



The Scottish Parliament  
Pàrlamaid na h-Alba

## Finance and Public Administration Committee

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By email

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Dear Maree,

### **Finance and Public Administration Committee scrutiny of the Financial Memorandum for the National Care Service (Scotland) Bill**

Thank you for your correspondence of 11 December 2023 and for the Scottish Government's response to the Finance and Public Administration Committee's report on the Financial Memorandum for the National Care Service (Scotland) Bill.

The Committee's report<sup>i</sup> on the original Financial Memorandum (FM) was published on 1 December 2022, following extensive scrutiny of the costs associated with the National Care Service (NCS) Bill and programme. Our report raised "significant concerns in relation to the costings within [the] Financial Memorandum", which we considered did "not provide best estimates of the costs the Bill gives rise to". We therefore requested "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".

Your response of 11 December 2023<sup>ii</sup> is accompanied by an updated FM, along with a summary of the financial implications of changes proposed to the Bill following the agreement between COSLA and the Scottish Government on shared accountability for the NCS (the shared accountability paper), as well as the related Programme

Business Case. We welcome this information and thank you and your officials for giving evidence to the Committee on 23<sup>iii</sup> and 25 January<sup>iv</sup>, when we explored these documents in detail.

We note the vision for the delivery of the NCS has developed significantly since the Bill was introduced in June 2022. Following a period of co-design and negotiation with COSLA and trade unions, an agreement was reached in July 2023 on shared accountability for the NCS. Under this agreement, legal accountability is to be shared between the Scottish Government, the NHS and local government, with local authorities maintaining responsibility for staff, assets and the delivery of services.

Your letter of 11 December highlights three significant changes which would impact on the finances associated with the Bill, should they be agreed to by Parliament in amendments to the Bill. These are the establishment of a new National Care Service Board, reforming Integration Authorities rather than creating new local Care Boards and local authorities retaining responsibility for all current functions and the delivery of social work and social care services, with no transfer of staff or assets. The timeline associated with implementation of the Bill has also been extended and costs have been re-phased across a 10-year period from 2022-23 to 2031-32.

These changes have a significant impact on the costs in the FM. The original FM presented costs ranging from £644 million to £1,261 million over a period of five years.

The updated FM, which is based on the proposals set out in the Bill as introduced, estimates costs of £880 million to £2,192 million over a period of 10 years.

Under the revised proposals to be introduced by amendment at Stage 2 of the Bill process, total costs over a 10-year period amount to between £631 million and £916 million, substantially lower than set out in the original and updated FM.

More broadly, the Committee heard that “the cost of the national care service, from 2031-32, would represent between 0.54 and 0.82%—less than 1 per cent—of [total] spend on social care” and “between 0.2 and 0.31% of the entire spend on health and social care”. The cost of the bill is, you therefore argued, “relatively small compared with the enormous amount that is being spent on social care [and] it is important that everyone understands that”. Other than for carer breaks, the Committee notes that none of this resource will go towards increasing the number of care staff or their wages.

This letter sets out below the Committee’s areas of concern in more detail.

### **Use of ‘framework’ legislation and timing of co-design**

Our December 2022 report sets out the Committee’s view that “the Scottish Government should not bring forward primary legislation unless it is based on a full and proper business case to allow stakeholders and the Parliament to scrutinise and take a view on the full cost estimates, ranges of costs, and margins of uncertainty”. We also raised concerns regarding the use of secondary legislation for setting out a significant level of detail on how the new NCS will work, noting that this approach

“limits scrutiny and does not provide the greatest opportunity to propose changes and shape its provisions”.

Your letter of 11 December 2023 notes our views on this matter and reiterates the Scottish Government’s commitment to co-design of the NCS system “so that the new structures and approaches work to reduce the historic gap between legislative intent and delivery. The Bill Team explained in evidence on 23 January 2024 that the shared accountability agreement “and everything that flows from that” resulted from the Scottish Government’s engagement with COSLA and the NHS and views received during ongoing co-design. They went on to say that “with co-design, depending on how that is approached, there can be some changes in costs”, adding that the engagement that has taken place since the Bill’s introduction has therefore led to “significant changes on accountability and governance” which are reflected in the revised costs for the Bill.

Asked whether the co-design process has now concluded, the Bill Team told the Committee that “as regards the primary legislation, we are confident that the co-design activity has given us a very comprehensive set of issues that we need to include, ... [and] the Scottish Government has set out the amendments that it intends to propose”. They went on to say that “the future co-design will be about how we deliver the frame of the bill” through secondary legislation.

During evidence, you were questioned on whether, rather than informing secondary legislation, the continuing co-design process could inform the Bill as it passes through Parliament to support more effective scrutiny of the costs associated with the final proposals. You responded—

“I suppose the issue is that this is a framework bill. We think that we have sufficient information. We have spoken to more than 1,000 people, and we have had a long process of co-design. We know, largely, what the primary legislation needs to change, but I do not think that there is any way round having the co-design process continue through secondary legislation, where we will collectively put a lot more meat on the bones.”

The Committee further noted during evidence that the longer the process of co-design continues, the greater the risk of delays to implementation of the Bill and associated increases in costs. The Bill Team suggested that time had been built into the programme to allow for changes in approach, but more time might be required should a significant issue be proposed during continuing co-design.

## **Continuing risks**

### Remaining concerns

Our December 2022 report on the original FM noted that, while “costings for all aspects of the Bill and associated elements [...] are difficult to predict due to the co-design approach being used for decision making, [...] even in the context of uncertainties, the Financial Memorandum should have included an indication of the potential scale of all costs associated with the Bill”. We specifically expected to see information on the potential financial impact of inflation and estimated costs

associated with IT projects, the transfer of local government staff, assets and liabilities, procurement, double-running, and VAT liability.

As noted earlier in this letter, the revised proposals and associated shared accountability paper provided by the Scottish Government in December 2023, remove a number of these uncertainties, including relating to the staff and assets transfers.

During evidence, we heard that the new proposals would mean no change to the current VAT liabilities of those delivering services, making these proposals “VAT neutral”. However, risks could remain if direct funding is provided to the Integration Authorities (IAs). The Bill Team said that, “given the specific and limited nature of the likely investments”, decisions on direct funding would be made on a case-by-case basis. The Committee understands that engagement is ongoing with HM Treasury in relation to potential remaining VAT liabilities associated with direct funding of IAs.

We previously expressed concerns regarding the absence in the original FM of any costs associated with the proposals for information sharing or the creation of an integrated health and social care record. There are no cost estimates provided in the updated FM (or original FM) relating to investment in integrated care record technology, on the basis that “the bill makes provision for information to be shared, rather than for the creation of the record itself”. However, we also heard from the Bill Team that the record will be “a core plank of our digital investment in health and social care”, with costings to be worked out “over the coming months and years”.

The Committee heard that, under the new proposals, ‘shared accountability’ will be discharged through the National Care Board, however, the exact format of the board, its precise functions and membership are still to be agreed and further detail set out in secondary legislation. The new FM assumes the National Care Board would be a non-departmental public body and Community Justice Scotland is used as a point of reference for the scale of the board and financial costs. However, in the absence of a clear vision regarding membership, scale and staffing requirement, costs for the board remain subject to significant variation.

Proposals to create a new public body are subject to the Scottish Government’s Ministerial Control Framework and require Cabinet approval. It is not for this Committee to make comment on the policy proposals in the Bill. However, within the context of our public service reform remit, the Committee draws the Minister’s attention to the recommendation in our Report on the Scottish Budget 2024-25 that a presumption against the creation of any new public bodies should be put in place until an evaluation of the size and structure of the public body landscape is completed.

The proposal to reform IAs rather than create new local care boards significantly reduces costs, which is welcome. Your response notes that there is scope for streamlining, co-operation and pooling of resources between IAs. However, it is unclear whether these potential scenarios have been reflected in the revised cost estimates presented. You were asked in evidence how the new arrangements would seek to resolve existing challenges with the structure of IAs and different priorities for funding of the local authorities and health boards. In response, you stated that “the

integration authorities will produce their local delivery plans, and the national board will look at those and will hold the authorities to account on delivery”, adding “I think that, if anything, that will improve the situation by ensuring that adequate funding is put against aspirations to ensure that delivery occurs”.

### Revised costings

Following proposed changes to the Bill as introduced and under the revised costings, the cost of carers’ breaks amount to a significantly higher proportion of the overall costs for the Bill than they did under the original FM. We note that work is continuing on establishing these costs and that significant variance remains. In the updated FM and shared accountability paper, costs for rights to breaks from caring amount to between £155 million and £225 million per year by 2034-35, and as explained in your letter, around half of the increase in the cost estimates is due to the revisions to 2023-24 unit cost prices and around half is due to inflation to nominal prices. We recognise the challenges in obtaining reliable data for unpaid carers and we therefore welcome the clarification of potential costs provided in the updated FM. We also note that you have recognised that “much care work is female work and is unseen and unaccounted for in our society”. However, the lack of data on unmet needs is a significant source of concern for the Committee. As discussed during evidence, unmet need “among people who are not successfully navigating the system and getting the care that they need” remains unknown at this stage and quantifying it will be essential to the Scottish Government’s ability to successfully deliver the Bill’s aims.

In the context of, as yet, unknown and unmet need, the Committee agrees that a system that is easier to access and navigate will inevitably lead to an increase in access to social care and, therefore, costs associated with the Bill.

Asked whether more unpaid carers than anticipated might come forward to access the right to breaks under the Bill, the Bill Team provided assurances to the Committee that the costs are not expected to exceed estimates and that “the high-level estimate of £148 million for what the cost could rise to in 2031-32 is, we think, at the top end of what it could be”. The Committee has reservations regarding the certainty of these estimates, particularly given the uncertainty around the number of unpaid carers and unmet need.

Issues related to workforce, the availability of staff and that of skills have also been explored by the Committee during recent evidence sessions. While we accept the Scottish Government’s argument that these are not direct costs arising from the Bill, given staff will not be directly employed by the government, recruitment is essential for the deliverability of the Bill. We note that much of the work being done to support the social care workforce is taking place outside the Bill, however, accurate costing for the additional staff component is essential to a thorough understanding of the overall costs associated with the National Care Service.

Costs to local authorities arising from the provisions of the Bill continue to be an area of interest to members of the Committee. The FM, in either its original or updated format, does not include any additional costs to councils. However, as discussed

during evidence on 25 January, councils may have to take on additional staff to deliver the aims of the Bill.

The Committee also explored in evidence the economic benefits arising from the establishment of a national care service. You told the Committee that “those benefits will come from having a social care system that delivers for people and from having a workforce that has better pay”. Specific benefits were cited including the impact on delayed discharges, future career prospects for young carers, and opportunities for both unpaid carers and those receiving care to contribute to the economy. Some detail is set out in the business case provided to the Committee, however, further work on the detail of the economic benefits is still being carried out.

### **Future monitoring of costs**

Given the significant and ongoing uncertainties and risks relating to the costs associated with this Bill, our December 2022 report on the original FM stated that—

“Should the Bill be enacted, implementation costs, savings and forecast expenditure should be monitored and reported on to the Finance and Public Administration Committee twice a year. The Committee further recommends that updates are provided in a similar format to the Financial Memorandum, rather than simply as part of a Programme Business Case to allow proper comparative scrutiny”.

We note your response that the Scottish Government “can provide regular updates on cost profiles as further decisions are made as part of the co-design process, and as other factors change”, and your explanation that “Local Finance Returns gather and collate social care expenditure on an annual basis, therefore it will not be possible to update these figures and calculations based on them more frequently”.

During evidence, you said you recognised that “this Committee, and others, have expressed concern about the framework nature of the Bill and the fact that, because it is enabling legislation, much of the detail is pinned down in secondary legislation”, adding that “I absolutely understand that concern; I hear you loud and clear”. We note your commitment “to improve that situation, I am mindful of how we could increase the level of scrutiny from the Committee, and others, at the stage of considering secondary legislation”.

In particular, the Committee notes the commitment you made in your response that “we are also developing specific, detailed, business cases to underpin the key aspects of the NCS proposals and will make these available to the committee in due course”.

Although future business cases can provide welcome clarity around the Scottish Government’s latest position, the Committee would have preferred for such information to be contained in the FM. We remain concerned at the reliance on business cases to supplement the original FM and consider this will pose challenges to future scrutiny of implementation costs, not least due to issues of comparability of different documents and the ability to read across between the FM and separate business cases. We further note that the current Programme Business Case

provided with the new FM does not contain financial information in the main document.

### **Consistency of presentation in Financial Memorandums**

In our December 2022 report, we asked for updated costings to be provided in a similar format to the original FM. The updated FM provided by the Scottish Government sets out in tracked changes where the costs have been revised, due for example, to inflation. This presentation format is very helpful as it provides a direct read across from the original FM, as we had previously requested. At that time, however, we did not expect to see the scale of changes proposed.

Nevertheless, although the updated FM no longer reflects the significant revisions proposed to the Bill, we consider that a similar approach will be useful in future in relation to other FMs where updated costs are required.

The Committee also takes this opportunity to raise a more general point of concern relating to the consistency of presentation of FMs accompanying Scottish Government bills.

We discussed, during evidence on this FM, the use of CPI<sup>1</sup> as a measure of inflation rather than the customary GDP<sup>2</sup> deflator, which is usually used by Government in its figures, including the Scottish Budget. The Bill Team explained that CPI has been used in this case “because we are trying to set out a realistic cost base [and we considered] it would be better to edge towards potentially estimating slightly higher than lower”.

While we have sympathy for the rationale behind this approach, the Committee believes that it is crucial that the same measures of inflation are used throughout Government to enable comparability of costs across all areas of the Scottish Budget.

Questions were also raised during evidence regarding the rounding of figures to the nearest million, which has resulted in any costs below £0.5 million being rounded down to zero. We note the Bill Team’s explanation that the overall totals are based on specific numbers rather than being rounded up or down and we welcome their offer to present detailed breakdowns of the rounded figures. However, it is essential for transparency and scrutiny that FMs provide “best estimates”, as required under the Parliament’s Standing Orders, and we therefore ask that precise figures are consistently presented in future FMs.

### **Further information requested during evidence**

Finally, while we acknowledge the enhanced costings and additional information presented to the Committee with the updated FM, uncertainties remain, as set out in more detail above.

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<sup>1</sup> Consumer Price Index inflation

<sup>2</sup> Gross Domestic Product

During oral evidence, the Bill Team committed to providing to the Committee the following information:

- the range of costs associated with the Bill as introduced and revised costs reflecting proposed changes, using the GDP deflator as measure of inflation,
- a detailed calculation behind the revised costs for rights to breaks from caring
- a breakdown of current Scottish Government staff costs associated with the development of the national care service, including the number of staff, salaries and grades,
- an assumed breakdown of staffing for the proposed National Care Board,
- a breakdown of the assumptions on the numbers of staff required to deliver the bill, including social care staff, people who are directly related to the delivery of the national care service and local support, and
- details of the real-terms equivalent for the £840 million allocated to social care staff.

We request this information in advance of the Stage 1 debate on the Bill.

## **Conclusions**

**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.**

**The reduction in the maximum cost variance from 225% to 45%, if one compares the ten-year costings in the new FM with the original proposals, is a welcome indicator of the work undertaken to provide more accurate, as well as lower costs.**

**Nevertheless, the Committee still has concerns regarding the approach taken by the Scottish Government to introduce a ‘framework’ Bill and use ‘co-design’ to develop the detail of the policy as the Bill progresses through Parliament. Had this Committee accepted the original Financial Memorandum presented by the Scottish Government, it would have led to significant unnecessary expense to the public purse at a time of severe strain on Scotland’s public finances.**

**We heard in evidence that the Scottish Government’s ‘co-design’ process continues to support development of the policy detail to be included in secondary legislation after the Bill is passed. This presents considerable challenges for this Committee to scrutinise the financial implications of the policy as it continues to develop beyond Stage 1.**

**We consider that understanding the economic benefits and improved delivery of care to be provided by the proposed National Care Service is crucial in assessing the overall cost-benefit of the proposals. However, insufficient information is currently available to fully allow for such analysis. While we**



agree in principle that shifting the spend to early intervention and prevention will lead to efficiency savings, it is difficult to quantify the overall benefits of the proposals in context of significant unknowns, including the lack of data on unpaid carers and unmet need.

The Committee notes that implementation of the Bill is being rephased over a longer period of time and understands that this is in part due to the pressures on public sector funding. Implementation will now not begin for several years after the FM was produced, compounding the risks that costs will rise in the intervening period.

We also note with concern officials' evidence that the National Care Service is a central component of the Scottish Government's investment strategy for sustainable public services.

We have set out specific concerns relating to the absence of, or incomplete, cost estimates in the updated FM, shared accountability paper and Programme Business Case in the body of this letter. While we acknowledge the Scottish Government's commitment to keep the Committee updated on the detail of costs as they develop, the piecemeal nature of providing various updates in different formats is not conducive to effective parliamentary scrutiny. We therefore ask, where possible, that updates provided are presented in a similar format to the FM.

Engagement with stakeholders is crucial to ensuring that the Scottish Government has the best available evidence to support policy development. It must however take place prior to legislation being introduced in Parliament, in line with established practice. Radical changes to provisions in a Bill during its passage makes scrutiny difficult.

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.

I am copying this letter to the Convener of the Health, Social Care and Sport Committee for their information.

Yours sincerely

**Kenneth Gibson MSP**  
**Convener, Finance and Public Administration Committee**

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<sup>i</sup> [Report on the Financial Memorandum for the National Care Service \(Scotland\) Bill \(azureedge.net\)](https://www.azureedge.net)

<sup>ii</sup> [Letter from the Minister for Mental Wellbeing and Social Care to the Convener of 11 December 2023 \(parliament.scot\)](https://www.parliament.scot)

<sup>iii</sup> [Finance and Public Administration Committee 4th Meeting, 2024 | Scottish Parliament Website](https://www.parliament.scot)

<sup>iv</sup> [Finance and Public Administration Committee 5th Meeting, 2024 | Scottish Parliament Website](https://www.parliament.scot)