National Care Service (Scotland) Bill — Stage 2

Section 13

Maree Todd

41 In section 13, page 7, line 17, leave out from <of> to end of line 19 and insert <, in relation to public social care services, of independent—

(a) information,

(b) advice, and

(c) advocacy.

( ) For the purposes of subsection (1), a public social care service is a service provided in pursuance of a function conferred by virtue of an enactment listed in the schedule of the Public Bodies (Joint Working) (Scotland) Act 2014.>

Section 36

Maree Todd

42 In section 36, page 16, line 30, after <that> insert <public health and social care>

Maree Todd

43 In section 36, page 16, line 30, leave out from <by> to end of line 33

Maree Todd

44 In section 36, page 17, line 3, leave out subsection (3) and insert—

<(3) For the purposes of this section, a public health and social care service is a service provided in pursuance of—

(a) a function conferred by virtue of an enactment listed in the schedule of the Public Bodies (Joint Working) (Scotland) Act 2014, or

(b) a function that is exercisable by—

(i) a health board constituted under section 2(1)(a) of the National Health Service (Scotland) Act 1978, or

(ii) a special health board constituted under section 2(1)(b) of that Act.

(4) For the avoidance of doubt, regulations under subsection (1) may provide for information to be shared in order for it to be used not only directly in the performance of the functions mentioned in subsection (3) but also in the performance of any function that supports the efficient and effective provision of public health and social care services (for example, the Scottish Ministers' functions under section 58 of the Regulation of Care (Scotland) Act 2001).>

Section 37

Maree Todd

45 Leave out section 37 and insert—

<CHAPTER

INFORMATION STANDARDS

Power to produce standards

(1) For the purposes of this Chapter, an information standard is a document, produced by the Scottish Ministers, setting out requirements in relation to the processing of Scottish health or social care information.

(2) An information standard may set out requirements by reference to another document (including a document which is not in existence when the standard is produced).

(3) For any requirement it sets out, an information standard must specify—

(a) to whom the requirement applies (see section (*Persons to whom an information standard may apply*)), and

(b) the information in relation to the processing of which the requirement applies.

(4) The Scottish Ministers must make any information standard they produce publicly available on the information-standards website.>

After section 37

Maree Todd

46 After section 37, insert—

<Persons to whom standards may apply

(1) The persons to whom a requirement set out in an information standard may be made to apply are—

(a) a local authority,

(b) an integration joint board established by order under the Public Bodies (Joint Working) (Scotland) Act 2014,

(c) a health board constituted under section 2(1)(a) of the National Health Service (Scotland) Act 1978,

(d) a special health board constituted under section 2(1)(b) of that Act,

(e) the Common Services Agency for the Scottish Health Service,

(f) Healthcare Improvement Scotland,

(g) the Scottish Ministers,

(h) a person providing independent health care services as defined by section 10F of the National Health Service (Scotland) Act 1978,

(i) a person providing a care service as defined by section 47 of the Public Services Reform (Scotland) Act 2010,

(j) a person providing social work services as defined by section 48 of that Act,

(k) a person who—

(i) provides a product or service to a person mentioned in any of paragraphs (a) to (j), and

(ii) knows, or ought to know, that the product or service is (or is to be) used for, or in connection with, electronically processing Scottish health or social care information.

(2) The Scottish Ministers may by regulations modify this section so as to change, or clarify, the list of persons to whom an information standard may be made to apply.>

Maree Todd

47 After section 37, insert—

<Duty to comply with standards

(1) A person to whom a requirement set out in an information standard applies must comply with it.

(2) The Scottish Ministers may by regulations provide for a civil sanction to be imposed on a person who breaches the duty under subsection (1).>

Maree Todd

48 After section 37, insert—

<Withdrawal of standards

(1) The Scottish Ministers may withdraw an information standard at any time by giving notice on the information-standards website that it is withdrawn.

(2) When an information standard is withdrawn—

(a) the duty under section (*Power to produce standards*)(4) to make it publicly available ceases to apply, and

(b) the duty under section (*Duty to comply with standards*)(1) to comply with it ceases to apply.>

Maree Todd

49 After section 37, insert—

<Interpretation of Chapter (*Information standards*)

(1) In this Chapter—

"information-standards website" means the website maintained by, or on behalf of, the Scottish Ministers with an internet domain name specified by the Scottish Ministers by regulations,

"processing" includes doing any of the things referred to in paragraphs (a) to (f) of section 3(4) of the Data Protection Act 2018,

"Scottish health or social care information" means information concerning, or connected with, the provision in Scotland of health care or a social service.

(2) For the purposes of the definition of "Scottish health or social care information"—

"health care" means a service for or in connection with the prevention, diagnosis or treatment of illness,

"illness" is to be construed in accordance with section 108(1) of the National Health Service (Scotland) Act 1978,

"social service" has the same meaning as it has in Part 5 of the Public Services Reform (Scotland) Act 2010 (see section 46(2) of that Act).

(3) By regulations, the Scottish Ministers—

(a) must amend the definition of "information-standards website" so that it specifies an internet domain name, and

(b) may subsequently amend that definition so as to change the internet domain name it specifies.>

Section 40

Maree Todd

50 In section 40, page 21, line 16, leave out subsection (2) and insert—

<( ) After section 78 insert—

"Regulations under section 78: visits to and by adult care home residents

78A Identification of Essential Care Supporter

(1) The Scottish Ministers must exercise the power under section 78(2) to impose a duty on providers of care home services for adults to—

(a) use their best endeavours to identify for every resident of accommodation provided by the care home service at least one individual as an Essential Care Supporter, and

(b) maintain a record of the Essential Care Supporters identified.

(2) The Scottish Ministers must set out in regulations under section 78(2)—

(a) the criteria to be applied in determining who a resident's Essential Care Supporter is, and

(b) the process by which that determination is to be made.

(3) The duty described by subsection (1) must be framed so that a provider of a care home service must have regard to the code published under section 78C in carrying out the duty.

78B Right to visits: care home residents

(1) The Scottish Ministers must exercise the power under section 78(2) to impose a duty on providers of care home services for adults to facilitate visits—

(a) to residents of accommodation provided by the care home service ("internal visits"),

(b) by residents of accommodation provided by the care home service ("external visits").

(2) The duty must be framed so that a provider of a care home service may only suspend visits (specifically or generally) if the provider has reasonable cause to believe that it is essential to do so to prevent a serious risk to the life, health or wellbeing of—

(a) in the case of internal visits, persons at the accommodation,

(b) in the case of external visits (either or both)—

(i) persons at the accommodation, or

(ii) persons at the place where the visit would take place, but for the suspension.

(3) The duty must also be framed so that, where a provider of a care home service has suspended visits due to a serious risk of a kind described in subsection (2), the provider must take all reasonable steps to eliminate or substantially mitigate the risk so that the suspension of visits can be lifted as soon as practicable.

(4) The duty must also be framed so that, even in cases where a provider of a care home service has reasonable cause to believe that suspending visits is essential to prevent a serious risk, the provider must continue to facilitate visits to or by a resident if—

(a) either—

(i) the provider has reasonable cause to believe that the resident will die before the suspension of visits is lifted, or

(ii) the provider has reasonable cause to believe that—

(A) the suspension of visits is causing, or is likely to cause, serious harm to the resident's health or wellbeing, and

(B) that harm outweighs the serious risk, and

(b) the resident and the person visiting, or being visited by, the resident agree to take any action or precaution that the provider reasonably considers would mitigate the serious risk to any extent (other than a negligible one).

(5) The duty must also be framed so as to create a presumption that the suspension of visits to a resident by the resident's Essential Care Supporter is likely to cause serious harm to the resident's health or wellbeing.

(6) Subsection (4) does not preclude the duty from being framed so as to include other circumstances in which visits to or by a resident must continue to be facilitated.

(7) The duty must also be framed so that a provider of a care home service must have regard to the code published under section 78C in carrying out the duty.

78C Code of practice on care home residents' right to visits

(1) The Scottish Ministers must prepare a code of practice providing guidance on fulfilling the duties imposed in accordance with sections 78A(1) and 78B(1).

(2) The code must provide that in fulfilling those duties the following are to be treated as paramount considerations—

(a) the importance to residents of visits in—

(i) promoting their dignity,

(ii) promoting their physical and mental health and emotional wellbeing, and

(iii) realising their human rights,

(b) the importance of recognising and supporting the vital role that people who are not care home staff (for example close relatives and friends) play, alongside staff, in providing their loved ones with regular care (including companionship, personal support and advocacy).

(3) The code may—

(a) provide guidance on how to—

(i) implement an effective visiting policy,

(ii) adapt personal care plans to include residents' visiting preferences or requirements,

(b) set out what the Scottish Ministers consider constitutes best practice in facilitating visits,

(c) give examples of—

(i) the means which providers could use to eliminate or mitigate a serious risk of a kind described in section 78B(2),

(ii) factors which may be taken into account in making an assessment about whether the harm caused to a resident in suspending visits outweighs the risk,

(d) any other guidance relating to fulfilling the duties mentioned in subsection (1) that the Scottish Ministers consider appropriate.

(4) The Scottish Ministers must—

(a) publish the code in such manner as they consider appropriate within the period of one year beginning with the day on which this section comes into force,

(b) review and, if they consider it appropriate, prepare and publish a new version of the code in such manner as they consider appropriate by the end of each review period, and

(c) take such steps as they consider appropriate to promote awareness of the code to providers of care home services for adults.

(5) Before publishing any version of the code, the Scottish Ministers must consult—

(a) SCSWIS,

(b) Public Health Scotland,

(c) such persons, or groups of persons, who they consider represent the interests of—

(i) providers of care home services for adults,

(ii) the residents of accommodation provided by such care home services, and

(iii) the families of such residents.

(6) In this section, "review period" means the period of 5 years beginning with the day on which the latest version of the code was published.

78D Interpretation of sections 78A to 78C

In sections 78A to 78C—

"care home service for adults" has the meaning given in section 82F,

"Essential Care Supporter", in relation to a resident of accommodation provided by a care home service, means the individual recorded as the resident's Essential Care Supporter in fulfilment of the duty imposed in accordance with section 78A(1),

"provider", in relation to a care home service, is to be construed in accordance with the definition of "provide" in section 105.".>

Section 41

Maree Todd

51 In section 41, page 22, leave out line 5

Maree Todd

52 In section 41, page 22, line 6, leave out from <to> to end of line 8 and insert <that constitutes, or is otherwise connected to, the provision of a service in pursuance of a function conferred by virtue of an enactment listed in the schedule of the Public Bodies (Joint Working) (Scotland) Act 2014, and>

Maree Todd

53 In section 41, page 22, leave out lines 16 to 27 and insert—

<(aa) it is an organisation that exists solely to provide benefits for society or the environment,

(ab) it is neither—

(i) established by an enactment, nor

(ii) subject to control by a person established by an enactment,

(ac) its profits (if any) are not expended except by way of—

(i) reinvestment with a view to providing the benefits for society or the environment that the organisation exists to provide, or

(ii) distribution to the community that the organisation exists to provide benefits to.

( ) For the purpose of paragraph (5)(ab), an organisation is subject to the control of a person established by an enactment if a decisive influence over the strategic objectives and significant decisions of the organisation is exercised by—

(a) a person established by an enactment,

(b) a person that, by virtue of this paragraph, would itself be treated as subject to the control of a person established by an enactment,

(c) more than one person described by sub-paragraph (a) or (b) acting jointly.>

Maree Todd

54 In section 41, page 22, line 30, leave out <definition> and insert <meaning>

After section 41

Maree Todd

55 After section 41, insert—

<Power to change threshold for Public Contracts (Scotland) Regulations 2015 to apply

(1) The Public Contracts (Scotland) Regulations 2015 are modified as follows.

(2) After regulation 5A insert—

"Amendment of threshold for contracts related to health and social care

5B.—(1) The Scottish Ministers may by regulations modify regulation 5 so as to change the estimated value that a relevant contract must have, or exceed, in order for these Regulations to apply in relation to it.

(2) In paragraph (1), "a relevant contract" means a public service contract that is exclusively for the provision of a service, or more than one service, covered by a CPV code mentioned in regulation 76A(4)(d).".>

Before section 42

Maree Todd

56 Before section 42, insert—

<Scottish Social Services Council's power to require information

(1) The Regulation of Care (Scotland) Act 2001 is modified as follows.

(2) After section 50 insert—

"Information from third parties

50A Council's power to require information

(1) The Council may, by notice in writing, require a person to provide it with information.

(2) A notice under subsection (1) must specify—

(a) the information required,

(b) the timescale within which it is to be provided.

(3) Where information is not provided in accordance with a notice under subsection (1), the Council may apply to the sheriff for an order requiring the person to provide the information within such time as the sheriff may order.

(4) The sheriff may make an order under subsection (3) only if it appears to the sheriff that the information sought is relevant to the exercise of a function of the Council set out in this Part.

(5) This section does not permit or require the provision of information in breach of a prohibition or restriction on the disclosure of information arising by virtue of an enactment or rule of law.".

(3) The italic heading immediately preceding section 57A becomes "Notification of dismissal etc. for misconduct".

(4) Section 57B (provision of other information to Council by employer) is repealed.>

Maree Todd

57 Before section 42, insert—

<Delegation of functions under Part 1 of the Regulation of Care (Scotland) Act 2001

(1) The Regulation of Care (Scotland) Act 2001 is modified as follows.

(2) In section 58(4) (functions of the Scottish Ministers under Part 1), after "section" insert "(to such extent as they choose)".>

After section 43

Maree Todd

58 After section 43, insert—

<*Protection of adults at risk of harm*

Provision of information by and to health care services

(1) The Adult Support and Protection (Scotland) Act 2007 is modified as follows.

(2) After section 5 insert—

"5A Disclosure of information by and to certain health care services

(1) Where a relevant health care service knows or believes—

(a) that a person is an adult at risk, and

(b) that action needs to be taken (under this Part or otherwise) in order to protect that person from harm,

the relevant health care service may report the facts and circumstances of the case to the council for the area in which it considers the person to be.

(2) A relevant health care service may, of its own accord, provide any information to a public body or office-holder listed in, or specified under, section 5(1) for the purpose of enabling or assisting a council in relation to its duty to make inquiries under section 4.

(3) The public bodies or office-holders listed in, or specified under, section 5(1) may, so far as consistent with the proper exercise of their functions, provide any information to a relevant health care service for the purpose of enabling or assisting a council in relation to its duty to make inquiries under section 4.

(4) For the purposes of this section, a "relevant health care service" means an undertaking which consists of or includes the provision of services by—

(a) a doctor,

(b) a dental practitioner,

(c) a dental care professional,

(d) a nurse,

(e) a midwife,

(f) a registered pharmacist,

(g) a registered pharmacy technician,

(h) an occupational therapist,

(i) a paramedic,

(j) an optometrist.

(5) In this section—

"dental practitioner" has the meaning given in section 108(1) of the National Health Service (Scotland) Act 1978,

"dental care professional" has the meaning given in section 10F(2B) of that Act,

"registered pharmacist" has the meaning given in section 108(1) of that Act,

"registered pharmacy technician" has the meaning given in section 10F(2B) of that Act,

"occupational therapist" means a person who is registered in the part of the register maintained by the Health and Care Professions Council under article 5 of the Health Professions Order 2001 (S.I. 2002/254) relating to occupational therapists,

"paramedic" means a person who is registered in the part of the register maintained by the Health and Care Professions Council under article 5 of the Health Professions Order 2001 relating to paramedics,

"optometrist" means a person registered in the register of optometrists maintained under section 7 of the Opticians Act 1989.

(6) The Scottish Ministers may by order modify subsections (4) and (5) so as to change or clarify the types of undertaking which are to be treated as a relevant health care service for the purposes of this section.".

(3) In section 44 (committee procedure), for subsection (2) substitute—

"(2) But those procedures must allow committee meetings to be attended by—

(a) a representative of—

(i) the Mental Welfare Commission for Scotland,

(ii) the Public Guardian,

(iii) SCSWIS (where it has not nominated a representative to be a member of the Committee), and

(b) any other person as the Scottish Ministers may by order specify.".

(4) After section 45 insert—

"45A Disclosure of information to the Committee by certain health care services

(1) A relevant health care service may provide any information to an Adult Protection Committee which the Committee requests.

(2) A Committee may only request information under this section if it appears to it to be appropriate for the purpose of performing its functions.

(3) For the purposes of this section, a "relevant health care service" has the meaning given in section 5A(4).".

(5) In section 46 (biennial report), in paragraph (vi), for "public body or office-holder" substitute "person".

(6) In section 78 (orders), in subsection (4), after "section" insert "5A or".>

Maree Todd

59 After section 43, insert—

<*Government social work advice*

National Chief Social Work Adviser and National Social Work Agency

(1) The Social Work (Scotland) Act 1968 is modified as follows.

(2) After section 5 insert—

"5ZA National Chief Social Work Adviser and National Social Work Agency

(1) The Scottish Ministers are to—

(a) designate a member of their staff as the National Chief Social Work Adviser to—

(i) advise them on policy in relation to social work and the protection of individuals at particular risk of harm, and

(ii) prepare an annual report for the Scottish Ministers on the state of social work services and the social work workforce,

(b) organise other members of their staff into an agency named the National Social Work Agency to support the National Chief Social Work Adviser.

(2) The member of staff designated as the National Chief Social Work Adviser must be registered as a social worker in a register that is a relevant register within the meaning of section 52(2) of the Regulation of Care (Scotland) Act 2001.".>

Section 44

Maree Todd

60 Leave out section 44

Section 46

Maree Todd

61 In section 46, page 23, leave out lines 30 to 33 and insert—

<( ) section 13 may modify any enactment other than this Act,>

Maree Todd

62 In section 46, page 24, line 2, leave out <4,>

Maree Todd

63 In section 46, page 24, line 2, leave out <15, 27, 28, 29>

Maree Todd

64 In section 46, page 24, line 2, leave out <and 36> and insert <36, (*Persons to whom standards may apply*) and (*Duty to comply with standards*)>

Maree Todd

65 In section 46, page 24, line 3, leave out subsection (4)

Maree Todd

66 In section 46, page 24, line 10, leave out subsection (6)

Section 48

Maree Todd

67 In section 48, page 24, line 19, leave out <National Care Service (Scotland) Act 2023> and insert <Care Reform (Scotland) Act 2025>

Long Title

Maree Todd

68 In the long title, page 1, line 1, leave out <to establish the National Care Service;>