



OFFICIAL REPORT
AITHISG OIFIGEIL

Health, Social Care and Sport Committee

Tuesday 25 February 2025

Session 6



The Scottish Parliament
Pàrlamaid na h-Alba

Tuesday 25 February 2025

CONTENTS

	Col.
INTERESTS.....	1
NATIONAL CARE SERVICE (SCOTLAND) BILL: STAGE 2	2

HEALTH, SOCIAL CARE AND SPORT COMMITTEE
6th Meeting 2025, Session 6

CONVENER

*Clare Haughey (Rutherglen) (SNP)

DEPUTY CONVENER

*Paul Sweeney (Glasgow) (Lab)

COMMITTEE MEMBERS

*Joe FitzPatrick (Dundee City West) (SNP)

*Sandesh Gulhane (Glasgow) (Con)

*Emma Harper (South Scotland) (SNP)

*Gillian Mackay (Central Scotland) (Green)

*Carol Mochan (South Scotland) (Lab)

David Torrance (Kirkcaldy) (SNP)

*Elena Whitham (Carrick, Cumnock and Doon Valley) (SNP)

*Brian Whittle (South Scotland) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Jackie Baillie (Dumbarton) (Lab)

Alex Cole-Hamilton (Edinburgh Western) (LD)

Jackie Dunbar (Aberdeen Donside) (SNP) (Committee Substitute)

Maree Todd (Minister for Social Care, Mental Wellbeing and Sport)

CLERK TO THE COMMITTEE

Alex Bruce

LOCATION

The Sir Alexander Fleming Room (CR3)

Scottish Parliament

Health, Social Care and Sport Committee

Tuesday 25 February 2025

[The Convener opened the meeting at 09:00]

Interests

The Convener (Clare Haughey): Good morning, and welcome to the sixth meeting in 2025 of the Health, Social Care and Sport Committee. I have received apologies from David Torrance and I welcome Jackie Dunbar to the committee as substitute. The first item is for Jackie Dunbar to declare any relevant interests.

Jackie Dunbar (Aberdeen Donside) (SNP): Thank you, convener. I have no relevant interests.

National Care Service (Scotland) Bill: Stage 2

09:00

The Convener: Our second item today is consideration of the National Care Service (Scotland) Bill at stage 2. I welcome the Minister for Social Care, Mental Wellbeing and Sport.

I will briefly explain the procedure that we will follow during today's proceedings for anyone who is watching. Members should have with them a copy of the bill, the marshalled list of amendments and the groupings. Those documents are available on the bill web page on the Scottish Parliament's website, for anyone who is observing.

I will call each amendment individually in the order on the marshalled list. The member who lodged the amendment should either move it or say, "Not moved", when it is called. If that member does not move it, any other member present may do so.

The groupings of amendments set out the amendments in the order in which they will be debated. There will be one debate on each group of amendments. In each debate, I will call the member who lodged the first amendment in the group to speak to and move that amendment and to speak to other amendments in the group. I will then call other members with amendments in the group to speak to but not move their amendments, and to speak to other amendments in the group if they wish to do so.

I will then call any other members who wish to speak in the debate. Members wishing to speak should indicate that by catching my or the clerk's attention. I will then call the minister, if she has not already spoken in the debate. Finally, I will call the member who moved the first amendment in the group to wind up and to indicate whether he or she wishes to press or seek to withdraw the amendment. If the amendment is pressed, I will put the question on the amendment. If a member wishes to withdraw an amendment after it has been moved and debated, I will ask whether any member present objects. If there is an objection, I will immediately put the question on the amendment.

Later amendments in a group are not debated again when they are reached. If they are moved, I will put the question on them straight away. If there is a division, only committee members are entitled to vote. Voting is by a show of hands. It is important that members keep their hands raised clearly until the clerk has recorded their names. If there is a tie, I must exercise a casting vote.

In normal circumstances, the committee is also required to formally consider and agree each section of the bill. However, in this case, since a number of amendments seek to leave out entire sections of the bill, a separate decision on those sections will not be required. When a separate decision is needed, I will put the question at the appropriate point.

Section 1—The National Care Service Principles

The Convener: Amendment 1, in the name of the minister, is grouped with amendments 2 to 14, 96, 15 to 39, 60 to 63, 65, 66, 40, 158, 67 and 68. I point out that, if amendment 96 is agreed to, I cannot call amendment 15 because of pre-emption. In addition, amendments 40, 158 and 67 are direct alternatives; they can all be moved and decided on. The text of whatever amendment is the last agreed to is what will appear in the bill.

I call the minister to move amendment 1 and speak to all amendments in the group.

The Minister for Social Care, Mental Wellbeing and Sport (Maree Todd): As was set out in my statement to Parliament on 23 January, we remain committed to delivering our Scottish national care service. However, I have concluded that we must achieve that without legislating for structural reform at this time, but must instead pursue a different means of delivering on our goals. The result of that decision is that part 1 of the bill, as introduced, requires to be removed. That would be done by amendments 1 to 39, which are in my name.

The removal of part 1 has the most significant impact on the establishment of care boards and the transfer of responsibility for community health, social work and social care services to the Scottish ministers. However, strengthening national oversight and support for the system remains a priority.

We are working to establish for the services an advisory board that will be informed by lived experience. We still intend to pursue several areas of local reform through means other than primary legislation.

We will continue to give further consideration to the national care service principles. In addition, we will proceed with publishing a co-designed charter of rights and responsibilities, independent of the bill.

A revised programme to improve complaint services will also be developed and delivered. Independent information, advice and advocacy is an area in which provision in the bill would still be helpful. Amendment 15 would therefore move section 13 to part 3 of the bill, and we will discuss amendments to it in a later group—I should say

that we will discuss those amendments if Brian Whittle's amendment 96 is not agreed to, because it would remove section 13 from the bill entirely. I urge members not to support it.

Amendments 60 to 68 are technical amendments to the remaining parts of the bill to reflect the removal of part 1. There are competing amendments for changing the bill's short title to reflect the removal of part 1. It will come as no surprise to members that I invite them to support amendment 67 over amendment 40 from Alex Cole-Hamilton and amendment 158 from Brian Whittle.

Brian Whittle's proposed short title of "Social Care and Support" would not be an accurate description of the bill, because it refers only to social care, whereas part 2 of the bill is also about healthcare. Alex Cole-Hamilton's proposal for "Care and Carers" is not technically inaccurate, but it places the emphasis on carers, which, although it is an important element of the bill, is not the only important element. I have therefore proposed "Care Reform" on the basis that it is a broader description.

I move amendment 1.

Brian Whittle (South Scotland) (Con): First, I place on the record my sincere thanks to the legislation team for processing my many amendments, which were lodged in such an unreasonably short time.

Across the Parliament, we all recognise the need for reform of our social care sector. We all know that our current model is unsustainable and we all want to see the change that is necessary to give social care in Scotland a sustainable and secure future. I question whether the rubble of the Scottish National Party's National Care Service (Scotland) Bill is the best foundation for a sustainable social care sector.

I make it clear that we would support many of the actions that are proposed in the bill, but to deliver them through this cut-and-shut legislation, and through Government amendments that have been lodged at the last minute, would do them a disservice and would risk storing up problems for the future. Indeed, given the Scottish Government's fondness for secondary legislation, I am unsure why, when that cross-party support exists, it does not intend to use that approach.

My amendments would give MSPs from all parties the opportunity to agree that legislation for serious social care reform should begin with a fresh sheet of paper, not with the half-shredded National Care Service (Scotland) Bill. Should members support my amendments and send the bill back to the drawing board, the Scottish Conservatives are committed to working across

the Parliament on new, properly planned legislation.

If members choose to reject my amendments and continue to build this house on sand, we will seek to make the best of the legislation, but I do not agree that that approach will produce the kind of legislation that social care deserves. I hope that MSPs will agree to scrap the bill and build something better.

On amendment 158, the bill as it looks in February 2025 is very different from the objectives that it set out to achieve. Its name needs to reflect its contents, which now represent much more technical and specific changes rather than radical reform. In fact, it does not represent the kind of radical social care reform that was required by either the Feeley report or the Scottish Government's ambitions for what was to be the national care service. Scottish Care has been clear about the need to use the language of social care distinctively rather than the often ambiguous terminology of "care" when detailing aspects of formal support planning and provision. The importance of that is increasingly recognised at Government level and should be reflected in the bill's name, given that, in its current iteration, the bill focuses more specifically on elements of social care than on wider changes.

If the legislation was called the "Social Care and Support (Scotland) Act", it would represent a clear and unambiguous approach to what the bill does and does not achieve. It would not take away from the need for progressing with urgent and radical social care reform, but it would acknowledge that the bill is now premised on more functional changes to existing practices and is no longer the key driver for transformative approaches.

Alex Cole-Hamilton (Edinburgh Western) (LD): I am very pleased to be here today and to speak to amendment 40, in my name, which seeks to rename the National Care Service (Scotland) Bill as the "Care and Carers (Scotland) Bill".

As the committee will know, from the very start, the Scottish Liberal Democrats stood against the bill in its original form and its principles. We did so because it sought to centralise social care services and remove power from communities and care professionals, who are best placed to exercise that power for the good of both those who provide care and those who receive it.

In the light of opposition from all other parties, I am pleased that the Government has finally decided to change course and abandon the centralising ministerial takeover of social care. However, it is unfortunate that it has taken four years and £30 million of taxpayers' money being wasted on that premise to get to this point. It is now only right that the bill with which we are

proceeding is named in a way that reflects what it intends to do.

Even in its original form, the bill would not have created a national care service. Giving it a similar name to one of our most beloved national treasures, the national health service, was a cynical attempt to make it appear to be something that it was not. The NHS answered a need from the rubble and poverty of war in which it was forged, whereas that was not the case for this takeover of social care. The NHS offers care that is free at the point of delivery, whereas nothing about the national care service was intended to do that.

We need a bill that seeks to support those who work in the care sector and those who rely on it. I note that two other amendments, rightly, seek to change the bill's name, but I believe that it is appropriate to rename it as the "Care and Carers (Scotland) Bill", so that the Parliament can send a clear message to care workers, care users and the legions of unpaid carers that they are what really matters.

Sandesh Gulhane (Glasgow) (Con): I declare an interest as a practising NHS general practitioner.

We need to be absolutely clear about the bill's timeline. We are three and a half to four years on from when the bill was introduced by Humza Yousaf. We are £30 million worse off than we were at the start of the process, and we have lost the bill's principles. After the Government lodged amendments—we should remember that the bill was introduced four years ago—we had 48 hours to digest the amendments and make a decision about what to do. That is not a particularly acceptable timeline, given the amount of time and money that have been spent on the bill. Let us not forget that the bill's second iteration involves 200-odd amendments and that the proposal for a national care service has been completely scrapped—we are not even talking about it any more. Describing the bill as a farce would be generous.

The minister has spoken about the bill representing reform, but reform in the social care sector would involve doing things that actually led to changes, so the bill does not represent reform to the sector. The Scottish National Party Government and the minister are simply trying to save face. That is why we are in this position. They have realised—as we have said all along—that a lot of the reforms, including Anne's law and Frank's law, could have been made straight away. If they had been made four years ago, people would not be waiting right now. The position that we are in is completely unacceptable, and the people of Scotland should rightly be very upset about how we have found ourselves in it.

I urge members to vote for Brian Whittle's amendment 158, because we need to take real evidence on the bill, which is now totally different from what was originally set out. We need to go back, take proper evidence and ensure that we do the right thing. We should not legislate just for the sake of legislating.

Paul Sweeney (Glasgow) (Lab): It is deeply regrettable that the Government has, in effect, gutted what was once a very ambitious bill named the National Care Service (Scotland) Bill. I believe that the Government's proposed naming of the final piece of legislation as the "Care Reform (Scotland) Act 2025" presents a misnomer, so we cannot support the Government's proposed change to the legislative title of the bill.

09:15

However, Scottish Labour members are minded to support amendment 40, in the name of Mr Cole-Hamilton, which proposes to change the legislation's name to the "Care and Carers (Scotland) Bill". That more appropriately reflects the Government's reduced horizons for the bill's ambitions. Given that the sections that would have created the national care service are being removed, the fundamental goals must be to move to preserve fair work, collective bargaining, Anne's law, the right to respite, and ethical commissioning. The term "Care and Carers" better reflects the scope of the bill, given that any fundamental reforms in the bill have been curtailed.

Maree Todd: I do not agree with Brian Whittle's proposal to scrap the legislation. I note Sandesh Gulhane's and Brian Whittle's in-principle support for many of our amendments to reform health and social care, and I urge them to vote for those.

With regard to Mr Cole-Hamilton's proposal, I ask members to instead support use of the words "Care Reform" that I am proposing, as they offer a broader description.

Amendment 1 agreed to.

Section 2—Responsibility for the National Care Service

Amendment 2 moved—[Maree Todd]—and agreed to.

Section 3—Responsibility for improvement

Amendment 3 moved—[Maree Todd]—and agreed to.

Section 4—Establishment and abolition of care boards

Amendment 4 moved—[Maree Todd]—and agreed to.

Schedule 1—Care boards: constitution and operation

Amendment 5 moved—[Maree Todd]—and agreed to.

Schedule 2—Care boards: application of public authorities legislation

Amendment 6 moved—[Maree Todd]—and agreed to.

Section 5—Financial assistance for care boards

Amendment 7 moved—[Maree Todd]—and agreed to.

Section 6—Strategic planning by the Scottish Ministers

Amendment 8 moved—[Maree Todd]—and agreed to.

Section 7—Strategic planning by care boards

Amendment 9 moved—[Maree Todd]—and agreed to.

Section 8—Care boards' planning process

Amendment 10 moved—[Maree Todd]—and agreed to.

Section 9—Frequency of planning by care boards

Amendment 11 moved—[Maree Todd]—and agreed to.

Section 10—Meaning of ethical commissioning strategy

Amendment 12 moved—[Maree Todd]—and agreed to.

Section 11—The National Care Service charter

Amendment 13 moved—[Maree Todd]—and agreed to.

Section 12—Further provision about the charter

Amendment 14 moved—[Maree Todd]—and agreed to.

Section 13—Independent advocacy

The Convener: Amendment 91, in the name of Brian Whittle, is grouped with amendments 69, 41, 70 and 92 to 95. I point out that, if amendment 41 is agreed to, I cannot call amendment 70 because of pre-emption.

Brian Whittle: At stage 1, the committee recommended

"In an effort to strengthen these provisions in the current Bill ... 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."

I think that that was because stakeholders were adamant that independent advocacy should be on the face of the bill to enhance parliamentary scrutiny and uphold rights of access to independent advocacy.

I realise that amendments 94 and 95 are reasonably similar, and I am open to working with colleagues at stage 3 on developing a tighter definition of "advocacy", to ensure that it is not only fully independent of ministers but financially and structurally independent of the organisations that deliver the care.

I move amendment 91.

Gillian Mackay (Central Scotland) (Green): My amendments 69, 70 and 94 are designed to provide a clearer definition of independent advocacy services, to avoid ambiguity in how the legislation is applied. In particular, the definition in amendment 94 was developed with the Scottish Independent Advocacy Alliance.

My other amendments would ensure that advocacy is genuinely independent, as well as applying it to all care services. Despite best efforts, some people will still need advocacy to access services.

I appreciate that the minister's amendment 41 pre-empts my amendment 70. I still believe that advocacy needs to cover all services, not just those that are in the public realm. I hope that, if the minister's amendment is agreed to, we can have a look at how we achieve the spirit of amendment 70 at stage 3.

Truly independent advocacy is essential to building trust. People must feel confident that their advocates are acting in their best interests and they must be able to access advice and information. The definition aligns with best practice and ensures consistency across the social care system.

Maree Todd: As I said in the debate on the previous group, I continue to think that there would be value in having the bill make provision about independent information, advice and advocacy. My amendment 15 will therefore move section 13 into part 3 of the bill.

The amendments in group 2 are about the substance of section 13, and I ask the committee

to support amendments 41 and 69 and not to support amendments 91, 70, 92, 93, 94 and 95. In some areas, however, I would like to work with members to look at revising those amendments ahead of stage 3.

On amendments 91, 92 and 95, which deal with a right to independent advocacy, I am committed to enhancing independent advocacy services as a mechanism for empowering people to have their voices heard and to participate fully in decisions about their care. However, members will be aware that such a right would require a significant expansion of capacity for providers of advocacy support to ensure that they could respond. That would take time to work through and would see a significant cost to the public purse, which must be considered carefully.

Members are also aware of my commitment to listening to the voice of people with lived and living experience, through co-design. Recent analysis of co-design work on independent advocacy has highlighted various issues, and my officials will bring me options as to how we can address those. Some of those solutions may require legislative change, using the regulation-making powers that the Government has introduced in the bill; others may not. Until I have decided which options to take forward, I will look to maintain the provisions as they are, and I therefore ask members not to support amendments 91, 92 and 95.

I offer my support for amendment 69 as part of my commitment to enhancing independent advocacy services. A regulation-making power will allow us to implement the results from co-design and engagement with stakeholders. In that way, we can use the insights that are gathered through co-design and engagement with stakeholders to ensure that the legislation supports improvements to the provision of independent advocacy in Scotland.

Amendment 41 seeks to add to the existing drafting to ensure that, as well as the possibility of independent advocacy connected to public social care services being provided for in secondary legislation in the future, independent advice and independent information can be provided for in that way. At stage 1, stakeholders asked us to make that change, and I am happy to do so. It will mean that we can gain from the insights of professional stakeholders and those with lived and living experience of accessing social care support services, and it will allow us to keep broader options open in the future.

Amendment 41 also updates the reference in section 13 to services that the national care service provides by replacing it with a reference to "public social care services", which are defined by reference to the enactments that are listed in the schedule to the Public Bodies (Joint Working)

(Scotland) Act 2014. I trust that members will be pleased with my response to a request that was made at stage 1 and I will support amendment 41.

If amendment 41 is agreed to, it will pre-empt amendment 70, and I believe that it will achieve what Gillian Mackay was intending with amendment 70—in other words, to clarify the scope of the provision in the light of the structure of the national care service. If that is not the case, I would be happy to work with Gillian Mackay.

On amendment 93, I am sympathetic to what Brian Whittle is trying to achieve in relation to advocacy service standards. I also note that amendments 92 and 95 contain similar provisions. We are all committed to ensuring the delivery of high-quality independent advocacy. However, I have some concerns about the impact that amendments 93, 92 and 95 could have on independent advocacy providers. In particular, amendment 93 appears to apply to all advocacy services, not just those that relate to social care services, and I am not sure that that is Mr Whittle's intention. Therefore, I ask him not to move amendment 93. Instead, I would welcome the opportunity to work with the members who raised the issue to further consider advocacy service standards ahead of stage 3.

On amendment 94, I appreciate what Gillian Mackay is trying to achieve. Aspects of amendment 94 are also present in amendment 95. The importance of a clear definition of independent advocacy has come through very strongly in our co-design work and our engagement with stakeholders, but we have also heard that definitions of independent advocacy can be inconsistent and that that can limit awareness and understanding of independent advocacy services, thereby making it harder for people to access them. Therefore, I ask Gillian Mackay and Paul Sweeney not to move amendments 94 and 95 but, instead, to work with me on a stage 3 amendment to provide a definition of independent advocacy, once we have had more time to fully consider our options.

Paul Sweeney: I ask the committee to consider amendments 92 and 95, which seek to improve the bill. Amendment 92 would add to section 13 a requirement that any regulations under subsection (1) must provide for a right to independent advocacy and that those advocacy services must be available to those who need them. Amendment 92 also seeks to define what advocacy service standards should be applied. In voting for amendment 92, members would add clarity to regulations made by the Scottish ministers in order to best give voice to those who need social care provision.

My amendment 95 seeks to replace section 13 with a more holistic definition of independent

advocacy, and it would guarantee that it was the Scottish ministers' duty to ensure that independent advocacy was available to those who had the right to access it.

It is important that the provision of independent advocacy is not allowed to stay as simply an optional extra that the Scottish ministers can decide to provide through the use of delegated powers and that, instead, the bill states that independent advocacy should be available to those who need it, including individuals who, owing to disability, require help to engage effectively with the process of determining their entitlement to and delivery of social care services.

I note that the minister has indicated that she is not minded to support amendments 92 and 95 at this stage. However, in the spirit of good will in which she made her comments, I am happy to work with her to better define the amendments, and I hope that we can reach a means of compromise at stage 3.

Joe FitzPatrick (Dundee City West) (SNP): I think that this is a very important element of the bill, and I am pleased to hear what the minister has said. It is clear that there is political consensus around the table in support of independent advocacy, which is a good thing. After hearing what Mr Sweeney said, I hope that the committee will be able to agree to amendments 69 and 41 and to discuss the issues to see whether we can achieve consensus to ensure that the general feeling around the table is taken forward at stage 3 in a way that actually works. I thank members and the minister for their engagement; in particular, I thank them for listening to the voices of living and lived experience.

09:30

The Convener: I call Brian Whittle to wind up and indicate whether he wishes to press or seek to withdraw amendment 91.

Brian Whittle: I should point out that the amendments that have been lodged reflect committee recommendations that were made at stage 1. On lived experience, I should say to the minister that I spoke with the Scottish Independent Advocacy Alliance to make sure that the wording that I used for amendment 91 fits with what it would want.

I am minded to press amendment 91, although, as I said at the start, I am perfectly prepared to work with other members to tighten the definition of "advocacy" to ensure that it is fully independent.

The Convener: The question is, that amendment 91 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Gulhane, Sandesh (Glasgow) (Con)
Mochan, Carol (South Scotland) (Lab)
Sweeney, Paul (Glasgow) (Lab)
Whittle, Brian (South Scotland) (Con)

Against

Dunbar, Jackie (Aberdeen Donside) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Harper, Emma (South Scotland) (SNP)
Haughey, Clare (Rutherglen) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)

Abstentions

Mackay, Gillian (Central Scotland) (Green)

The Convener: The result of the division is: For 4, Against 5, Abstentions 1.

Amendment 91 disagreed to.

Amendment 69 moved—[Gillian Mackay]—and agreed to.

The Convener: Amendment 41, in the name of the minister, has already been debated with amendment 91. I remind members that, if amendment 41 is agreed to, I cannot call amendment 70 because of pre-emption.

Amendment 41 moved—[Maree Todd]—and agreed to.

Amendment 92 not moved.

Amendment 93 moved—[Brian Whittle].

The Convener: The question is, that amendment 93 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Gulhane, Sandesh (Glasgow) (Con)
Mackay, Gillian (Central Scotland) (Green)
Mochan, Carol (South Scotland) (Lab)
Sweeney, Paul (Glasgow) (Lab)
Whittle, Brian (South Scotland) (Con)

Against

Dunbar, Jackie (Aberdeen Donside) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Harper, Emma (South Scotland) (SNP)
Haughey, Clare (Rutherglen) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)

The Convener: The result of the division is: For 5, Against 5, Abstentions 0.

As there is a tie, I must exercise a casting vote, and I vote against the amendment.

Amendment 93 disagreed to.

The Convener: I call amendment 94, in the name of Gillian Mackay.

Gillian Mackay: In the spirit of the offer from the minister to work on a definition ahead of stage 3, I will not move amendment 94.

Amendment 94 not moved.

Amendment 95 not moved.

The Convener: I call amendment 96, in the name of Brian Whittle. I remind members that, if amendment 96 is agreed to, I cannot call amendment 15, due to a pre-emption.

Amendment 96 moved—[Brian Whittle].

The Convener: The question is, that amendment 96 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Gulhane, Sandesh (Glasgow) (Con)
Whittle, Brian (South Scotland) (Con)

Against

Dunbar, Jackie (Aberdeen Donside) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Haughey, Clare (Rutherglen) (SNP)
Harper, Emma (South Scotland) (SNP)
Mackay, Gillian (Central Scotland) (Green)
Mochan, Carol (South Scotland) (Lab)
Sweeney, Paul (Glasgow) (Lab)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)

The Convener: The result of the division is: For 2, Against 8, Abstentions 0.

Amendment 96 disagreed to.

Amendment 15 moved—[Maree Todd]—and agreed to.

Section 14—Complaints service

The Convener: Amendment 97, in the name of Gillian Mackay, is grouped with amendments 71, 98, 72 and 99.

Gillian Mackay: Although I welcome the Scottish Government's intention of seeking to improve the complaints process, there are still things that we could make better. It is important to make the system as smooth as possible. Unpaid carers have said that the current system lacks trust and transparency and often leaves them with unresolved issues. To bring about trust in the complaints procedure, it is clear that a process should be developed to enable complaints to be assessed against the principles that are set out in the bill.

Amendment 99 would strengthen the complaints system by ensuring that complaints were assessed against the key principles, which are the "realisation of human rights", enabling

"people to thrive and fulfil their potential"

and enabling

“communities to flourish and prosper”.

It would also introduce guidance on the handling of complaints related to social care resource allocation and eligibility assessments, which are two contentious issues for the sector.

I am not entirely sure whether amendment 97 is directed at the correct entity when it refers to “local authorities”. If the minister flags any issues with that, I will be happy to work with her to come up with a more appropriate definition ahead of stage 3. The amendments have been worked on with carers organisations, so I hope that members will support them.

I move amendment 97.

Maree Todd: My amendments 16 and 17, which were debated with the first group of amendments, would have the effect of removing from the bill the complaints provisions in sections 14 and 15. My view is that the complaints service that is provided for by section 14 and the associated regulation-making power that is in section 15 cannot be included without the entirety of part 1 of the bill. A new NCS complaints service will not make sense in isolation.

I make it clear, however, that I am absolutely committed to improving the complaints processes. The independent review of adult social care made it clear that, when things have not worked well for people and their rights have not been met, they must have rapid recourse to an effective complaints system and redress. The NCS that the review proposed would prioritise an improved complaints process.

So far, more than 200 people with lived experience of receiving, accessing or delivering care have been involved in co-design and engagement to consider findings from existing evidence and to identify key priorities for improvements to the complaints processes. That will enable us to identify and drive forward the improvements that are required to ensure that a rights-based approach is taken on complaints.

If the committee supports removal of part 1 of the bill, we will continue to work closely with people who are accessing and delivering care and with our stakeholders in order to identify improvements that should be taken forward. If sections 14 and 15 remain in the bill, I cannot support amendments 97, 71, 98, 72 and 99, all of which relate to complaints.

Amendment 97 seeks to limit the scope of complaints that can be dealt with by the complaints service that is required under section 14 of the bill to care services that are provided by local authorities. That would mean that the complaints service would not be able to receive

complaints in all circumstances—for example, it would not be able to do so when someone was accessing social care services via self-directed support options 1 and 2. I believe that it is vital that we not limit the complaints service in that way, and that we ensure that all users of social care services are able to utilise the new complaints service.

Amendment 71 seeks to make it clear that the person who is to be allocated a complaint is not only appropriate, as is currently required by section 14(3), but is the person who will oversee its resolution. Although the amendment seeks to provide clarity, its effect is to confuse the position on who complaints should be passed to. The person who oversees the resolution of a complaint might not be the person who is best placed to address that complaint. That is particularly true when the role of oversight bodies such as the Care Inspectorate and the Scottish Public Services Ombudsman is taken into account. I therefore encourage members not to support amendment 71.

Amendment 72 seeks to define who may make a complaint to the NCS complaints service. However, setting that out in the bill unintentionally risks interfering with existing established legal procedures. The model complaints handling procedure for public body social care complaints that has been set by the Scottish Public Services Ombudsman already defines who can submit a complaint. Although who that is is deliberately broad ranging, it is defined enough to allow only relevant complaints. It includes relatives or representatives of people who use services, as well as people who come into contact with, or are affected by, services.

Amendment 72 would also limit the scope for using the associated regulation-making power in section 15 in the future. For those reasons, I ask for the amendment not to be supported.

Amendment 98 seeks to establish that a “relevant complaint” is about a

“social service as defined by section 46 of the Public Services Reform (Scotland) Act 2010.”

It would narrow the bill’s wording by removing reference to the NCS, rather than extending it. I understand the intent of the amendment. However, I believe that it is vital that we not limit the scope of the services that are covered in that way, and that we ensure that all users of social care across the sector, whether they receive public or private provision—including those who use services for which integration is key, such as community health and prison social care—are able to utilise the new complaints service and the associated complaints-related regulations where

appropriate. I therefore encourage members not to support amendment 98.

Amendment 99 provides examples of what regulations in relation to complaints handling may cover, which includes assessing complaints against a set of principles, providing guidance on handling complaints that are made in relation to the allocation of resources and assessments of eligibility, and providing timescales. Although I welcome and will further consider the examples proposed, the regulation-making power in section 15 is subject to the outcomes of a co-design process, which will enable us to develop and strengthen a consistent complaints system and associated redress. I do not wish to undermine or pre-empt the outcomes of co-design by including examples in the bill. I therefore invite members not to support amendment 99.

The Convener: I invite Gillian Mackay to wind up and to press or seek to withdraw amendment 97.

Gillian Mackay: As I said at the outset, I was not entirely sure that amendment 97 was directed at the correct bodies. I appreciate what the minister has said about amendment 97.

In winding up, I want to respond specifically to what the minister said about amendments 72 and 99. Amendment 72 was suggested by carers, who wanted to make sure that not only a person who was receiving care could complain. They wanted the bill to be clear about that. On amendment 99, I appreciate the minister's desire not to pre-empt the co-design process, but I would hope that all the aspects identified in the amendment would be taken into consideration anyway when a complaints process was developed, so, to my mind, amendment 99 does not completely pre-empt what could be done in the co-design process.

I will not press amendment 97.

Amendment 97, by agreement, withdrawn.

09:45

Amendment 71 moved—[Gillian Mackay].

The Convener: The question is, that amendment 71 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Mackay, Gillian (Central Scotland) (Green)
Mochan, Carol (South Scotland) (Lab)
Sweeney, Paul (Glasgow) (Lab)

Against

Dunbar, Jackie (Aberdeen Donside) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)

Gulhane, Sandesh (Glasgow) (Con)
Harper, Emma (South Scotland) (SNP)
Haughey, Clare (Rutherglen) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Whittle, Brian (South Scotland) (Con)

The Convener: The result of the division is: For 3, Against 7, Abstentions 0.

Amendment 71 disagreed to.

Amendment 16 moved—[Maree Todd]—and agreed to.

Section 15—Dealing with complaints

Amendment 98 moved—[Gillian Mackay].

The Convener: The question is, that amendment 98 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Mackay, Gillian (Central Scotland) (Green)
Mochan, Carol (South Scotland) (Lab)
Sweeney, Paul (Glasgow) (Lab)

Against

Dunbar, Jackie (Aberdeen Donside) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gulhane, Sandesh (Glasgow) (Con)
Harper, Emma (South Scotland) (SNP)
Haughey, Clare (Rutherglen) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Whittle, Brian (South Scotland) (Con)

The Convener: The result of the division is: For 3, Against 7, Abstentions 0.

Amendment 98 disagreed to.

Amendment 72 not moved.

Amendment 99 moved—[Gillian Mackay].

The Convener: The question is, that amendment 99 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Mackay, Gillian (Central Scotland) (Green)
Mochan, Carol (South Scotland) (Lab)
Sweeney, Paul (Glasgow) (Lab)

Against

Dunbar, Jackie (Aberdeen Donside) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gulhane, Sandesh (Glasgow) (Con)
Harper, Emma (South Scotland) (SNP)
Haughey, Clare (Rutherglen) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Whittle, Brian (South Scotland) (Con)

The Convener: The result of the division is: For 3, Against 7, Abstentions 0.

Amendment 99 disagreed to.

Amendment 17 moved—[Maree Todd]—and agreed to.

Section 16—Directions to care boards

Amendment 18 moved—[Maree Todd]—and agreed to.

Section 17—Removal of care board members

Amendment 19 moved—[Maree Todd]—and agreed to.

Section 18—Transfer of care board's functions in an emergency

Amendment 20 moved—[Maree Todd]—and agreed to.

Section 19—Transfer of care board's functions due to service failure

Amendment 21 moved—[Maree Todd]—and agreed to.

Section 20—Emergency intervention order

Amendment 22 moved—[Maree Todd]—and agreed to.

Section 21—Application for emergency intervention order

Amendment 23 moved—[Maree Todd]—and agreed to.

Section 22—Variation and revocation of emergency intervention order

Amendment 24 moved—[Maree Todd]—and agreed to.

Section 23—Research

Amendment 25 moved—[Maree Todd]—and agreed to.

Section 24—Training

Amendment 26 moved—[Maree Todd]—and agreed to.

Section 25—Support for other activities

Amendment 27 moved—[Maree Todd]—and agreed to.

Section 26—Compulsory purchase

Amendment 28 moved—[Maree Todd]—and agreed to.

Section 27—Power to transfer functions from local authorities

Amendment 29 moved—[Maree Todd]—and agreed to.

Schedule 3—Enactments giving rise to transferable local authority functions

Amendment 30 moved—[Maree Todd]—and agreed to.

Section 28—Power to bring aspects of healthcare into the National Care Service

Amendment 31 moved—[Maree Todd]—and agreed to.

Section 29—Power to re-organise the National Care Service

Amendment 32 moved—[Maree Todd]—and agreed to.

Section 30—Consultation before bringing children's and justice services into the National Care Service

Amendment 33 moved—[Maree Todd]—and agreed to.

Section 31—Transfers of staff

Amendment 34 moved—[Maree Todd]—and agreed to.

Section 32—Transfers of property and liabilities etc

Amendment 35 moved—[Maree Todd]—and agreed to.

Section 33—Interpretation of expressions about functional transfers

Amendment 36 moved—[Maree Todd]—and agreed to.

Section 34—Consequential modifications

Amendment 37 moved—[Maree Todd]—and agreed to.

Schedule 4—Modifications in connection with Part 1

Amendment 38 moved—[Maree Todd]—and agreed to.

Section 35—Interpretation of Part 1

Amendment 39 moved—[Maree Todd]—and agreed to.

After section 35

The Convener: Amendment 100, in the name of Jackie Baillie, is grouped with amendments 101 to 114, 146 and 149 to 151.

Jackie Baillie (Dumbarton) (Lab): Let me thank you, convener—and, of course, the committee—for the opportunity to attend your meeting and to speak to the amendments in this group. I will cover all nine of my amendments and add a brief word about the amendments in the name of Carol Mochan.

I believe that there is actually consensus across our country that our NHS is nothing without its staff, but I think that this applies, too, to the social care sector, and indeed many of the problems in social care—from a lack of care packages to unpaid carers not receiving the right support—emanate from the failure to properly value staff and to promote fair work. The amendments seek to build on the work of the Feeley review and to embed fair work, human rights and ethical procurement into the bill.

Although the Scottish Government's national care service is no more, and we have seen the removal of part 1 of the bill, we must ensure that the revised bill addresses fair work, ethical commissioning and procurement standards, which are core principles regarding the treatment of those receiving care and those providing that care.

I have always argued that we need to change the thinking in social care, but it is more about culture than it is about structures, and I believe that there is broad consensus on that. I want to salvage something positive from the wreckage of the national care service proposals, and these amendments would start to give ministers—and, through them, the proposed advisory board—that opportunity to address culture.

Amendment 100 would create a new part to the bill. The amendment sets out the founding principles for fair work and human rights in Scotland's social care sector. The fair work, equality and human rights principles and duties, as set out in amendment 101, are not new. They should not, therefore, be contentious. Amendments 100 and 101 are about creating a rights-respecting culture within the social care sector—something that I know that we all support, whether it involves the public, private or not-for-profit providers. I am keen to see more being done to tackle providers that are perhaps engaged in tax avoidance schemes, for example, rather than providing good-quality social care as their first priority.

Amendment 101 makes reference to a strategic plan for social care services, which I will address in a later grouping. In essence, the amendment creates a duty on Scottish ministers and other

relevant authorities to implement social care services based on the founding principles and the strategic plan.

Amendment 102, on ethical commissioning, would add a requirement for the Scottish Government to

“prepare and publish a code of practice on ethical commissioning”,

with appropriate consultation with service users, carers, providers and trade unions. The code of practice should be reviewed at least once during every three-year period and the Scottish Parliament should be informed of the outcome. I believe that it is appropriate to set out the high-level intention in the bill and allow for collaboration and consultation with stakeholders to ensure that we get the detail right.

Amendment 103 sets out a requirement for the Scottish Government and public authorities to have regard to both that code of practice and the national standards for community engagement or other guidance on community engagement in designing, commissioning, delivering and reviewing services that are provided by the social care sector.

Amendment 104 is on ethical procurement, which is important and is something that I feel was missing from the original bill when it was introduced. In short, the amendment would require the Scottish Government, by regulation, to

“provide for arrangements for the ethical procurement of social care services”—

something that the Government has said that it wants to do. I appreciate that there is a lot in this amendment, but it is important in ensuring that the founding principles of the services that are provided in Scotland's social care sector are actually met. It is important to have that on the face of the bill and it is right, in my view, to leave the detail of the arrangements to secondary legislation.

Amendment 105 would require contracting authorities to insert in their contracts or framework agreements conditions related to performance to ensure that providers comply with legal obligations that already exist.

10:00

Amendment 106 relates to collective bargaining. I am aware of concerns among some people about the supposed impact that the amendment would have on current negotiations between the Scottish Government, trade unions and employers in Scotland on agreeing a constitution for sectoral bargaining. I am genuinely pleased that that work is happening but, to be fair, sectoral bargaining has been talked about for a very long time and has

yet to materialise. I therefore believe that the text of the bill should commit to collective bargaining arrangements. If the work of the Scottish Government and other stakeholders comes to fruition before the end of the passage of the bill, that would be most welcome and would fit with the intention of the amendment.

Amendment 114 concerns definitions of terms that are used in the other amendments, and amendment 149 would provide the power to make regulations regarding ethical procurement, which would be subject to the affirmative procedure.

I urge the committee to support amendments 107 to 113, in the name of Carol Mochan. That suite of amendments is designed to strengthen fair work principles in the bill and embed human rights.

I urge all members to vote for the amendments in my name and those in Carol Mochan's name.

I move amendment 100.

Carol Mochan (South Scotland) (Lab): I thank my colleague Jackie Baillie for moving her amendment 100 and speaking to her other amendments in the group. I hope that members will support those amendments. I particularly agree with her comments on sectoral collective bargaining. That has been an important part of discussions with the minister and others, but it is important that we get those measures in the bill.

I am happy to speak to the amendments in my name in the group, which seek to strengthen fair work principles in the bill and embed human rights. Amendment 107 seeks to ensure that international workers who are employed in social care shall enjoy all the rights and benefits of United Kingdom status, the social care sector and fair work in care. The amendment would require the Scottish ministers to create a fair work charter for internationally recruited workers, along with statutory guidance on

"the application of the code of practice on ethical commissioning ... and regulations on ethical procurement ... to the delivery of fair work for international workers."

Amendment 108 would place a duty on the Scottish ministers to prepare and publish guidance on

"continuous improvement in the arrangements for fair work in the social care sector."

The guidance would apply to all relevant public authorities and contracted providers and would be subject to review in each three-year period, with revised guidance being issued or a statement being laid before Parliament setting out that a revision was not needed.

Amendment 109 would create standardised

"acts and omissions of a contracted provider that constitute a reportable breach of contract in relation to fair work standards",

which would be reported against. The intent is also to provide for remedies when there are breaches, including contract termination, and to create a standard approach to managing, reporting on and publishing information on breaches.

Although I appreciate that the measures that are set out in amendment 107 may be addressed elsewhere in legislation, I believe that the amendments strengthen the fair work principles in the bill, and I am interested in hearing the minister's response to that.

Amendment 110 seeks to ensure that contracted providers comply with the labour relations requirements that are referred to in amendment 105. Amendment 110 would also make the victimisation of social care workers on the grounds of trade union membership or trade union activity a breach of the measures in amendments 100 and 101, which have been lodged by Jackie Baillie, on the founding principles and social care duties.

The purpose of amendment 111 is to maximise the realisation of human rights for service users and workers in the social care sector by providing regulation-making powers and a duty to make regulation to achieve that purpose. Amendment 111 would require that such regulations include provision to cover financial transparency, control over profit, control over tax avoidance, sanctions for tax evasion, expansion of public and not-for-profit social care services, and establishment or designation of a care finance regulator. Human rights should be embedded in the bill and amendment 111 would significantly strengthen the bill in that regard.

Amendments 112 and 113 would create provisions for monitoring and reporting on fair work. Amendment 112 would create a common standard of fair work indicators with monitoring and reporting of those indicators to enforce fair work standards.

Amendment 113 would place a duty on Scottish ministers to publish an annual report on fair work in care in Scotland.

I urge members to support the amendments.

Brian Whittle: Amendment 146 is from a recommendation in our stage 1 report. It states:

"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."

Despite its intention, there are real concerns among stakeholders about section 41. Amendment 146 seeks to assure those stakeholders that the guidelines will be reviewed. That will help Parliament to understand the impact of ethical commissioning and interactions with other procurement contracts, if any.

Gillian Mackay: I want to come in briefly on the group as a whole and say that I support what Carol Mochan and Jackie Baillie have already said. However, I hope that, in summing up, Jackie Baillie will cover what the totality of the impact will be for local authorities. The Scottish Government is not always the one that is doing the procuring in the first place, and throughout the bill process, one of our concerns has been about autonomy for local authorities. I hope that Jackie Baillie might be able to address those considerations in her summing up.

Maree Todd: I am delighted to see that there is widespread support for the principles of fair work, ethical commissioning and ethical procurement in Scotland.

On amendment 100, which was lodged by Jackie Baillie, I am not against the use of principles in legislation. The Government included principles for the national care service in part 1 of the bill, but I am unclear about the benefit of including those principles in legislation and about what consequences they could have on the wider social care system. In particular, and unlike the principles in section 1 of the bill, they do not seem to be focused on people who are receiving care and support.

I will always agree that Scotland's social care sector will benefit from being an exemplar of fair work. Work is already being done to develop sectoral bargaining with our partners in the social care sector, and we are also working with the UK Government on changes to that area in the UK Employment Rights Bill.

The Scottish Government is providing funding to deliver the real living wage to social care workers who are delivering direct care and commissioned services. That was £230 million in the current financial year and will be £125 million next year, subject to the budget being agreed. Further, an effective voice framework is also being piloted and will be evaluated over the summer before being implemented on a national basis.

Although I agree with the people-first ethos, the principle of people before profit, although commendable, is not likely to be implementable,

and it could have unforeseen consequences. The people of Scotland rely on a variety of services being delivered by a multitude of organisations, including the third, independent and public sectors. To prevent social care provision that is based on profit making would significantly risk the delivery of the support and services that our people need.

On tax avoidance, the Scottish Government recognises that a more robust and fair system of taxation could enhance the commitment to realising the human rights of service users and workers by increasing the available resources. I am not sure, however, that that principle in amendment 100 will achieve the member's aims, and it could have other unintended consequences for other legislation, including procurement legislation.

There might be a place for such principles in legislation—we can further discuss what they could be—but they must improve the experience of those who are being cared for and supported in Scotland. I am not convinced that the principles that are set out in amendment 100 do so. I ask Jackie Baillie not to press the amendment. If she does, I ask the committee not to support it.

I do not support amendment 101, in the name of Jackie Baillie, on the new social care sector duties. I understand that the amendment's intention is to create a requirement for ministers to act in accordance with the founding principles that are set out in amendment 100 and the national strategic plan for social care services that is set out in amendment 115.

Although I agree that clarity about our aims and objectives for delivery of social work and social care services would be helpful, the problem is that the amendment would create new statutory duties for ministers in respect of social care services. That goes against the agreement that has been reached that local government will retain responsibility for delivery of social work and social care services, so it is no longer appropriate for ministers to have new duties—even very broad ones, as proposed in the amendment—in respect of them. It could make it less—not more—clear who is responsible for improving services, which is a key demand of people with lived and living experience. The amendment could create a situation in which ministers must take ultimate responsibility for delivery as a last resort, which is not wanted.

I would be happy to work with the member on alternative wording, although I must stress that a new duty for ministers is no longer needed. If there was to be an amendment along such lines, I would want to strengthen and build on health and social care integration. I therefore ask the member not to

move amendment 101, but, if it is moved, I ask the committee not to support it.

I recognise that the intention of amendment 102, in the name of Jackie Baillie, is to bring a consistent approach to commissioning, but it is not necessarily the best way to achieve the improvement that we all seek. Ministers are not responsible for social care commissioning, and the amendment misses out the bodies that are. I know that there is an implementation gap between the intent of social care commissioning and what is ultimately delivered.

In partnership with the Convention of Scottish Local Authorities, a working group that includes representation from social care providers, commissioners and people with lived experience is developing principles for ethical commissioning and guidance that all commissioners can use. That work is about focusing on the outcomes for social care users and ensuring that their voices are heard during the commissioning process.

Given the positive steps that are already being taken in relation to ethical commissioning, further provision as set out in amendment 102 is not necessary, but I would be happy to work with the member on an appropriate amendment for stage 3. I therefore ask the member not to move amendment 102, but, if it is moved, I ask the committee not to support it.

The purpose of amendment 103, in the name of Jackie Baillie, is to place a duty on Scottish ministers and relevant public authorities in relation to the code of practice that is proposed in amendment 102, so that they give it due regard in the design, commission, delivery and review of social care services.

As I mentioned, work is already under way on ethical commissioning principles and guidance, which will assist in closing the implementation gap between commissioning intent and what is delivered in practice. However, as with amendment 102, I would be happy to work with the member on an appropriate amendment for stage 3. I therefore ask the member not to move amendment 103, but, if it is moved, I ask the committee not to support it.

In response to amendment 104, in the name of Jackie Baillie, I am committed to delivering ethical procurement and I am confident that we already have the legislative powers to deliver it. Although I sympathise with what the amendment is trying to achieve, it duplicates existing procurement regulations. Procurement legislation and policy, such as the sustainable procurement duty, already provide details on how procurement should be carried out, which include key considerations for public sector bodies.

Scottish ministers are required to publish guidance that is specific to health and social care, which contracting authorities must have due regard to. It is through that statutory guidance that we will embed ethical procurement practices. Therefore, the Government's position is to oppose amendment 104. It is unnecessary and it risks further complicating the procurement landscape for people, providers and public sector bodies, so I ask members not to support it.

10:15

On amendment 105, it is vital that care service providers meet all their legal obligations, no matter how they are funded. Amendment 105 is substantially a duplication of the requirements that are set out in regulation 19 of the Public Contracts (Scotland) Regulations 2015, so it would have no practical effect. As drafted, the amendment would also put requirements on public sector bodies when procuring a wide range of services—it is not limited to community health and social care, which is the focus of the bill, and the reference to social care providers does not achieve that. Therefore, I invite Jackie Baillie not to move amendment 105. If it is moved, I ask the committee not to support it.

Amendment 106 was also lodged by Jackie Baillie. Although I support the establishment of sectoral bargaining arrangements for the social care workforce, I cannot support the amendment. The limitation of legislative competence in relation to employment law means that the Scottish Parliament cannot establish statutory requirements for participation in sectoral bargaining. We have had only a short time to consider the amendment, but we have serious concerns that it is outwith the Parliament's legislative competence. The Government has not stood still on the important element of fair work. The fair work in Scotland group has been working to develop a voluntary sectoral bargaining model that provides a mechanism for determining pay terms and conditions on a voluntary participation basis.

The Scottish Government is also engaging with the UK Government on the Employment Rights Bill, which we hope can create a legislative basis for a Scottish national social care negotiating body and fair pay agreements in Scotland. I invite the member not to move amendment 106. If it is moved, I ask the committee not to support it.

On amendment 107, which was lodged by Carol Mochan, I am delighted to see the interest in international recruitment. However, the amendment would add an additional burden on social care and would potentially not improve the situation in Scotland for international workers. We already demonstrate our commitment to ethical recruitment through our code of practice for the

international recruitment of health and social care personnel in Scotland. In a similar vein to its position on fair work and employment powers, the UK Government continues to resist calls for the responsibility for immigration policy, as far as it affects Scotland, to be passed to the Scottish ministers. Without responsibility for immigration policy, we continue to press the Home Office for robust and regular data on international workers and their visas.

We will continue to do what we can within the Scottish Parliament's current competence, and policy work is under way in the sector to raise awareness, to support displaced visa holders and to look at improvement and system change. However, as this is an important issue and I agree with the spirit of the amendment, I am happy to look at the issue further and to consider, before stage 3, whether improvements could be made that would require legislation. I invite Carol Mochan not to move amendment 107. If it is moved, I ask the committee not to support it.

On Carol Mochan's amendment 108, the Scottish Government already publishes fair work first guidance, to which public bodies and other public sector partners should give due regard. Therefore, amendment 108 is not necessary. Again, I invite Carol Mochan not to move the amendment. If it is moved, I ask the committee not to support it.

The intention behind Carol Mochan's amendment 109 is unclear. It seeks to provide a regulation-making duty for ministers to specify acts and omissions of a contracted provider that constitute a reportable breach of contract in relation to fair work standards. Amendment 109 would result in information being gathered, but no practical action would be enabled as a result. It is therefore challenging to see how and where the proposed provision would exert real change for care workers and supported people, which is what the bill is really about. If the intention behind the amendment is to require standard actions to be taken as a result of contract breaches, I point out that common law already provides long-established remedies for dealing with breaches of contract, which include rights of termination. The procurement rules also include provisions regarding compliance with employment law, and those measures can result in the exclusion of bidders who fail to comply.

Amendment 109 would add little or nothing to existing law other than, perhaps, an obligation to report such a breach and keep a register. It is unlikely that that would have any greater effect on contractor behaviour than the existing measures that are in place, and it would create a further administrative burden with no benefit, despite there being a cost to the public purse. Therefore, I

invite Carol Mochan not to move amendment 109. If it is moved, I ask the committee not to support it.

I have sympathy with the intention behind amendment 110, which was also lodged by Carol Mochan, but I do not believe that it is necessary, and we have serious concerns that it is outwith the legislative competence of the Parliament. Contracted providers already have responsibilities to comply with their legal obligations on employment and labour relations, and there are already laws that protect workers' rights to trade union membership and to participate in trade union activity, so provisions that deal with victimisation already exist. However, the Scottish Parliament does not have the competence to extend the scope or intent of labour laws, even when there is cross-party agreement on delivering fair work. Therefore, I invite Carol Mochan not to move amendment 110. If it is moved, I ask the committee not to support it.

Although we whole-heartedly support the aim of maximising the realisation of human rights for workers and people who access care, amendment 111 would not do that. Public bodies are already required to respect, protect and fulfil the rights of citizens, including people who work in and use social care services. The amendment would introduce measures relating to tax avoidance, but such measures raise questions about legislative competence and would be out of the bill's scope, and the broad range of regulations across the spectrum of human rights that would be placed on ministers would be inappropriate and unachievable.

Amendment 111 focuses on the profit that is made by, and the tax practice of, care providers. There is already a wealth of legislation regarding legal requirements for tax practices, and there are powers in procurement legislation to exclude providers if they have not met their tax obligations and have not self-cleansed, so the amendment would add no further practical application to that which is already available. The amendment also refers only to social care services, so it would risk undermining our existing legislation on integrated health and social care, whereas we should be building on and strengthening that.

Therefore, it is my view that the power could not be used in the way in which Carol Mochan might have intended. Amendment 111 would risk the passage of the bill because of questions about legislative competence, and it is neither necessary nor appropriate, so I invite her not to move it. If it is moved, I ask the committee not to support it.

I understand what Carol Mochan wants to achieve through amendment 112. However, at the moment, there are no agreed fair work indicators, which would need to be agreed with the sector to enable effective and proportionate measurement.

The Scottish Government already publishes fair work first guidance, to which public bodies and other public sector partners should give due regard. Furthermore, given that the burden of any new reporting requirements would fall on the social care sector, especially local government, health and social care partnerships and social care providers, it would be useful to consult stakeholders on the need for and the impact of the amendment. I would be happy to work with Carol Mochan on those issues before stage 3, but, for now, I invite her not to move amendment 112. If it is moved, I ask the committee not to support it.

As is the case with amendment 112, amendment 113, which was also lodged by Carol Mochan, would rely on new data—this time, from commissioning authorities on workforce engagement. That would mean that there would be another new burden and cost on the social care sector. Again, I understand what Carol Mochan wants to achieve, so, as I set out in relation to amendment 112, I would like to consult the sector to understand the impact of the amendment, and I would be happy to work with her before stage 3. For now, I invite her not to move amendment 113. If it is moved, I ask the committee not to support it.

As I understand it, amendment 114, which was lodged by Jackie Baillie, would introduce an interpretation section to provide clarity on the terms that are set out in the amendment and used in the new section that she proposes to add. It might well be a useful addition, but we would like to review, following stage 2, what, if any, interpretation section is required. Therefore, I ask Jackie Baillie not to move amendment 114. If it is moved, I ask the committee not to support it.

Brian Whittle's amendment 146 seeks to place a duty on the Scottish ministers to review ethical commissioning guidelines and to lay a report before the Scottish Parliament once in every five-year period following royal assent. It is unclear what guidelines are being referred to, so I would welcome the member clarifying that. As is set out, our intention is for ethical commissioning principles and guidance to support an improvement in services in a way that is flexible in response to need and can be reviewed and revised easily over time. To place a duty to report on a review of guidelines therefore seems unduly burdensome and not in keeping with the flexible approach to improvement that is our aim, so I invite Brian Whittle not to move amendment 146. If it is moved, I ask the committee not to support it.

I turn to amendments 149, 150 and 151. Jackie Baillie's amendment 149 and Carol Mochan's amendments 150 and 151 have the same purpose, which is to provide that any regulations under the proposed new section's ethical procurement, reportable breaches of contract and

fair work indicators are subject to affirmative procedure. Those relate to the earlier amendments 104, 109 and 112, respectively. I ask committee members not to support amendments 104, 109 and 112, if they are moved. If those amendments are not agreed to, amendments 149, 150 and 151 should also not be agreed to. I therefore ask the committee not to support amendments 149, 150 and 151, if they are moved.

The Convener: I call Jackie Baillie to wind up and to press or seek to withdraw amendment 100.

Jackie Baillie: Convener, you will be pleased to hear that I will not cover every amendment in turn—the committee would give up the will to live if I tried to do so.

Gillian Mackay raised the issue of local authorities. The common principles would be for all social care provision and would provide the framework for the social care sector. I have an expectation that ministers, working alongside their advisory board, would use them to inform and bring forward the strategic plan.

When it comes to amendments, I hear what the minister says. I recall that it was mentioned in discussions with the minister and others in the sector that there would be reference to ethical commissioning in the bill. However, when we lodge amendments to that effect, they are rejected. That is genuinely disappointing.

In relation to amendment 104, the minister referred to statutory guidance. I wonder whether that has been published or could be shared, because that would certainly be helpful.

On amendment 106 and the other amendments that the minister referred to, we believe that competence is a matter for the Parliament. Those amendments have been accepted. That is a matter for the Parliament to make a judgment on, and we believe that they are competent. I am conscious that there is no other legislative opportunity. I am keen for this suite of amendments, which builds on the work of the Feeley review and which the minister has said she supports—whether on fair work, human rights or ethical procurement—to be supported in some way.

The amendments try to get us to do more than offer warm words—the Parliament and the Government are very good at offering warm words. We need to put some of those principles into legislation. However, I am a reasonable person—oh, the minister is testing my patience by smiling at that. *[Laughter.]* I am sure that she did not mean to.

Maree Todd: You are very reasonable.

Jackie Baillie: I am very reasonable. I am happy to continue a discussion if the minister is

willing, because I think that there is a shared desire to strengthen the provisions in the bill. I am therefore willing to withdraw amendment 100 and not to move the others in order to allow that further dialogue; however, if that dialogue is unsuccessful, we reserve the right to bring the amendments back at stage 3.

I seek to withdraw amendment 100.

Amendment 100, by agreement, withdrawn.

10:30

Amendments 101 to 106 not moved.

The Convener: I invite Carol Mochan to move or not move amendment 107.

Carol Mochan: Given the minister's comments, I will be happy to work with her, so I will not move amendment 107.

Amendment 107 not moved.

Amendments 108 to 114 not moved.

The Convener: I briefly suspend the meeting.

10:32

Meeting suspended.

10:40

On resuming—

The Convener: Amendment 115, in the name of Jackie Baillie, is grouped with amendments 126 and 127.

Jackie Baillie: I will speak to all three of my amendments in the group.

If we are to get social care right, we need a national strategy that sets out key objectives that we can all agree on and that identifies the state of the landscape while respecting local structures and accountability. That is why I lodged amendment 115, which would require the Scottish Government to have a four-year national strategic plan for social care services that should include social care planning and procurement of services. As members can see from the amendment, the strategic plan would be comprehensive and designed in consultation and collaboration with key stakeholders across the sector, and it would drive consensus about what needs to be done to make social care the very best it can be.

Amendment 126 would require the Scottish Government, integration joint boards and health and social care partnerships to publish details of the funding that was available for social care in the current financial year and for the subsequent five financial years. That information would be published at least once every financial year.

Similarly, amendment 127 calls for data collection and reporting on social care needs, including unmet need and estimated costs. It is important that we have transparency about finances and an understanding of the level of unmet need across Scotland, and it would serve as an opportunity to assess the progress that ministers were making. If we are to get serious about transforming social care and ensuring that it meets our population's needs, we need a clear strategic approach that is agreed on by stakeholders. I urge all members to support the amendments in group 5.

I move amendment 115.

Maree Todd: I cannot support Jackie Baillie's amendment 115, but I would be happy to work with her on alternative wording to consider at stage 3. I agree that it would be helpful for us to have a strategic plan for health and social care services. However, the problem with amendment 115 is that it could lead to a situation in which ministers had to take on responsibility for delivering social care services if all other routes failed. That would go against the agreement that local government should retain statutory responsibility for the delivery of social work and social care services, the employment of staff and the ownership of the assets. I do not think that changing that would be the intention of amendment 115.

I would be more than happy to work with the committee on alternative wording for a requirement for a national strategy for health and social care if members want that in the bill, although I stress that we do not now need legislation to have such a strategy. In doing such work, I would want to make sure that we strengthened and built on the integration of health and social care.

I turn to Jackie Baillie's amendment 126. The Scottish Government is committed to improving the financial transparency of integration authority spending, including on social care. The powers to specify financial reporting by integration joint boards already exist under the Public Bodies (Joint Working) (Scotland) Act 2014 and are sufficient for that purpose. The total funding that is available for social care in a financial year is subject to changes within each year, so an accurate report of the available amounts cannot be made until after the end of each financial year, for the same reason that accurate long-term forecasts are not possible. Any published information of the nature that the amendment requires would therefore be subject to frequent revision, which would place a considerable burden on the reporting bodies and erode public confidence in the information. I therefore cannot

support amendment 126, and I invite members not to support it, if it is moved.

10:45

I welcome the intention of Jackie Baillie's amendment 127. Having the ability to understand and cost current and future need for social care is valuable for informing policy development, strategic planning, monitoring and evaluation, but there are significant limitations with the existing data that would make reporting against it meaningless. In addition, the reporting requirement in amendment 127 would create duplication, as the integration authorities are required by legislation to produce a local needs assessment.

Being cognisant of the complexities and challenges with data availability, the Scottish Government is already progressing work to better understand social care needs, based on existing data, with the aim of informing future approaches to data collection and reporting. However, I am open to working with Jackie Baillie at stage 3 to consider how we could address the data gaps, and I invite her not to move amendment 127. If the amendment is moved, I ask the committee not to support it.

Jackie Baillie: There is currently no effective strategy, which is why I think that the bill needs to be amended. There is a lack of transparency among some of the social care bodies, and trying to get information from them is like trying to get blood out of a stone. We absolutely need to improve data and reporting—if we do not, how will we measure progress?

However, the minister will be pleased to hear that I will be consistently reasonable. I will seek to withdraw amendment 115 and will not move amendments 126 and 127, on the understanding that she will work with me prior to stage 3 to bring something back.

Amendment 115, by agreement, withdrawn.

Section 36—Care records

The Convener: Amendment 116, in the name of Brian Whittle, is grouped with amendments 117, 42, 43, 118 to 122, 44 and 124.

Brian Whittle: In its stage 1 report, the committee stated that it

“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.”

I want that to be done by 2027.

In 2018, the Scottish Government produced Scotland's digital health and care strategy, which

drew on the then Health and Sport Committee's report on technology and innovation in health and social care, in which the committee agreed that data sharing through a single platform that connects with other systems was the best way forward. In that report, the Health and Sport Committee said:

“We recommend any cross-cutting technology, if it is to effectively join up health and social care, must include the social and community care sector and hospices and would expect to see this in the strategy.”

The Scottish Government has not delivered on the rolling delivery plan targets. Seven years on, we are still discussing the importance of healthcare technology integration, rather than simply delivering it.

Amendment 122 seeks to address concerns about data breaches by requiring ministers to report on the cost of such breaches and what steps they will take to prevent further breaches. Including that provision would help the Government to self-reflect and to improve security.

What we are talking about here is the ability of social care to speak to primary care and secondary care, which is fundamental if the bill is to have any kind of success. We are way behind the curve, and we should be setting such targets for the Government.

I move amendment 116.

Maree Todd: I ask the committee not to support amendments 116 to 122 and 124, and to support my amendments 42 to 44.

Brian Whittle's amendment 116, the intention behind which I appreciate, seeks to mandate regulations for an information-sharing scheme under section 36. As such regulations would be subject to the affirmative procedure, parliamentary approval of draft regulations would be required.

If ministers were under a duty—rather than having a power—the duty would require ministers to keep returning to Parliament until Parliament was content to approve a draft instrument. In some cases, it is clear that a duty is required, but ministers will create regulations to set out the details of the scheme under section 36 in any event. In those circumstances, I do not consider that anything more than a power is needed.

The spirit and intention of section 36 is to create the scheme based on the need for reform in health and social care, as identified in the independent review of adult social care. Our intention on that was clearly set out in the accompanying documents when the bill was introduced. I therefore invite members not to support amendment 116.

On amendment 117, lodged by Brian Whittle, the mandated creation of a single digital platform

is not necessary to achieve the objective of better information sharing. An appropriate legal gateway, along with interoperable systems underpinned by common information standards, will achieve the same intent. A single digital platform could create issues for health and social care organisations that do not have the right infrastructure or funds to implement a digital system. It would also represent a significant risk in respect of so-called vendor lock-in, which would create unacceptable financial and resilience risks. I invite members not to support amendment 117.

My amendments 42 to 44 will identify the scope of the information-sharing provision. They simplify the scope by setting out what public health and social care services will be encompassed, without reference to organisational structures. I ask the committee to support my amendments.

On amendment 118, which Gillian Mackay lodged, I understand the intention in seeking to expand the scope of section 36. That is what I aim to achieve in my amendments 42 to 44. Without a definition of care services in the legislation, it would be difficult to interpret and accurately assess the effect of amendment 118. I therefore encourage members not to support amendment 118, if it is moved.

I recognise the spirit of the provisions that Gillian Mackay's amendment 119 suggests. However, the true effect in legislation means that I cannot support the amendment. Existing legislation that refers to the UK Government sets out an individual's rights as to how their information is processed and provides for accessibility. As amendment 119 is about the control of information, we consider that it relates to the reserved matter of data protection and that it would therefore be outwith this Parliament's competence.

Although I agree that individuals should have a say in who accesses information in their records, it would not be practical to promise that they could exercise full control over that. Indeed, it would not be in the public interest. For example, when providing emergency care, it is important that health and care professionals are able to access records without explicit consent. I invite Gillian Mackay not to move amendment 119 and, if it is moved, I ask the committee not to support it.

Turning to Jackie Baillie's amendment 120, I understand the motivation behind legislating for a digital shared care record, but I do not agree with the proposal. The amendment relates to the control of information, which I consider to be a reserved matter of data protection. That is therefore outwith the Scottish Parliament's legislative competence. I invite Jackie Baillie not to move amendment 120 and, if it is moved, I ask the committee not to support it.

I cannot support amendment 121, which was lodged by Sandesh Gulhane, as drafted. Paragraph (b) in the amendment is unclear as to its scope and intent. Specifically, it is unclear whether it relates to the portability of assessments or whether the intention is that services in a particular local authority should be able to access information that has been created or is held by other local authorities. Although I cannot support the amendment, I assure the member that digital access to personal health and care information for members of the public is a priority that we are actively pursuing.

Parliament will be aware that the First Minister recently announced that the first release of our digital front door will be available in Lanarkshire from December this year. The first release will include the ability for people to access part of their core health information and, over time, more and more health and care information about an individual will be fully accessible to them via digital means. I invite members not to support amendment 121, if it is moved.

On Brian Whittle's amendment 122, I fully recognise the importance of accountability and transparency, particularly in relation to matters that involve citizens' sensitive personal information. However, I ask the committee to resist the amendment on the ground that information breaches are likely to arise from being in breach of other relevant data protection legislation rather than the scheme that is provided for. I do not believe that it is possible to accurately assess the financial costs that are associated with information breaches.

With regard to the Scottish Government's approach to setting out plans to prevent future information breaches, I direct Brian Whittle to our data strategy for health and social care. In addition, I believe that existing arrangements for holding ministers to account, such as parliamentary questions, are suitable ways for the member to receive regular updates. I therefore ask him not to move amendment 122. If it is moved, I invite the committee not to support it.

On amendment 124, I understand Brian Whittle's motivation for legislating for a single electronic health and care record, but I do not agree with the proposal and I urge the committee not to support the amendment. First, section 36 is not about the creation of such a record; it is about creating the legal gateway by which a range of reforms to information sharing in health and social care can be brought forward.

Secondly, a single record would offer a significantly less attractive proposition than an integrated record, because the latter allows for flexibility in the procurement of digital systems to meet the needs of local organisations and

mitigates a multitude of risks. The challenges that are posed by the creation of a single record, particularly in relation to fiscal and technical design considerations, would be prohibiting factors in mandating that within the timeframe.

The Convener: I invite Gillian Mackay to speak to amendment 118 and other amendments in the group.

Gillian Mackay: Section 36 outlines information-sharing requirements for professionals who work in public health and social care services. In order to create a care record system that is person centred, section 36 should be amended so that it outlines measures to ensure citizens' control of and access to their data, and a digital choice approach.

My two amendments in the group—amendments 118 and 119—seek to ensure that the care records that will be established under the bill will align with best practice in human rights data approaches and digital choice frameworks. By embedding clear rights in the regulations, amendment 119 would strengthen personal autonomy and ensure that individuals have meaningful control of their care information. The amendment provides that citizens must have the right of access to and control of their care records, including the ability to determine who may access different types of information. That is essential for maintaining privacy and trust in the system.

I recognise what the minister said about control and some people potentially being excluded. If my amendment needs to be worked on to provide further useful definition, I am happy to do that. However, outwith the normal situations where people have data shared with doctors and so on, there are people who will not necessarily want their data to be shared, and it is essential that they have a choice on that.

Amendment 119 seeks to ensure that guardians may exercise the rights on behalf of those for whom they hold legal responsibility, which offers vulnerable individuals clarity and protection. Crucially, the amendment would also guarantee that care records will be accessible in various formats, ensuring that no one will be excluded due to digital barriers.

My amendments in the group would make it explicit that providers of care services should be included in the information-sharing framework. I take on board the minister's point about the definition of care providers, but care providers need appropriate access to relevant records in order to deliver safe, effective and person-centred care. The amendments were worked on with third sector care providers, who do not always have access to all the records that they feel that they need. However, their access must be balanced

with strong safeguards that give individuals control of their data by ensuring a clear rights-based approach to information governance. My amendments would support a more transparent, accessible and accountable system.

The Convener: I invite Jackie Baillie to speak to amendment 120 and other amendments in the group.

11:00

Jackie Baillie: Despite repeated Government commitments on greater integration of health and social care, it is clear from talking to those at the coalface that that has simply not happened. One of the most obvious examples is the collection and sharing of a patient's information to trusted bodies that are involved in the individual's care. Despite digital solutions existing, the Government has been much too slow to take action and seems to be stuck in an analogue age. In lodging amendment 120, I want the use of digital technology to improve data sharing.

Despite the Government's track record, I remain an optimist. That is why I lodged amendment 120, which would require the creation of that digital shared record and which sets out practical examples of what it should include, with safeguards around the sharing of information and data protection. The detail will be for the Government to bring forward in regulations. We do not believe that amendment 120 relates to a reserved area, but if the minister is willing to discuss it, I will consider withdrawing it.

For the record, we support all the other amendments in the group.

The Convener: I call Sandesh Gulhane to speak to amendment 121 and other amendments in the group.

Sandesh Gulhane: The data is not ours. The data is not the NHS's. The data that is held belongs to the individual—the patient, the person—and it is important that full access to that data is available to that individual. It is very important that we do not lose sight of that and that we do as much as we can to provide that reassurance.

The minister said that Gillian Mackay's amendments 119 and 118 might hinder emergency care, but it is clear that people who are participating in a scheme would be told that the full data will be accessible in emergencies and when they see their GP, as that is absolutely vital. However, I do not think that the care worker who comes to someone's door to help them needs to see that person's full care or health records, so under the amendments, an individual would be

able to choose whether such a person would see them.

We are in full support of all the amendments in the group. The minister said that Brian Whittle's amendment is not necessary and that a single platform is not required. From the perspective of someone on the front line, who sees patients and who, a month later, as a GP, is unable to see what the hospital has said, I cannot tell you how important that single data platform is. When I was working in psychiatry, cross-covering paediatric psychiatry, I was unable to see or write in the patient notes. That is not safe and it is not acceptable in 2025. It is simply not a position that we should be in.

Lastly, the minister spoke about my amendment 121, which looks at portability—that is, allowing an individual to move with their data and local authorities to be able to see it. However, I do not think that it would be the worst thing for local authorities to be able to see anyone's data as long as they were given permission to do so by the individual.

The Convener: I call Brian Whittle to wind up and to press or seek to withdraw amendment 116.

Brian Whittle: I listened to the minister with a degree of frustration as she contradicted the Scottish Government's intention and what her own cabinet secretary said. Listening to Sandesh Gulhane, who spoke from the perspective of a healthcare professional, it was clear how unbelievably important it is to have such a platform. I repeat that, in 2018, the Scottish Government produced Scotland's digital health and care strategy, which drew on the Health and Sport Committee's report on technology and innovation in healthcare and social care, in which the committee agreed that data sharing through a single platform that connects the other systems is the best way forward.

Emma Harper (South Scotland) (SNP): As a healthcare professional who works in acute care as well as out in the community and has taught nurses in the past, I know that there have been challenges—we have heard that in the evidence that the committee has recently taken regarding digital access and access to case notes—but would it not be better to employ a digital strategy separately, because we are talking here about primary care, secondary care and care in the community? With the evolution of artificial intelligence, would it not be better to look at that separately, rather than inserting it into the bill?

Brian Whittle: No, because all healthcare should be connected. The connection between healthcare professionals, and how we move care from part of the NHS into primary and secondary

care and even, in some cases, the third sector, should be seamless.

As I have said many times, this country is way behind the rest of the United Kingdom, which is way behind much of the rest of Europe. The longer we leave the issue, the harder the solution is going to be. It is incumbent on the Parliament to send a message to the Government and set a target. I know that the cabinet secretary agrees with me on that.

We need a general platform that allows there to be autonomy across the whole sector for the deployment of different kinds of software. It is incredibly important, especially in an acute setting, that a person is able to access pharmacology or whatever has come out of primary and secondary care. If somebody has come out of hospital, it is important that everybody understands their role in delivering their care and understands what other care has been given. I find it very frustrating when I listen to the cabinet secretary, because there are many mixed messages coming out of the Government, and we are not making any progress.

I urge the committee to pass amendments 116 and 117, because, if anything is to come out of the bill, it is fundamentally important that the digital platform is put in place.

The Convener: Thank you, Mr Whittle, although I think that, in your comments, you promoted the minister to cabinet secretary. *[Laughter.]*

The question is, that amendment 116 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Gulhane, Sandesh (Glasgow) (Con)
Mackay, Gillian (Central Scotland) (Green)
Mochan, Carol (South Scotland) (Lab)
Sweeney, Paul (Glasgow) (Lab)
Whittle, Brian (South Scotland) (Con)

Against

Dunbar, Jackie (Aberdeen Donside) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Harper, Emma (South Scotland) (SNP)
Clare Haughey (Rutherglen) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)

The Convener: The result of the division is: For 5, Against 5, Abstentions 0.

As there is a tie, I must exercise a casting vote. My casting vote is to vote against amendment 116.

Amendment 116 disagreed to.

Amendment 117 moved—[Brian Whittle].

The Convener: The question is, that amendment 117 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Gulhane, Sandesh (Glasgow) (Con)
Mackay, Gillian (Central Scotland) (Green)
Mochan, Carol (South Scotland) (Lab)
Sweeney, Paul (Glasgow) (Lab)
Whittle, Brian (South Scotland) (Con)

Against

Dunbar, Jackie (Aberdeen Donside) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Harper, Emma (South Scotland) (SNP)
Clare Haughey (Rutherglen) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)

The Convener: The result of the division is: For 5, Against 5, Abstentions 0.

As there is a tie, I must exercise a casting vote. My casting vote is to vote against amendment 117.

Amendment 117 disagreed to.

Amendments 42 and 43 moved—[Maree Todd]—and agreed to.

Amendment 118 not moved.

Amendment 119 moved—[Gillian Mackay].

The Convener: The question is, that amendment 119 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Gulhane, Sandesh (Glasgow) (Con)
Mackay, Gillian (Central Scotland) (Green)
Mochan, Carol (South Scotland) (Lab)
Sweeney, Paul (Glasgow) (Lab)
Whittle, Brian (South Scotland) (Con)

Against

Dunbar, Jackie (Aberdeen Donside) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Harper, Emma (South Scotland) (SNP)
Haughey, Clare (Rutherglen) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)

The Convener: The result of the division is: For 5, Against 5, Abstentions 0.

As there is a tie, I must exercise a casting vote. I vote against amendment 119.

Amendment 119 disagreed to.

The Convener: I call amendment 120, in the name of Jackie Baillie.

Jackie Baillie: I think that the minister gave an indication that she is prepared to discuss the

matter before stage 3. If that is the case, I am happy not to move amendment 120.

Amendment 120 not moved.

Amendment 121 moved—[Sandesh Gulhane].

The Convener: The question is, that amendment 121 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Gulhane, Sandesh (Glasgow) (Con)
Mackay, Gillian (Central Scotland) (Green)
Mochan, Carol (South Scotland) (Lab)
Sweeney, Paul (Glasgow) (Lab)
Whittle, Brian (South Scotland) (Con)

Against

Dunbar, Jackie (Aberdeen Donside) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Harper, Emma (South Scotland) (SNP)
Haughey, Clare (Rutherglen) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)

The Convener: The result of the division is: For 5, Against 5, Abstentions 0.

As there is a tie, I must exercise a casting vote. I vote against amendment 121.

Amendment 121 disagreed to.

Amendment 122 moved—[Brian Whittle].

The Convener: The question is, that amendment 122 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Gulhane, Sandesh (Glasgow) (Con)
Mackay, Gillian (Central Scotland) (Green)
Mochan, Carol (South Scotland) (Lab)
Sweeney, Paul (Glasgow) (Lab)
Whittle, Brian (South Scotland) (Con)

Against

Dunbar, Jackie (Aberdeen Donside) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Harper, Emma (South Scotland) (SNP)
Haughey, Clare (Rutherglen) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)

The Convener: The result of the division is: For 5, Against 5, Abstentions 0.

As there is a tie, I must exercise a casting vote. I vote against amendment 122.

Amendment 122 disagreed to.

Amendment 44 moved—[Maree Todd]—and agreed to.

The Convener: Amendment 123, in the name of Brian Whittle, is grouped with amendments 125, 134, 135, 138 to 141, 148, 155, 156, and 159.

Brian Whittle: Once again, I give members the opportunity through my amendments, which seek to leave out sections of the bill, to accept that the bill is not the right approach and to try again to develop the very best legislation, which the sector needs. The bill is now exactly the same as it always was—apart from changes to virtually every section in it.

If we pass the bill as it is, there will be a need further down the line to bolt on other legislation, which is something that never works. Once again, the Scottish Government has failed to recognise that it has become a victim of a sunk-cost fallacy. It is convincing itself that, no matter how bad is the path that it is on, it has spent so much time and effort on getting here that turning back would be unthinkable.

11:15

My concern is that we are not going to provide justice for the people whom the bill is trying to help. We will not reform care, and we will not protect those whom the bill proclaims to support in the manner that it could and should support them. From the bill's very origins, the Scottish Government has been desperate to stress how much engagement it did with stakeholders ahead of the first draft. Even when the number of stakeholders who were against the plan rose well beyond the number of those who supported it, the Government persisted, yet it has lodged stage 2 amendments less than 48 hours before the deadline for doing so, thereby giving MSPs and stakeholders alike virtually no time to review or comment on the proposed changes—never mind to propose improvements.

Having spoken to senior figures in the care sector, I know just how much of a disappointment that has been. Apparently, stakeholder feedback is a priority only when it aligns with the Scottish Government's view. Even the committee's report on the bill recommended that stakeholders have a formal opportunity to consult at stage 2. I suppose that, now that the Scottish Government has rendered at least 100 pages of the document irrelevant with the scrapping of part 1, it sees little reason for heeding the rest of it.

Regardless of how members might wish to view my intentions in my amendments to raze the rest of this shadow of a bill, I want to make it clear that I recognise that social care needs serious reform. I want people across Scotland, many of whom are very vulnerable, to have swift and equal access to effective care. However, I see, too, the consequences if we get the early steps towards

that wrong. As I have said, it is my firm belief that the best approach is to start again, and I hope that colleagues will agree with me.

Although I propose removal of all sections of the bill, I urge colleagues to give particular consideration to my amendment 139, which seeks to leave out section 41. Not only is it yet another section in which the intention of the Scottish Government is unclear, but I and others, including stakeholders in the care sector, believe that it could be interpreted as a means of excluding any profit-making entity from providing care services. I would, of course, welcome clarification from the minister on that point, but the mere fact that the Government appears to be willing to allow a section that could be interpreted in that way troubles me greatly. It is incompatible with ethical commissioning and procurement and the relevant recommendations of the Scottish Parliament Health, Social Care and Sport Committee; it is incompatible with the Social Care (Self-directed Support) (Scotland) Act 2013; it is incompatible with the need for a sustainable mixed market; and it is incompatible with pre-existing Scottish Government guidance on the procuring of care and support services. It lacks evidence of support of reserved procurement after public consultation, and it highlights significant shortcomings in the Scottish Government's business and regulatory impact assessment for the bill.

I move amendment 123.

Maree Todd: Brian Whittle's amendments seek to remove sections 36 to 48 of the bill. They would, in effect, remove the bill's remaining sections, following my amendments to remove part 1, so I ask committee members not to support them.

Agreement to amendments 123 and 125, which relate to sections 36 and 37, would result in barriers to effective sharing of information and consistent use of information standards across health and social care. That would negatively impact on our ability to improve delivery of high-quality health and care services for individuals.

Amendments 134 and 135 propose the removal of the introduction of the right to breaks for unpaid carers. Establishment of that right has received an overwhelmingly positive response. It is clear that there is support for delivering it, as it will help to ensure that unpaid carers can have a life alongside their caring role, and it is likely to reduce other costs arising from unplanned hospital admissions, failed hospital discharge and additional residential care when caring relationships break down. I remain committed to delivering the crucial right to breaks in order to uphold the health and wellbeing of unpaid carers and to publicly recognise the immense value of the support that they provide.

Amendment 138 would remove provisions related to Anne's law, which we are absolutely committed to delivering, and for which there is strong cross-party support.

Our amendment 50 includes provision for enabling care home residents to identify an essential care supporter, as has been called for by Care Home Relatives Scotland. I am grateful to that group and others for working with us on that amendment.

Brian Whittle's amendment 139 would remove section 41, which will extend the reserved contracting process to third sector organisations in health and social care. That process will help those organisations to compete with larger for-profit ones. It will support a flexible mixed-market model for delivering social care, with decisions being made locally based on local needs. Independent and third sector organisations, both for-profit and not-for-profit ones, are and will continue to be important partners in delivering social care for Scotland.

Agreement to Brian Whittle's amendments would halt reforms in a range of really important areas, which I believe largely command cross-party support. I cannot believe that the member would want us to halt Anne's law and the right to breaks for carers. I therefore ask the committee not to support any of the amendments in the group.

The Convener: Sandesh Gulhane has asked to speak. After he has spoken, I will bring you back in, minister, if you wish to respond to his points.

Sandesh Gulhane: The minister speaks of her commitment, and the Government's commitment, to Anne's law. Where was that commitment three and a half years ago, when Anne's law could have been brought in and would have sailed through Parliament? Where was the minister's commitment to the right to breaks for carers three and a half years ago?

Those measures are in amendments that the minister has lodged. Quite simply, they are being introduced on the back of a failed NCS bill, instead of being front and centre in the original bill. They could have been front and centre standing on their own in a bill that, again, would have sailed through, because the measures command the full support of Parliament. This is not the way to do it.

Maree Todd: I do not agree with Sandesh Gulhane's narrative on those points. The reason for putting Anne's law in the bill is that human rights are absolutely embedded in the bill and it is an appropriate place to put Anne's law, which is also about embedding human rights in our social care system.

The introduction of Anne's law has proved to be difficult because of the need to strike a balance with the European convention on human rights. I do not agree that it could have been done three and a half years ago. Across the rest of the UK and Ireland, nobody has yet legislated for something similar. We are leading the way on the issue, and I look forward to gaining the support of committee members to ensure that Anne's law passes, through the bill.

The Convener: Jackie Baillie has indicated that she, too, wishes to speak. Again, minister, I will bring you back in to answer.

Jackie Baillie: I will make a tiny contribution. I have sympathy with Brian Whittle's frustrations, although I do not believe that the committee should support his amendments. It is the case that the right to breaks for carers and Anne's law could have been introduced much sooner. I hesitate to point out that the minister has already rejected amendments on embedding human rights in the bill. I, of course, hope to work with the minister, but I recognise Brian Whittle's frustrations, although I do not advocate support for his amendments.

The Convener: Minister, do you have anything to add?

Maree Todd: I am glad to hear that Jackie Baillie's—and, I presume, other Labour Party members'—support for the proposed legislation extends to voting for it and against wrecking amendments.

The Convener: I call Brian Whittle to wind up and to press or seek to withdraw amendment 123.

Brian Whittle: On amendment 139, I think that the problem is one of ambiguity and what could come off the back of it. I talked about the incompatibility with ethical commissioning and procurement and the recommendations of the Scottish Parliament's Health, Social Care and Sport Committee. In paragraph 89 in the summary of recommendations in the stage 1 report on the bill, the committee says that there is

"an inherent contradiction between reserving the right to participate in procurement by type of organisation, and the principles of ethical commissioning."

I understand what the minister is trying to do with the provisions, but we have to remove the ambiguity and the potential off the back of that.

I have to say that the attempt to tag on to the bill Anne's law and rights for unpaid carers is quite disturbing. We all support Anne's law 100 per cent, and we all recognise the need for unpaid carers to have a break, but trying to force the bill through on the back of that is, frankly, disgraceful. If the public knew the way in which the bill has sometimes been dealt with, they would be up in arms. As my colleagues have said, Anne's law

and breaks for unpaid carers could have been introduced in secondary legislation three and a half years ago. There is no need for the bill.

The reason why I am asking for the bill to be started again is that I do not believe that, as it is drafted, it will do what it could and should do for those whom it pretends to support.

I press amendment 123.

The Convener: The question is, that amendment 123 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Gulhane, Sandesh (Glasgow) (Con)
Whittle, Brian (South Scotland) (Con)

Against

Dunbar, Jackie (Aberdeen Donside) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Haughey, Clare (Rutherglen) (SNP)
Harper, Emma (South Scotland) (SNP)
Mackay, Gillian (Central Scotland) (Green)
Mochan, Carol (South Scotland) (Lab)
Sweeney, Paul (Glasgow) (Lab)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)

The Convener: The result of the division is: For 2, Against 8, Abstentions 0.

Amendment 123 disagreed to.

Section 36, as amended, agreed to.

After section 36

Amendment 124 moved—[Brian Whittle].

The Convener: The question is, that amendment 124 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Gulhane, Sandesh (Glasgow) (Con)
Mackay, Gillian (Central Scotland) (Green)
Mochan, Carol (South Scotland) (Lab)
Sweeney, Paul (Glasgow) (Lab)
Whittle, Brian (South Scotland) (Con)

Against

Dunbar, Jackie (Aberdeen Donside) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Harper, Emma (South Scotland) (SNP)
Haughey, Clare (Rutherglen) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)

The Convener: The result of the division is: For 5, Against 5, Abstentions 0.

As there is a tie, I must exercise a casting vote. I vote against amendment 124.

Amendment 124 disagreed to.

Section 37—Information standard

The Convener: Amendment 45, in the name of the minister, is grouped with amendments 46 to 49 and 64.

Maree Todd: My amendments 45 and 48 will clarify what can be considered to be an information standard and allow standards to be set by reference to documents that do not yet exist. The amendments also provide for details on the duty to make the standards publicly available and on separately withdrawing them, so that Scotland may keep in line with the dynamic movement of the standards landscape.

My amendments 46 and 47 recognise proposed amendments to part 1 of the bill and will update the chapter on information standards accordingly, while also adding the power for Scottish ministers to modify by regulation the people and organisations to whom section 37 applies. Amendment 47 will also allow for a civil sanctions regime to be introduced where breaches are incurred.

My amendment 49 provides definitions for the new chapter on information standards.

My amendment 64 is a technical amendment to apply the affirmative procedure to the regulation-making powers in amendments 46 and 47.

I urge members to support my amendments 45 to 49 and 64.

I move amendment 45.

The Convener: No member has indicated that they wish to speak on the group of amendments. Do you wish to add anything to wind up, minister?

Maree Todd: No. I am content.

Amendment 45 agreed to.

The Convener: I call Brian Whittle to move or not move amendment 125.

Brian Whittle: Given the likely outcome of a vote, I will save the committee time. Disappointedly, I seek to withdraw amendment 125.

The Convener: Do you mean that you are not moving amendment 125?

Brian Whittle: I am sorry—I am not moving amendment 125.

Amendment 125 not moved.

Section 37, as amended, agreed to.

After section 37

11:30

Amendments 46 to 49 moved—[Maree Todd]—and agreed to.

Amendments 126 and 127 not moved.

Before section 38

The Convener: Amendment 128, in the name of Sandesh Gulhane, is grouped with amendments 129, 130, 152 and 153. I call Sandesh Gulhane to move and speak to amendment 128, and to speak to the other amendments in the group.

Sandesh Gulhane: It is important that we look at what the situation is like right now across our country. It is clear that local authorities up and down our country are slashing care for people who need it. It is clear that, across our country, people who are desperately in need of care—when they want to leave hospital, when they want to live in their own home and when their care needs to be changed—are not receiving the urgent care that they need. Amendment 128 looks to ensure that we are able to give people a reassuring timeline. Six weeks is a very long time, and we would not want it to be that long, but at least there would be a timeframe within which people would have to get their care. That is not an unreasonable thing to ask for.

On amendments 129 and 130, we agree with Paul Sweeney and we are keen to see those provisions in the bill.

I move amendment 128.

The Convener: I call Paul Sweeney to speak to amendment 129 and the other amendments in the group.

Paul Sweeney: Amendment 129, in my name, requires Scottish ministers to make regulations that expedite access to social care services for those with terminal illness, and to provide increasing levels of social care services with the progression of the terminal illness. We all know of cases of people with a terminal illness who have had to wait for social care services for the majority of their remaining days. Amendment 129 gets rid of that national scandal by guaranteeing that the person's terminal illness is considered when social care services are being considered.

Amendment 130 requires Scottish ministers to make regulations that provide an individual with equivalent care when they move from one local authority area to another, thus preventing the all-too-frequent situation where an individual with a care package loses their entitlement when they move between local authority areas.

Amendment 152 confirms that, under section 46, regulations that relate to the proposed new section entitled "Terminal illness: provision of services" would be subject to affirmative procedure. Amendment 153 would confirm that, under section 46, regulations that relate to the proposed new section entitled "Portable care packages" would also be subject to affirmative procedure.

Maree Todd: I ask the committee to resist all the amendments in the group.

On amendment 128, under the Social Care (Self-directed Support) (Scotland) Act 2013, local authorities have a duty to provide social care through self-directed support, with people who are eligible for social care being offered a range of choices on how they receive their support. The delivery of care results from collaborative discussion, which might not be compatible with the timescale that the amendment sets out. The provision of social care and the timelines for delivery are the responsibility of the local authority. The assessment of needs is for the local authority to undertake, and there is no statutory definition of "critical need". Amendment 128 would result in ambiguity and uncertainty, so I resist it.

I do not support amendment 129, given that it could interfere with current powers under the Social Work (Scotland) Act 1968. The purpose of amendment 152 is to add to section 46 corresponding provisions for regulations relating to amendment 129, so I do not support that amendment, either. However, I am keen to work with Paul Sweeney before stage 3 to consider how we could take the matter forward.

I understand the intention behind amendments 130 and 153. The point of need should absolutely be consistent and transferable across Scotland, as is already stipulated in legislation. However, given that local authorities have the statutory right to implement their own policies in relation to eligibility and assessment, and that they have a duty of care for those within their jurisdiction, it would not be feasible to provide care without completing suitable assessments or evaluations of needs. For that reason, I resist amendments 130 and 153.

I ask the committee to resist all the amendments in the group.

Sandesh Gulhane: The minister spoke about people being allowed self-directed support following "collaborative discussion". People are told, "You can employ somebody and take on all the difficulties that come with that. That is your choice—it is up to you—and here is some money to do that. Good luck." That is not collaborative and does not allow self-directed support to be provided in an appropriate way. If that is happening, we are leaving people who require

care to simply fend for themselves—we have heard that time and again from people with lived experience. The minister talks a lot about ensuring that we take account of lived experience and says that she speaks to people with lived experience, but that point does not seem to have been picked up, which I find concerning. It is clear that six weeks seems to be a decent amount of time to arrange for people to be given care, and we can define “critical need” in secondary legislation, as required.

I support Paul Sweeney’s amendments, because we should do everything that we can to ensure that people with a terminal illness are looked after as quickly as possible.

I press amendment 128.

The Convener: The question is, that amendment 128 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Gulhane, Sandesh (Glasgow) (Con)
Whittle, Brian (South Scotland) (Con)

Against

Dunbar, Jackie (Aberdeen Donside) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Harper, Emma (South Scotland) (SNP)
Haughey, Clare (Rutherglen) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)

Abstentions

Mackay, Gillian (Central Scotland) (Green)
Mochan, Carol (South Scotland) (Lab)
Sweeney, Paul (Glasgow) (Lab)

The Convener: The result of the division is: For 2, Against 5, Abstentions 3.

Amendment 128 disagreed to.

The Convener: Amendment 129 was already debated with amendment 128. I call Paul Sweeney to move or not move amendment 129.

Paul Sweeney: Although the minister has indicated an interest in discussion, I feel that the matter is critical, which merits amendment 129 being moved.

Amendment 129 moved—[Paul Sweeney].

The Convener: The question is, that amendment 129 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Gulhane, Sandesh (Glasgow) (Con)
Mackay, Gillian (Central Scotland) (Green)
Mochan, Carol (South Scotland) (Lab)
Sweeney, Paul (Glasgow) (Lab)
Whittle, Brian (South Scotland) (Con)

Against

Dunbar, Jackie (Aberdeen Donside) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Harper, Emma (South Scotland) (SNP)
Haughey, Clare (Rutherglen) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)

The Convener: The result of the division is: For 5, Against 5, Abstentions 0.

As there is a tie, I must exercise a casting vote. I vote against amendment 129.

Amendment 129 disagreed to.

Amendment 130 moved—[Paul Sweeney].

The Convener: The question is, that amendment 130 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Gulhane, Sandesh (Glasgow) (Con)
Mochan, Carol (South Scotland) (Lab)
Sweeney, Paul (Glasgow) (Lab)
Whittle, Brian (South Scotland) (Con)

Against

Dunbar, Jackie (Aberdeen Donside) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Harper, Emma (South Scotland) (SNP)
Haughey, Clare (Rutherglen) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)

Abstentions

Mackay, Gillian (Central Scotland) (Green)

The Convener: The result of the division is: For 4, Against 5, Abstentions 1.

Amendment 130 disagreed to.

The Convener: As we have reached a natural break in the proceedings and we are not going to conclude stage 2 today, I will call a halt to the meeting. At our next meeting, next week, we will continue our stage 2 consideration of the National Care Service (Scotland) Bill.

Meeting closed at 11:41.

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

All documents are available on
the Scottish Parliament website at:

www.parliament.scot

Information on non-endorsed print suppliers
is available here:

www.parliament.scot/documents

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000

Textphone: 0800 092 7100

Email: sp.info@parliament.scot



The Scottish Parliament
Pàrlamaid na h-Alba