) Bill. Retrieved from https://yourviews.parliament.scot/health/national-care-service-bill/consultation/view_respondent?uuld=819869390 [accessed 27 February 2023]
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- [10] Faculty of Advocates. (2022). Response to the call for views on the National Care Service (Scotland) Bill. Retrieved from https://yourviews.parliament.scot/health/national-care-service-bill/consultation/view_respondent?uuld=962015585 [accessed 27 February 2023]
- [11] COSLA. (2022). Response to the call for views on the National Care Service (Scotland) Bill. Retrieved from https://yourviews.parliament.scot/health/national-care-service-bill/consultation/view_respondent?uuld=55566480 [accessed 27 February 2023]

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