



OFFICIAL REPORT
AITHISG OIFIGEIL

Health, Social Care and Sport Committee

Tuesday 4 March 2025

Session 6



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HEALTH, SOCIAL CARE AND SPORT COMMITTEE

7th 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)

Katy Clark (West Scotland) (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 4 March 2025

[The Convener opened the meeting at 09:00]

Decision on Taking Business in
Private

The Convener (Clare Haughey): Good morning, and welcome to the seventh meeting in 2025 of the Health, Social Care and Sport Committee. I have received apologies from David Torrance, and Jackie Dunbar joins us as a substitute.

The first item on the agenda is a decision on taking business in private. Do members agree to take item 5 in private?

Members indicated agreement.

National Care Service (Scotland)
Bill: Stage 2

09:00

The Convener: Agenda item 2 is our continued consideration of the National Care Service (Scotland) Bill at stage 2, and I welcome to the meeting the Minister for Social Care, Mental Wellbeing and Sport.

For those who are watching, I will briefly explain the procedure that we will follow during today's proceedings. The members should have with them a copy of the bill, the marshalled list and groupings, all of which are available on the bill's web pages on the Scottish Parliament's website.

I will call each amendment individually in the order that is set out in the marshalled list, and 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 all the 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 so wish. I will then call any other members who wish to speak in the debate. Members who wish to speak should indicate as much by catching my attention or the attention of the clerks. 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 it. 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 and, 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, and 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, as a number of amendments seek to leave out entire sections of this bill, a separate decision on those sections will not be required. Where a separate decision is needed, I will put the question at the appropriate point.

Section 38—Rights to breaks for carers

The Convener: Amendment 73, in the name of Gillian Mackay, is grouped with amendments 74 to 81, 131, 132, 82, 133, 83 to 85 and 88. I call Gillian Mackay to move amendment 73 and speak to all amendments in the group.

Gillian Mackay (Central Scotland) (Green): Most of my amendments in this group relate to what the bill describes as sufficient breaks

“from providing care for the cared-for person”.

Significant concerns about that phrase have been expressed by carers organisations. I am sure that it was not meant in that way, but the fact is that many carers do not actually want a break from the cared-for person; they want a break from the act of caring itself. Indeed, they would quite often like to have a break alongside that cared-for person, and that is particularly true for parents who are caring for their children. Therefore, I think that that reference should be left out and something else perhaps put in.

My amendments 131 and 88 seek to define the phrase “sufficient breaks”. I am aware that Jackie Baillie has an amendment on this issue, too, but amendment 131 suggests a “reasonable limitation” on how long people care for and a

“recognition of the carers’ ... right to rest”,

which was important to many of those carers.

As for Jackie Baillie’s amendment 132, I think that a break of two weeks might not be enough for some people. It has to be done on an individual basis. I appreciate Jackie Baillie’s intention in wanting to set out some baseline or limit, but I worry that it might be seen as a ceiling rather than a floor.

I move amendment 73.

The Convener: I call Jackie Baillie to speak to amendment 132 and other amendments in the group.

Jackie Baillie (Dumbarton) (Lab): It is estimated that 700,000 to 800,000 unpaid carers live in Scotland. Scotland’s care service is struggling. Many carers are unable to access the support that they are entitled to. As a consequence of that, unpaid carers take on a greater role in supporting the needs of loved ones.

I am concerned about the lack of detail and I share Gillian Mackay’s concerns about the lack of detail in the bill as introduced around the right to breaks. I have therefore lodged amendment 132, which calls for a clear definition of “sufficient breaks”. I have suggested that carers should receive a minimum—not a ceiling, but a minimum—of two weeks’ break. However, the committee and the minister will recognise that this is a probing amendment. I would be delighted if the minister went further, but it would be helpful to establish what would be deemed to be sufficient in terms of breaks.

The Minister for Social Care, Mental Wellbeing and Sport (Maree Todd): I welcome the intention behind Gillian Mackay’s amendments 73 to 80 and 83 to 85, which is to ensure that the new rights to breaks can include the provision of breaks taken together with a cared-for person. Although I consider that the existing provisions do not prevent the carer and the cared-for person from taking short breaks together, I support the amendments to ensure that that is absolutely clear.

I am, however, concerned by one potential consequence of the definition of breaks that is proposed in amendment 85, which is that it could allow local authorities to give effect to the right by providing a carer with breaks that are unrelated to their caring role. I am sure that that was not the intention, so I would like to work with Gillian Mackay ahead of stage 3 to develop a definition that does not risk undermining the right that we are trying to confer.

I am also happy to support amendment 81, which would turn the regulation-making power to make further provisions about breaks into a duty to make regulations. It was always the intention to make regulations, so turning that “may” into a “must” does no harm.

Amendment 82 is intended as a minor drafting amendment to add the word “also” as a consequence of agreement to amendment 81. It is not necessary or helpful as a consequential change and so I do not support it. If Gillian Mackay thinks that it is more than a consequential change, however, I would be happy to discuss with her what she means it to do and how it could be more clearly expressed.

I have a number of concerns about Gillian Mackay’s amendment 131 and Jackie Baillie’s amendment 132, which set rules about how the regulations should define sufficient breaks. In both amendments, there are aspects of the wording that do not work. For example, amendment 131 uses the term “working hours”, which is an employment law concept. That is not how we would draft regulations that are related to unpaid care.

I should also emphasise that I consider a provision that requires recognition of article 24 as drafted raises questions of legislative competence, especially given the reservation of international relations under the Scotland Act 1998.

Amendment 132 talks about a minimum entitlement of a two-week break. It is unclear what is to constitute a break in that context and whether it means two weeks consecutively or cumulatively, and what period it will be for—a month, a year or a lifetime.

Beyond the wording, some of the principles behind the amendments are inconsistent with feedback from carers in our previous consultation. Overwhelmingly, responses favoured personalisation over standardised entitlements. There is also the concern that, by setting rules about what regulations that define sufficient breaks have to say, the amendments would preempt the intended consultative process. By imposing rules about what regulations have to say now, we might end up preventing the regulations setting out a definition in the terms that carers, delivery partners and other consultees want to see. Although I cannot support either amendment 131 or 132, I would be happy to discuss what might be possible with Gillian Mackay and Jackie Baillie ahead of stage 3, so that we end up with a definition of “sufficient breaks” in regulations that is workable, that reflects the views that will be expressed through the intended consultative process and which can be adapted in the future, if required.

Amendment 133 is consequential on amendment 131 and, as I do not support amendment 131, I ask members not to support amendment 133.

Finally in this group, I am pleased to support Gillian Mackay’s amendment 88, which would extend the range of information that a short break service statement must contain and so increase transparency around the availability of different types of short break services and what local authorities are doing to meet demand. There are some ambiguities in the drafting of amendment 88, which I would like to resolve at stage 3. I will be pleased to work with Gillian Mackay to do that.

The Convener: I call Gillian Mackay to wind up and to press or seek to withdraw amendment 73.

Gillian Mackay: I do not have anything to add. I will press amendment 73.

Amendment 73 agreed to.

Amendments 74 to 81 moved—[Gillian Mackay]—and agreed to.

Amendment 131 not moved.

The Convener: Amendment 132, in the name of Jackie Baillie, has already been debated with amendment 73. I call Jackie Baillie to move or not move it.

Jackie Baillie: I will not move amendment 132, on the basis that there will be further discussion with the minister.

Amendment 132 not moved.

Amendments 82 and 133 not moved.

Amendments 83 to 85 moved—[Gillian Mackay]—and agreed to.

The Convener: Amendment 134, in the name of Brian Whittle, has already been debated with amendment 123. I call Brian Whittle to move or not move it.

Brian Whittle (South Scotland) (Con): On the basis of last week’s discussion and debate, I will not move it.

Amendment 134 not moved.

Section 38, as amended, agreed to.

After section 38

The Convener: Amendment 86, in the name of Gillian Mackay, is grouped with amendment 87.

Gillian Mackay: Amendments 86 and 87 seek to strengthen support for carers by ensuring clear timescales for the preparation of adult carer support plans and young carer statements under the Carers (Scotland) Act 2016. Currently, there are no statutory deadlines for local authorities to produce those plans, which leaves carers without the support that they need. Unpaid carers have long reported frustration with delays in accessing assessments and support. Without clear deadlines, carers can be left waiting indefinitely, which undermines their ability to balance caring responsibilities with their own wellbeing. The introduction of statutory timescales will provide much-needed accountability and ensure that carers receive timely recognition and assistance.

Additionally, the amendments would repeal sections 7 and 13 of the 2016 act, which currently allow local authorities to decide whether to prepare a plan or statement if a carer’s identified needs do not meet eligibility criteria. Removing those provisions will ensure that all carers, regardless of eligibility, receive a formal assessment, reinforcing their right to support and acknowledging the vital role that carers play in our system.

I move amendment 86.

09:15

Maree Todd: I support Gillian Mackay's amendments 86 and 87, which seek to ensure that carers can access support on a reasonable timescale, including support under the new right to breaks. Until a carer has an adult carer support plan or a young carer statement, they are unable to access statutory carer support, including short-break support. I acknowledge how essential it is for carers to be supported to take care of their own health and wellbeing while maintaining their caring role, and statutory timescales would support consistency between areas and help promote early intervention.

However, I am well aware of pressures on local carer services. Therefore, when it comes to setting timescales, it will be important to engage with carers and services in order to balance the need for such plans to be prepared in a reasonable time, while not adding to the pressure on services and allowing them to prioritise carers in urgent need. With that in mind, I intend to retain the accelerated timescales that are currently set out in regulations for carers looking after someone with a terminal illness.

I urge members to support amendments 86 and 87.

The Convener: I call Gillian Mackay to wind up and indicate whether she wishes to press or seek to withdraw amendment 86.

Gillian Mackay: I just want to thank the minister for her support of the amendments. I will press amendment 86.

Amendment 86 agreed to.

Amendment 87 moved—[Gillian Mackay]—and agreed to.

Section 39—Enactments relating to carers: minor modifications

Amendment 135 not moved.

Section 39 agreed to.

After section 39

Amendment 88 moved—[Gillian Mackay].

The Convener: The question is, that amendment 88 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

For

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

Against

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

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

Amendment 88 agreed to.

Section 40—Visits to or by care home residents

The Convener: Amendment 50, in the name of the minister, is grouped with amendments 50E to 50G, 50A, 50H to 50J and 50B to 50D.

Maree Todd: Seeing and spending time with loved ones is a fundamental human need, and it is central to the provisions in the bill relating to Anne's law. I, along with the First Minister, have been profoundly impacted by what relatives and others have told us about their experiences during the pandemic, and we have listened very carefully to those who have campaigned for Anne's law.

As a result, I have lodged amendment 50, which ensures that people living in adult care homes can always connect with the people who are important to them, both in and out of the home, unless there are exceptional circumstances. Indeed, even where there are exceptional circumstances, the amendment requires some types of visit always to be supported, namely in end-of-life situations and where the suspension of visiting would cause

"serious harm to the resident's health or wellbeing"

that would outweigh other risks.

Some family and friends are not simply visitors—they are essential care supporters and an integral part of the care team for their loved ones. Amendment 50 gives formal recognition to their role in providing care, support and companionship, as is called for by the care home relatives Scotland group. It provides for at least one person to be identified as an essential care supporter for every care home resident, as well as a legal presumption that suspending visits from that person will always cause serious harm to their loved one's health and wellbeing.

The approach builds on existing practice, which is reflected in the two current health and social care standards and in guidance. I am deeply grateful to the members of the care home relatives

Scotland group and others who have helped us in developing this approach, and I call on all members to support amendment 50.

I will speak to the amendments to amendment 50 in marshalled order. Amendment 50E, from Jackie Baillie, would remove the words “use their best endeavours” in relation to the duty of care homes to identify for every resident at least one individual as an essential care supporter. That would mean that care homes must identify an essential care supporter for all residents, no matter what their circumstances. I cannot support that. In practice, there will be situations in which, sadly, it is not possible to identify someone because the resident has no family or friends, and some residents who do might have a firm preference against designating someone as an essential care supporter for reasons of their own. The purpose of identifying essential care supporters is to give formal recognition to those people who actually perform that role. It is not to be a tick-box exercise in which someone’s name has to be recorded for every resident just to fulfil a legal requirement, nor is it to be an exercise in stripping care home residents of their personal autonomy. If they choose not to have an essential care supporter, that should be their right. For those reasons, I cannot support Jackie Baillie’s amendment 50E.

Amendments 50F and 50G are connected. The overall effect would be to prevent care homes from suspending visits without permission from Public Health Scotland or Scottish ministers or their delegates. I cannot support those amendments because they fundamentally misunderstand the different roles that are played by the different actors. Care providers are ultimately responsible for taking decisions about visiting, but they do not do that in a vacuum. They take advice from others, including health boards and public health teams, as well as other bodies that are concerned with matters besides public health, such as welfare issues.

Public Health Scotland does not provide advice to care homes. That is the responsibility of teams that work for the health boards, which, under the Public Health etc (Scotland) Act 2008, have duties to protect the health of the public in the health board’s area. Amendments 50F and 50G would undermine the proper role of care homes in taking decisions on visiting, taking account of public health and non-public health advice from a range of bodies. I urge Jackie Baillie not to move them.

Amendment 50A, which was lodged by Brian Whittle, is about communication with residents’ essential care supporters when visits are suspended. I thank Brian Whittle for the amendment. Communication is so important. We had already intended to include guidance on

communication in the code of practice, but, having reflected on the amendment, we now think that it would be worth going further than amendment 50A, which is only about giving reasons in the context of a general decision to suspend visits. Although I therefore agree with the intention of amendment 50A, I invite Brian Whittle not to move it today and, instead, to work with me to bring forward something more comprehensive at stage 3.

Amendment 50H, from Jackie Baillie, proposes that Scottish ministers should consider

“what steps are necessary to protect care homes from legal action”

in cases in which an essential care supporter has been given access to a care home resident at a time when other visits have been suspended. It is not clear what the amendment intends to achieve. Amendment 50 ensures that, when visiting is to be suspended to prevent a serious risk, the provider must continue to support visits when they believe that the suspension of visits is causing or is likely to cause serious harm to the resident’s health or wellbeing, and that harm outweighs the serious risk that led to the suspension of visits. In considering such risks, care providers should always act on advice from local national health service board health protection teams, which have duties to protect the health of the public in their areas under the Public Health etc (Scotland) Act 2008.

It is unclear why Scottish ministers would want to take steps to protect care providers from legal action if they have failed to follow advice—public health or otherwise—to protect people. Furthermore, it is unclear how ministers would do that in practice or, indeed, what would be required given that the amendment just obliges them to consider what steps are necessary. On that basis, I cannot support Jackie Baillie’s amendment 50H.

Jackie Baillie’s amendment 50I seeks to ensure that any decision that is made to suspend visits must be reviewed every 48 hours and remain in force for no longer than seven days. It would require an expedited appeals process to be put in place for an essential care supporter, which would be considered by the body that granted permission for the suspension of visits. No later than 72 hours after an appeal is made, it must be heard, and a decision must be issued.

Those are all matters that can be dealt with in due course by regulations in the code, and I would rather take the time to discuss them with everybody concerned before committing to an approach that might be unworkable in practice or have serious unintended consequences. Aspects of amendment 50I as drafted could go particularly

wrong, not least as it is predicated on amendment 50G being agreed to, which I am against.

However, there might be principles that are set out in amendment 50I that it could be valuable to extract and express in the bill in less problematic terms. Therefore, I ask Jackie Baillie not to move amendment 50I and, ahead of stage 3, I would be very happy to discuss with her what regulation should be in the code and what further bill amendments might be useful in order to reflect such principles.

Jackie Baillie's amendment 50J would add to the matters that are listed in the code of practice that care home providers must treat as "paramount considerations" when fulfilling the duties that are described in proposed sections 78A(1) and 78B(1). I agree whole-heartedly that the matters identified in amendment 50J are important, but framing them as paramount considerations in relation to both duties is the wrong drafting approach. The point of the current framing is that there are two absolutely crucial paramount considerations, which have overarching effect across the duties to identify essential care supporters and to facilitate visits.

In summary, the absolutely crucial paramount considerations that are relevant to both duties are respecting and promoting residents' dignity, wellbeing and human rights, and recognising and supporting the vital role that people who are not care home staff, such as close relatives and friends, play in providing regular care. Creating a long shopping list of paramount considerations risks detracting from the two considerations' paramountcy. If everything is a paramount consideration, nothing is.

The paramount considerations that amendment 50J specifically proposes cannot have overarching effect across the two duties. In relation to the first duty, none of the proposals whatsoever is relevant; in relation to the second duty, they are relevant only in limited circumstances. Amendment 50J would simply put the matters it mentions in the wrong place in the bill.

Beyond that, I do not think that the mentioned matters' specifics are quite right. The first would make a paramount consideration of the presumption that suspending essential care supporter visits would cause serious harm. However, amendment 50 makes that a legal presumption, so it will be the law that care home providers have to apply it. It makes no sense that they must "have regard to" a presumption that they are legally required to follow.

The second proposed further paramount consideration is a requirement for staff and essential care supporters

"to work together as equals to agree how visits should be facilitated".

I am unclear what that would mean in practice and I am quite troubled by there being no reference to involving the resident.

The last proposed further paramount consideration is

"the need for consistency of risk management processes for both staff and visitors."

Obviously, staff are not the same as visitors. Risk management processes for staff will flow from their obligations as regulated professionals and their employment contracts. If the suggestion is that staff are not to be made subject to any risk management processes that visitors cannot be subjected to, that would cause serious problems.

09:30

Amendment 50 already covers most of the ground that amendment 50J would deal with. Again, I am very happy to speak to Jackie Baillie ahead of stage 3 about how we could make explicit the matters that the code must address. However, the way that amendment 50J is constructed—both in terms of where it would insert the extra paragraphs and in what they say—is a problem, and I urge Jackie Baillie not to move it.

I turn to Brian Whittle's amendment 50B with good news for him: I support it. It would require the code of practice to be published in

"a manner that is accessible to the public, and includes a version in an easy read format".

The Government intends to do just that, so I am happy to support an amendment saying so. However, we might have to revisit the use of the phrase "easy read" at stage 3, as it does not have a concrete legal meaning—naturally, we will want to ensure that there is certainty about what the duty requires.

In less good news for Brian Whittle, I do not support his amendment 50C, which would require ministers to review the code of practice if a "significant number of complaints" were received about it. That would judicialise a political matter in a way that is good for neither law nor politics. Amendment 50 already provides for the periodic review of the code. If any Government were to hear significant discontent about the code's terms, it would use its powers to review it and change it if necessary, but involving courts in the matter and asking them to adjudicate on whether a number of complaints received—the amendment does not say by whom—is a significant number is not necessary or a good idea.

I am afraid to say that I also cannot support Brian Whittle's amendment 50D. It would require ministers to report every year, forever, on the

implementation of sections 78A to 78C in every local authority area. That would be a significant drain on public resources, and I am not sure what the benefit of a routine reporting cycle like that would be. I hope that Brian Whittle will be reassured to know that the Care Inspectorate will assess care providers' compliance with the regulations and that the Government already has plans to ensure learning and improvement through a national oversight group for Anne's law.

I move amendment 50.

The Convener: I invite Jackie Baillie to move amendment 50E and to speak to all the amendments in the group.

Jackie Baillie: I welcome the opportunity to bring to the committee six amendments that seek to amend amendment 50, in the name of the minister. Taken together, my amendments would strengthen the rights of residents living in care homes to receive visits from people who are important to them.

I welcome the Government's amendment 50, as it is better than the original provisions in the bill, but I genuinely do not believe that, as it stands, it goes far enough in protecting the rights of care home residents to see their loved ones. I am genuinely worried that too much onus is being put on care home providers to make judgments and that the checks and balances that are in place are insufficient. We absolutely must get that area right, which is why I have lodged my amendments.

As we know, Anne's law is the result of campaigning by family members of people in care homes who were separated from their loved ones for long periods during the Covid-19 pandemic, which had devastating impacts on people's health and wellbeing. One of the greatest and most costly failures of the pandemic took place in Scotland's care homes. The cost in human lives was tragic, and the suffering that was caused was unimaginable. Even as restrictions for the rest of the country eased, care homes remained under repeated lockdowns, which caused harm and trauma for the residents and their families.

For many years, campaigners have been seeking a change in the law to prevent that from ever happening again, and it is imperative that we pass legislation that will end that preventable harm. I thank the care home relatives Scotland group for its continued efforts to see that change become a reality.

I will now address my amendments in turn. Amendment 50E seeks to strengthen the duty on care home providers to identify an essential care supporter for each resident to ensure that that is not an optional extra or a tick-box exercise. Amendment 50E is a serious amendment that seeks to effect change.

Amendment 50J would require that the code of practice on care home residents' right to visits must provide that, in following those duties, the following are considered—

Sandesh Gulhane (Glasgow) (Con): Will Jackie Baillie take an intervention?

Jackie Baillie: Of course.

Sandesh Gulhane: Thank you. I declare an interest as a practicing NHS general practitioner.

I would like to go back to amendment 50E and talk a little bit more about the essential care supporter and having somebody named as such. As you rightly said, during the pandemic, there was an absolute failure when it came to Scottish care homes. Anne's law is fundamental, and we all agree with it—we have all said, for many years, that we want it to come in.

My feeling is that a named essential care supporter will strengthen the rights of the individual. The idea, which I believe in, is that that person will be a trusted source for the care home resident, who might not be able to speak for themselves, although, if they can, their voice will, surely, be heard louder than that of the essential care supporter. Is that the case? Do you think that the role of essential care supporter is a vital one to have?

Jackie Baillie: Yes, that is absolutely the case. I could not have put it better myself. It is an essential role. We have seen what has happened in the past. We need to reflect on that, and we need to ensure that the legislation that we pass is as robust as possible, which is why I lodged amendment 50E.

Let me move on to amendment 50J. When it comes to care homes fulfilling the duties of the code of practice, we want the following to be considered:

"the presumption of serious harm to residents where visits with their Essential Care Supporters are denied ... the requirement for care home staff and Essential Care Supporters to work together as equals to agree how visits should be facilitated",

which is not necessarily always the case, and

"the need for consistency of risk management processes for both staff and visitors."

Amendments 50G and 50I are essential if we are to get Anne's law right. Amendment 50G would require care providers to seek permission before they can suspend visits. It states that the suspension of visits may only be granted by

"Public Health Scotland on health grounds, or ... the Scottish Ministers (or a body delegated to make the decision on behalf of Scottish Ministers) for any other reason."

Amendment 50I would put in place important checks and balances regarding the suspension of visits, with any decision to grant a suspension being

“reviewed once in every 48 hour period by the body that granted”

it, and the suspension remaining

“in force for a period of no longer than 7 days”.

As it stands, there is a lack of an appeals process, which is why amendment 50I would allow for an expedited

“appeal to be heard and a decision issued no later than 72 hours after the appeal has been made.”

Amendments 50G and 50I are critical, because the process of suspending essential care supporters from visiting residents should require a high bar and appropriate authorisation. Some people might argue that the renewal process for applications and the appeal process are much too burdensome, but I fundamentally disagree. We need to get this right and ensure that previous mistakes are not made again.

Amendment 50F is consequential to amendment 50G, and amendment 50H would require the Scottish ministers to consider

“what steps are necessary to protect care homes from legal action against them in cases where ... an Essential Care Supporter”

has visited the care home while all visits have been suspended. That is important, because we need to give the sector the confidence and reassurance that it will be backed in taking action to guarantee the right of residents to be visited by their essential care supporter.

The Feeley review identified the need for stronger protections for care home residents to maintain meaningful connections with loved ones, even during challenging situations such as outbreaks of disease. It is therefore crucial that we ensure that stronger protections are enshrined in the bill.

It is important for us to get the balance right. I am not convinced that the minister has yet gone far enough, but I am more than happy to work with her, as she knows. I urge the Government to seriously consider the detail of my amendments. We have been talking about this for years now. The opportunity to strengthen amendments should not be missed. We can and should go further. I will agree to not move amendments 50I and 50J, and I am prepared to not move amendment 50E and all the others if we have further discussions with the minister on the whole suite of amendments prior to stage 3.

I move amendment 50E.

The Convener: I invite Brian Whittle to speak to amendment 50A and the other amendments in the group.

Brian Whittle: Like Jackie Baillie, I am really pleased to see the minister’s amendment 50, although I agree that more clarity is required, because it does not go far enough in supporting Anne’s law.

As the minister has said, amendment 50A would set a requirement for care home service providers to provide a written reason to both the resident and the essential care supporter in any case in which a visit is denied. It represents an effort to ensure that records are retained that could be used as evidence for any future inquiries or for evaluation of the implementation of the law, which is pertinent to amendment 50D.

I welcome the minister’s comments about her intention to go further than what is proposed in amendment 50A and her offer to have further discussions on how we could strengthen the amendment. Therefore, I will not move amendment 50A.

Amendment 50B would place a requirement on the Scottish ministers to publish the code of practice in such a manner that it is publicly available and to provide it in an easy-read format. I welcome the minister’s support for that amendment and her intention to strengthen it. It is important that an accessible and easy-read version of the code of practice is available. Given that many care home residents will experience greater mental decline than the average population, it is especially important that the code is accessible to them.

Amendment 50C would place a requirement on ministers to revise the code if a significant number of problems have been reported. That is extremely important—we want to be able to trigger revisions to the code if it is clear that it is not working as intended. Amendment 50C would also trigger revisions in a timely manner.

Amendment 50D would place a requirement on ministers to publish a report on the implementation of Anne’s law, broken down by council area, each year. Given what we are trying to do with amendment 50A, I do not think that that would be a particularly onerous requirement, as we will be gathering evidence as we go along. Amendment 50D would improve parliamentary scrutiny of the implementation of Anne’s law and would help to identify any areas in which additional support is needed to make sure that Anne’s law is in place for every person who receives care in a care home and their families, which, surely, is what we are all here to try to do. Therefore, I intend to move amendment 50D.

The Convener: I invite the minister to wind up on amendment 50.

Maree Todd: The discussion on this group of amendments has been a long one, and it has been a long road to get Anne's law right. In putting Anne's law at the heart of the bill, in primary legislation, we are recognising our overall commitment to ensuring that people can see and spend time with loved ones. We have listened very carefully to those who have campaigned for Anne's law and others to get to this point, and I believe that my amendment 50, which takes account of what we have heard, will ensure that people remain connected.

Importantly, amendment 50 formally recognises the role of essential care supporters, who are an integral part of the care team, as has been called for by Care Home Relatives Scotland. It places a duty on care homes to identify essential care supporters, and it provides a legal presumption that suspending visits to the person for whom they are caring will always cause serious harm to their loved one's health and wellbeing.

I thank members for the other amendments in the group. Some of them sound reasonable on the face of it but would be unworkable, as they do not reflect current practice on the ground. Others would have unintended consequences. However, I recognise the importance of a number of areas that have been raised, so my door remains open to Jackie Baillie, other members and—crucially—Care Home Relatives Scotland to discuss those suggestions ahead of stage 3.

In summary, I ask members to support my amendment 50 and Brian Whittle's amendment 50B, and to not support all the other amendments in the group.

The Convener: I invite Jackie Baillie to wind up and to press or seek to withdraw amendment 50E.

Jackie Baillie: I am content, on the basis of the minister's concluding remarks, not to press amendment 50E or to move my other amendments in the group.

Amendment 50E, by agreement, withdrawn.

Amendments 50F and 50G not moved.

09:45

The Convener: I call amendment 50A, in the name of Brian Whittle.

Brian Whittle: Given the minister's helpful comments on revisiting the issue, I will not move the amendment.

Amendment 50A not moved.

Amendments 50H to 50J not moved.

Amendment 50B moved—[Brian Whittle]—and agreed to.

The Convener: I call amendment 50C, in the name of Brian Whittle.

Brian Whittle: Given the minister's comments, I will not move amendment 50C at this stage, but it relates to an important area that needs to be explored further.

Amendments 50C and 50D not moved.

Amendment 50, as amended, agreed to.

Amendment 138 not moved.

Section 40, as amended, agreed to.

After section 40

The Convener: Amendment 89, in the name of Katy Clark, is grouped with amendment 90.

Katy Clark (West Scotland) (Lab): Amendment 89 would require that regulations be brought forward on reporting of the tax and ownership status of publicly owned care services, and amendment 90 seeks to extend freedom of information rights to publicly owned care services. The minister and her officials were kind enough to meet me yesterday and offered to have further discussions before stage 3.

I indicated to the minister that I was not planning on pressing either amendment to a vote today and am very open to discussions about their drafting. There are specific issues relating to the definition of care. I advise that the definition that I seek to rely on is the one that is in the Community Care and Health (Scotland) Act 2002. I would, of course, be happy to discuss the matter.

The background is that we have moved away from having a care sector that was dominated by publicly owned and run organisations providing publicly paid-for care. Of the 42,489 registered care home places in March 2022, 77 per cent were in privately run care homes; 80 per cent of staffing in care homes is in the private sector. There is significant market concentration in much of Scotland, with the 10 largest for-profit care home providers accounting for more than a third of registered places.

A significant number of organisations are registered outside the UK and involve private equity and real-estate investment trusts and US-based hedge funds. Across the UK, the five largest chains account for nearly 20 per cent of beds, according to work from 2016.

I will give an example that members might be aware of, or might have been involved in as constituency representatives—namely, the collapse in 2011 of Southern Cross Healthcare, which was owned by Blackstone Group. The

consequences of that affected 31,000 care home residents, including in the constituency that I represented at the time. Many of those Southern Cross care homes were sold to Four Seasons Health Care, which is owned by Jersey-based private equity firm, Terra Firma. In April 2017, 220 care homes and 17,000 residents were affected when that organisation, too, became bankrupt.

Four Seasons, like many private equity operations, consisted of complex corporate structures. The *Financial Times* reported that it consisted of 200 companies, arranged in 12 layers, in at least five jurisdictions, including several offshore territories. Tax avoidance and profit shifting were central to the operations.

Both my amendments are based on the principles of transparency, following the public pound and that, where publicly funded care is provided by organisations other than public authorities, there should be freedom of information rights and transparency in relation to tax and ownership. As the committee will be aware, freedom of information rights do not exist outside public authorities. That was particularly evident during Covid, when information that relatives were able to obtain using rights that they had with local authority providers was not available from other providers.

Jackie Baillie has spoken this morning about the experience of families during Covid. The Freedom of Information (Scotland) Act, which the Scottish Parliament passed in 2002, was designed to be flexible and to enable, under section 5, the addition of named providers or categories. In reality, that power has rarely been used by ministers. Since Covid, families of care home residents and freedom of information campaigners have been frustrated by the lack of progress.

Members of Parliament expressed their frustration in 2013, when updating of designations under the Freedom of Information (Scotland) Act 2002 resulted in an amendment that required reports from ministers every two years, on use of the section 5 power. Despite that, the power has basically been used to report that no action has been taken. There was a Scottish Government consultation in 2019 on use of the section 5 powers, and care was one of the examples that was focused on. That could have resulted in the extension to care services of designations under the act, but the Scottish Government decided not to progress with that.

In May 2022, the Public Audit and Post-legislative Scrutiny Committee of this Parliament reported, in its inquiry on the operation of the Freedom of Information (Scotland) Act 2002, that public sector bodies that deliver public sector services should be subject to freedom of information rights. The Scottish Information

Commissioner has consistently called for the designation of providers of health and social care services as subject to the 2002 act, especially following the Covid pandemic. Repeated polling by the commissioner has shown public support for that principle, and the consultation that I held for my proposed member's bill on freedom of information reform in 2022 showed overwhelming support for the principle.

Sandesh Gulhane: Does Katy Clark acknowledge that private care homes are paid less to provide a service than the local authority pays its own providers, that they therefore represent a significant saving to the public purse, and that they are not the very evil entities that, it seems, they are portrayed as?

If a company provides an element of public service but also does other things, other companies could use a freedom of information request to look into the detail of that company—which could include very sensitive information—thereby gaining an advantage not just in the public space but in relation to private services. Does that not risk our losing private care homes, which save the public money?

Katy Clark: Sandesh Gulhane has raised two points. I will attempt to respond to both. His first point relates to both the cost and quality of care that is provided in the private sector. It is, of course, the case that most private care companies and organisations in Scotland provide good-quality care, but the principle must be that, if the public sector is paying for a service, we should have access to a basic level of information about that service. That was the intention behind the 2002 act, but steps have not been taken to extend freedom of information requirements to that sector. As I indicated, a percentage of the sector has been financialised, with Southern Cross Healthcare being just one example. When things go wrong, that can be serious for individuals and for their families. We must have robust models and when we, as taxpayers, are funding care we must ensure that we are satisfied that we are providing some level of service and security for residents.

The second point concerns a live issue that my proposed member's bill grapples with. To be clear, the bill would require the aspects of a service that are funded by the taxpayer, and the parts of an organisation that deliver publicly paid-for services, to comply with FOI rights. The bill would not affect any parts of an organisation that are funded in other ways. That is the principle for how freedom of information would operate for organisations that provide both public and private sector services.

My amendments are narrowly drafted. Amendment 89 would require ministers, by way of regulations, to

“specify requirements for bodies providing publicly funded care services”

in relation to “transparency of ownership” and “tax status” and would require a higher degree of transparency from bodies that are not publicly owned, but which provide care that is funded by the taxpayer. I think that that addresses Sandesh Gulhane’s point.

Amendment 90 would require the extension of freedom of information regulations to care providers, for the reasons that I have already outlined. I understand from my discussions with the minister yesterday that she is likely to say that a further consultation will take place. I submit that Parliament should communicate a very clear message that we expect transparency when the public pound is being used to pay for care, and that we expect to have freedom of information rights regarding tax and ownership. I look forward to discussing those matters more, as the bill proceeds.

I move amendment 89.

Maree Todd: I cannot support either of the amendments in the group. Amendment 89 would place a duty on ministers to make regulations that would impose requirements on care service providers that are publicly funded, but it is unclear what the limits to that power would be. At face value, the amendment suggests that the requirements could be about anything, which seems to be rather broad.

There are two particular things that amendment 89 says the regulations would have to impose requirements about—“tax status” and “transparency of ownership”. It is unclear what those requirements would be or what could be done to a provider that does not comply with whatever the requirements are.

It is also unclear which services the regulations would apply to. Beyond the challenges that are posed by its drafting, amendment 89 has the potential to cause problems regarding compliance with the United Kingdom Internal Market Act 2020, which Katy Clark’s colleagues at Westminster have refused to abolish.

It might be that some, or all, of what Katy Clark seeks to achieve with amendments 89 and 90 can already be done. Public bodies already have powers to exclude providers through regulation 58 of the Public Contracts (Scotland) Regulations 2015 and regulation 9 of the Procurement (Scotland) Regulations 2016. The powers include the power to exclude providers that have breached their obligations relating to payment of taxes or social security contributions.

My door is always open, if Katy Clark wants to discuss further what can be done to address any

specific concerns that she has, but I believe that amendment 89 is the wrong answer to those concerns.

Amendment 90 would extend the requirements of the Freedom of Information (Scotland) Act 2002 to persons

“providing publicly funded care services”.

I understand the desire to improve access to information about care services. I agree that access to information is critical in fostering public trust and ensuring effective delivery of services. That is why the Government has already committed to consulting on extension of the freedom of information law to private and third sector care homes and care-at-home services.

10:00

Amendment 90 is not the way to take forward such a change; the right way to take forward change in the area is the existing power under section 5 of the Freedom of Information (Scotland) Act 2002. That allows for and requires specific consultation, thereby ensuring that any extension of freedom of information law would be properly planned and tailored to the sector’s specific needs. It means, in particular, that there would be an opportunity to consult in order to get an appropriate definition of the bodies that we would make subject to the freedom of information requirement.

The expression “publicly funded care services” that is used in amendment 90 is unclear and, I think, might cover more bodies than Katy Clark intends it to cover. Around 11,000 care services are registered with the Care Inspectorate, and many are delivered in partnership with private and third sector providers of varying sizes.

Being subject to freedom of information laws also comes with certain resource implications, which have to be carefully considered when we are deciding which bodies to extend the laws to, especially in the context of a sector that is already facing substantial financial challenges following the recent national insurance hike. I note that the Coalition of Care and Support Providers in Scotland—CCPS—has indicated to the committee that it does not support amendment 90, citing concerns about the resource implications of new obligations being placed on providers.

Therefore, I ask Katy Clark not to move amendment 90. I will be pleased to discuss with her, in advance of stage 3, the work that the Government already has under way on access to information rights in the sector, and the other avenues for making progress on this important issue.

The Convener: I call Katy Clark to wind up and to indicate whether she wishes to press or seek to withdraw amendment 89.

Katy Clark: I look forward to discussing those matters further with the minister. As I have said, I do not plan to press either amendment 89 or amendment 90 to a vote today, but I just want to say to the minister that there is a great deal of frustration about the delays in extending freedom of information requirements within the care sector—in particular, following experiences during Covid. However, I will discuss the issue further with the minister before stage 3.

In relation to tax and ownership, given the nature of the changes that have taken place in the care sector, we need information about ownership structures and tax status, because we do not want more residents being evicted as a result of care homes with complex and non-transparent ownership arrangements going bust. We should learn the lessons of history in order to ensure that we are not put in that position again.

As I have said, though, I do not plan to press amendments 89 and 90 to a vote.

Amendment 89, by agreement, withdrawn.

Section 41—Reserving right to participate in procurement by type of organisation

The Convener: Amendment 51, in the name of the minister, is grouped with amendments 52, 53, 53A, 54 and 55. I call the minister to move amendment 51 and to speak to all the amendments in the group.

Maree Todd: The Feeley review made it clear that, although there are some areas of good practice, procurement needs to improve: it needs to be ethical, outcome focused, person led, flexible and collaborative, and to embed fair work. Although I am confident that the current suite of procurement legislation already provides the flexibility to deliver most of the improvements that are needed, there are two areas where changes to legislation would be of benefit—first, extending the reserved contracting process to third sector organisations that meet the listed criteria for services and, secondly, providing a new ministerial power to amend the light-touch regime threshold.

Before turning to the detail of my amendments on the reserved contracting process, I take this opportunity to reiterate my appreciation to all providers that deliver vital services to our communities. I am aware that there has been some concern about what this process will mean for the market, so I want to be clear that we need a mix of third sector, for-profit and public sector organisations to provide social care throughout Scotland. The extension of the reserved contracting process will not change that. Providers

that do not meet the criteria to participate through that process will still have access to other contract opportunities through different procurement routes.

I turn to the detail of the amendments. Amendment 51 will remove the limit on the duration of contracts that can be made subject to the reserved process. Representatives of the third sector have told us that the five-year limit that was proposed in the bill as introduced would be unhelpful. As a result of amendment 51, the decision on the length of a contract that is subject to the reserved process will be made on a case-by-case basis by the relevant public body.

Amendment 52 is a tidying-up amendment to replace a reference to services being provided

“to or on behalf of the National Care Service”,

in consequence of the removal of part 1 of the bill.

Amendment 53 will broaden the definition of the bodies that will qualify to bid for contracts through the reserved process. That reflects extensive work that has been undertaken with stakeholders to ensure that the criteria fulfil the policy intention of ensuring that third sector organisations, including social enterprises, can bid through the process. I thank all the stakeholders involved for their invaluable feedback.

Amendment 54 will make a minor drafting adjustment.

Before I move on from the reserved process, I urge members not to support Brian Whittle’s amendment 53A. The purpose of section 41 is to create a process for bidding for certain contracts that is open only to third sector organisations, so that they are not always crowded out by big for-profit companies. Last week, Brian Whittle made it clear in speaking to his amendment 139, which would remove section 41, that he is opposed to that approach in principle. His amendment implies that the state should have no role in providing a level playing field to ensure that the sector has an appropriate mix of for-profit and not-for-profit providers.

Mr Whittle’s amendment 53A is more of the same. It would allow companies that are principally set up to make profit for their shareholders or members to enter the reserved process, provided that they say that they do not intend to use the profits from reserved contracts for private gain. That would still be opening up the reserved process to organisations beyond third sector organisations, which are the organisations that section 41 was designed to benefit. That is understandable from Brian Whittle, who we know is opposed to the whole principle behind section 41, but members who are not opposed to that should vote against amendment 53A.

Finally on this group, I turn to my amendment 55. Procurement legislation details the rules that apply when public sector bodies purchase from external providers. It sets thresholds at which rules, such as requirements for specific competitive processes, apply. The rules depend on the type and value of what is being purchased. For health and social care services, the light-touch regime threshold and rules apply. There is currently no mechanism for changing the threshold of the light-touch regime, and the current threshold has been in place since 2015.

Amendment 55 provides a power to change the threshold by regulations for health and social care contracts. Any future changes to the threshold must be exercised in compliance with international law, including trade agreements, and would be subject to the negative procedure.

I move amendment 51.

The Convener: I call Brian Whittle to speak to amendment 53A and the other amendments in the group.

Brian Whittle: My concern with amendment 53 is that the change may compromise the discretion of care commissioning bodies in their efforts to deliver services in the most efficient and effective way. I am concerned that that might force them to make imperfect choices, delivering less service for the same cost to the taxpayer.

Amendment 53A is a probing amendment, but it would broaden the set of organisations qualifying for reservable contracts by requiring only the area of operation in relation to the reservable contract to be of a non-profit nature, rather than the whole organisation. As I said, the amendment would tighten the language on reservable contracts. I accept that it is a probing amendment, and I wanted to give the minister an opportunity to respond to that.

Maree Todd: Procurement can and should be the enabler of the much-needed improvements to social care. The light-touch regime provides flexible rules on procuring social care services that are over a certain value. There is currently no way for us to change the value at which the rules apply, and amendment 55 will give us that power.

As I said, we rely on a wide range of service providers to meet the needs of the people of Scotland. I appreciate all the work that they have done and continue to do to deliver those vital services to people.

The reserved contracting process is one of many approaches that can be taken when procuring. The decision on whether to use that process will be made at the local level. The ethical commissioning and procurement principles will be

at the centre of all decision making, including decisions on which procurement approach to use.

My amendments 51 to 54 will update the defining criteria of the reserved contracting process and will remove the limitations on contract durations through that process. People in the sector have told us how they would define the third sector, and we have listened to them. My amendments reflect that work.

On that basis, I urge the committee to support amendments 51 to 55 in my name, and not to support Brian Whittle's amendment 53A.

The Convener: The question is, that amendment 51 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

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

Against

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

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

Amendment 51 agreed to.

Amendment 52 moved—[Maree Todd]—and agreed to.

Amendment 53 moved.

Amendment 53A not moved.

The Convener: The question is, that amendment 53 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

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

Against

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

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

Amendment 53 agreed to.

Amendment 54 moved—[Maree Todd]—and agreed to.

The Convener: I call amendment 139, in the name of Brian Whittle, which was already debated with amendment 123.

Brian Whittle: The minister's comments on my intention to leave out the whole of section 41 were not reflective of what I was trying to do, which was to take out of the bill all the sections that are left, to start again and to deliver a better bill than currently exists. However, as we discussed last week, I will not move amendment 139, at this stage.

Amendment 139 not moved.

Section 41, as amended, agreed to.

10:14

Meeting suspended.

10:25

On resuming—

After section 41

Amendment 55 moved—[Maree Todd]—and agreed to.

Before section 42

The Convener: Amendment 56, in the name of the minister, is in a group on its own.

Maree Todd: Amendment 56 will give the Scottish Social Services Council a power to compel written information from various sources, such as employers, witnesses and other public bodies, when that is pertinent to the exercise of its functions, including fitness-to-practise investigations. That will mean that it will no longer need to make an application to the court under section 1(1) of the Administration of Justice (Scotland) Act 1972 and chapter 3, part 1, of the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc Rules) 1999 for such information when it is not provided voluntarily, thereby reducing the time that is taken for an investigation and the costs involved.

I move amendment 56.

Sandesh Gulhane: I wonder whether the minister could clarify a couple of things in amendment 56. In a legal sense, "a person" can refer to individuals, businesses, and organisations, but the definition is potentially limited by the provisions in the legislation. Are there such limitations in the legislation? Are there any

restrictions in the full legislation or definitions that govern the power?

Maree Todd: I am happy to discuss those questions with Dr Gulhane offline. The process, which people have asked us to use to strengthen the powers of the SSSC, is relatively uncontroversial. I am content to discuss any concerns with him between now and stage 3.

The Convener: As no other member has indicated that they wish to speak, do you wish to wind up, minister?

Maree Todd: There is no need to wind up.

The Convener: The question is, that amendment 56 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

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

Abstentions

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

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

Amendment 56 agreed to.

The Convener: Amendment 57, in the name of the minister, is in a group on its own.

Maree Todd: As the development of the national care service, the national social work agency and related policies progresses, we must ensure that the appropriate bodies can undertake all necessary activities in a cohesive and complementary way. Amendment 57 provides clarification of a power that Scottish ministers already hold. They can already delegate to the Scottish Social Services Council or authorise other relevant persons to undertake on their behalf any of the functions under section 58 of the Regulation of Care (Scotland) Act 2001. Amendment 57 clarifies that a function can be delegated in part as well as entirely. For example, a function may be delegated only in so far as it relates to a particular workforce.

I move amendment 57.

The Convener: No other member has indicated that they wish to speak. Is there anything further that you wish to contribute, minister?

Maree Todd: No, thanks.

The Convener: The question is, that amendment 57 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

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

Against

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

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

Amendment 57 agreed to.

Amendment 140 not moved.

Section 42 agreed to.

Amendment 141 not moved.

Section 43 agreed to.

Amendment 90 not moved.

10:30

The Convener: Amendment 142, in the name of Sandesh Gulhane, is grouped with amendment 154.

Sandesh Gulhane: It is important that we give the Care Inspectorate commensurate powers to be able to deal with all of what is happening under the legislation. We are able to strengthen its hand, provide for the creation of a system of complaints to go the Scottish Care Inspectorate and increase resources, as required, for the extra work that the Care Inspectorate is going to be doing. Amendment 154 simply makes that an affirmative process.

I move amendment 142.

Maree Todd: I cannot support either of Sandesh Gulhane's amendments. They would require ministers to make regulations for matters that are already dealt with by the Public Services Reform (Scotland) Act 2010.

I do not know what additional powers Sandesh Gulhane envisages the regulations would give the Care Inspectorate. It is not clear what sanctions the regulation-making power could put in place to back any new powers that it gives the Care Inspectorate, nor is it clear how those new powers would sit alongside those that are already in the 2010 act.

If Dr Gulhane feels that there are specific gaps in the Care Inspectorate's powers, I am happy to discuss what can be done to address that ahead of stage 3. However, requiring ministers to use subordinate legislation to make unspecified changes for a vaguely defined purpose in an area where primary legislation already governs what can be done by the Care Inspectorate—and, indeed, by other bodies, including the Scottish Social Services Council and the Scottish Public Services Ombudsman—is legally and constitutionally the wrong way to go about closing whatever the perceived gap might be.

I ask the committee not to support Sandesh Gulhane's amendments 142 and 154.

The Convener: I call Sandesh Gulhane to wind up and to press or seek to withdraw amendment 142.

Sandesh Gulhane: It is very important that we create a complaints system. The Care Inspectorate seems to be a good route for that to happen and to improve local standards. However, I heard what the minister said, and I seek to withdraw amendment 142.

Amendment 142, by agreement, withdrawn.

The Convener: Amendment 58, in the name of the minister, is in a group on its own.

Maree Todd: Adult support and protection is everyone's business. We all have a responsibility to support and protect the most vulnerable people in our society, and we want to make it as easy as possible for those at risk of harm to receive the right support at the right time.

For clarity, I note that local health and social care partnerships continue to hold overall responsibility for investigating and supporting adults who might be at risk of harm.

I have heard from a wide range of stakeholders, including those from health, social work and police sectors, that the variation in how adult protection guidance, including profession-specific guidance, is applied across Scotland can leave them unsure of the most appropriate action to take when they have concerns about an adult at risk.

Amendment 58 seeks to address that by clarifying that, where there are concerns about an adult at risk, information can be shared quickly, proportionately and safely between independent healthcare providers, including private providers, and the local authority. It will allow relevant healthcare services to contribute to adult protection committees, which take strategic action on improvements to governance and planning. The amendment will improve consistency and reduce variation in relation to supporting and protecting our most vulnerable adults in Scotland.

I move amendment 58.

The Convener: No member has indicated that they wish to speak. Do you wish to add anything further?

Maree Todd: No.

Amendment 58 agreed to.

The Convener: Amendment 59, in the name of the minister, is in a group on its own.

Maree Todd: Social work plays a unique and crucial role that impacts on and influences the lives of people across the entire age spectrum. The Feeley review identified that social work services are disjointed and inconsistent, and that our dedicated professional social workers need more and better support to help them in the challenging roles that they undertake. A national social work agency will provide strategic national leadership to the social work profession, driving change and continuous improvement across Scotland. Working in partnership with sector partners, we seek to build a sustainable, strong and highly skilled workforce for the future, from student to senior leader.

The profession is regulated and the social worker title is protected by law. Therefore, formalising the existing role of the national chief social work adviser in statute signals its importance and centrality to the social work profession. The national chief social work adviser will champion the vital cross-cutting function of social work, bring strategic leadership at national level and advance the position of social work nationally. In partnership with the sector, the national chief social work adviser will drive the development of a sustainable and highly skilled workforce and strengthen cohesion through enhanced leadership of the social work profession.

I move amendment 59.

Sandesh Gulhane: The role of the national chief social work adviser sits in the Scottish Government at deputy director level. The minister is looking to create a national social work agency around the national chief social work adviser with that person at deputy director level, which undermines the person who does that role. For equality among our healthcare professionals, especially considering how vital social workers are to the care sector, we need the post to be at director level to enable the postholder to access all meetings and to sit at a level commensurate with other professions. I worry that all this work is being put on somebody who really should be sitting at director level, as is the case with similar roles.

Maree Todd: To strike a note of consensus, I agree that the social work profession is vitally important and that the professional leadership that is provided by the office of the chief social worker

should be recognised and have an appropriate status. The grade of that individual is not specified in the bill, and, although I agree with the premise of what Sandesh Gulhane has said, I do not think that it is necessary to specify the grade of the chief social worker in the bill.

Sandesh Gulhane: Would the minister consider increasing the grade of the national social work adviser to that of director?

Maree Todd: I think that we are getting into controversial territory here. As the member will understand, ministers do not specify the grades of civil servants in the Government. I am happy to discuss the situation with him between now and stage 3, but I do not think it appropriate to specify the grade in the bill.

The Convener: Have you finished your winding up, minister?

Maree Todd: Yes.

The Convener: The question is, that amendment 59 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

For

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

Against

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

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

Amendment 59 agreed to.

The Convener: Amendment 143, in the name of Brian Whittle, is grouped with amendments 144, 147 and 157. I call Brian Whittle to move amendment 143 and to speak to all amendments in the group.

Brian Whittle: The amendments have been prompted by recommendations from the stage 1 report. That report says:

"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.”

That is, I suggest, what the bill is all about.

Amendment 143 would place on ministers a duty to report on Frank’s law, again to improve parliamentary scrutiny of its implementation. That will help to identify any areas that need additional support for implementation to ensure that that law is in place for every person who is entitled to personal care.

On amendment 144, which would place a duty on ministers to publish a report on the equality of social care services by local authority area, the Government’s original intention behind the bill was to reduce the inequality in care services across Scotland. I am—along with everybody else, I am sure—supportive of reducing health inequalities, including those occurring in care spaces, and it is important to gather data on where services are unequal if we are to be able to know how to address that problem in the future.

It is also important to measure the bill’s impact on equality of services. Amendment 147 would, therefore, place a duty on ministers to report to Parliament outcomes that are contained in the bill. Much of the bill will have been revised at stage 2, and if it passes fully, it is important to understand what it is achieving for all those who are in need of social care and for those who work in the sector.

On amendment 157, during the evidence sessions on the bill, stakeholders were very concerned about its financial aspects, and the committee had particular concerns about the financial memorandum with regard to part 2, on health and social care information. Given the significant number of amendments and revisions that are being made to the bill, it is important that its costs be quantified. That will ensure that the Government is able to budget appropriately in the future and that the bill’s provisions are funded, unless the Government chooses otherwise.

I move amendment 143.

Maree Todd: I cannot support any of the amendments in this group. I understand the intention behind amendment 143, which would require an annual report to be made on the provision of personal care to under-65s. I, too, value robust data collection. However, I can confirm that the information that is required by amendment 143 is already published annually in relation to personal care, therefore the intention behind the amendment is already being met. If the member’s intention is to require the publication of additional information, the amendment would fail to do so, and I consider that it should not be supported.

The intention behind amendment 144, as drafted, is not clear, and I cannot support a duty that I do not understand. Having heard what Brian Whittle has had to say about the amendment, I am not sure that “equality of ... services” is the right expression to use, and if the amendment were to be agreed in its current terms, its legal effect would be unclear. I therefore invite Brian Whittle not to move it, and I will be happy to discuss the particular proposal in advance of stage 3.

10:45

Amendment 147 would require publication of a report on the act’s operation every two years for ever more. I cannot support that perpetual drain on public resources that would have no clear purpose. The delivery of the national care service will, as I have explained, be about so much more than what is done through the bill alone. A report of the type that is envisaged would therefore tell only part of the story, and it would be a very disjointed story at that, given that most of what is in the bill amends existing legislation. It is hard to understand what sort of report Brian Whittle envisages, as it would comment on arrangements only to the extent that the legislation that underpins them will be amended by the bill. A report in the terms that are proposed would be bizarre and it would add nothing to the existing mechanisms that are available to this Parliament and the public to scrutinise the health and social care system overall. I therefore urge members to reject amendment 147.

I also urge members to reject amendment 157, which would prevent the act that results from the bill from being commenced until ministers had prepared a report on the estimated costs arising from it. Like the amendments to leave out all the bill’s sections, that is simply another wrecking attempt by Mr Whittle, and I urge members to reject amendment 157 as they rejected those other amendments.

The financial implications of the bill as amended at stage 2 will be subject to scrutiny in the usual way when the supplementary financial memorandum is produced. The Finance and Public Administration Committee will scrutinise that in the usual way, and there are ample routes for this committee or any member to obtain information about costs from the Government at any time. Amendment 157 is simply an attempt to put a completely unnecessary procedural hurdle in the way of getting on with improving the flow of information through our health and social care systems, delivering breaks for carers and delivering Anne’s law.

Sandesh Gulhane: I find it odd that the minister talks about wrecking when she has removed section 1 of the bill and has lodged multiple

amendments that, in effect, wreck the original bill that the Scottish Government laid.

The Convener: Minister, do you wish to come back in on that point?

Maree Todd: No.

The Convener: I invite Brian Whittle to wind up and to press or seek to withdraw amendment 143.

Brian Whittle: I hear what the minister says about amendment 144 and I welcome the opportunity to discuss that further. However, I find it strange that she says that there are already reports containing the information that would be required by amendment 143, given that the committee's recommendation was that there is a need for a reinforced role for the Scottish Parliament to undertake regular structured scrutiny. What the minister says goes against what the committee found. The fact that we are not collecting the data is not a reason why we should not collect it. If we have on-going managed collection of data, accountability is much easier and it is much easier to deliver a report.

I also find it very strange that we would not understand how much the bill will cost before we enact it. When we are deploying public money, it is really important that we understand where that money is going and how much it will be, so I find the minister's arguments against amendment 157 quite puzzling.

I press amendment 143.

The Convener: The question is, that amendment 143 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 143 disagreed to.

The Convener: Does Brian Whittle wish to move amendment 144?

Brian Whittle: I will take the opportunity to work with the minister on that one. At this point, I will not move it.

Amendment 144 not moved.

The Convener: Amendment 145, in the name of Brian Whittle, is in a group on its own.

Brian Whittle: Amendment 145, again, follows a recommendation in the stage 1 report, which says:

"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 ... In particular, an assessment of the extent to which this is contributing to improved outcomes for those in receipt of social care."

I think that that is central to discussion of the bill and to the issue of delayed discharge. Amendment 145 seeks to place a statutory duty on ministers to eradicate delayed discharge. They have already pledged to do so, so why should that target not be binding?

The amendment is intended to force the Government to consider all options when tackling delayed discharge, because its current approach is clearly not working. In December 2024, 61,760 days were spent in hospital by people whose discharge had been delayed, and that figure is a 6 per cent increase on the number of days of delay in December 2023. Those statistics come from the monthly figures on delayed discharges in NHS Scotland that were published by Public Health Scotland on 4 February 2025.

I move amendment 145.

Maree Todd: Although I welcome Brian Whittle's focus on delayed discharge, which is a key priority for the Scottish Government, I urge members not to support amendment 145.

I am absolutely clear that the current numbers of people being delayed in hospital and the considerable variation in the level of such delays in different parts of Scotland are unacceptable, and I agree that every feasible option that would support a reduction must be considered. However, I do not believe that having a statutory target in the bill would drive such a reduction. We know that shifting the balance of care from hospitals to the community and ensuring the use of best practice in integrated discharge processes will make a difference. That will require careful work across health and social care systems.

The statutory duty to provide social care services sits with local authorities and the challenge in addressing delays is complex. That is why efforts to drive improvement must be rooted in collaborative engagement and support, not in

arbitrary targets. Since last July, the Scottish Government has been working collaboratively with the Convention of Scottish Local Authorities and with health and social care partnerships to explore the challenges that local systems face, offer support to those with the highest levels of delays and identify and promote best practice. That work will be supported by the commitments in our latest budget to enhance the hospital at home service, improve frailty pathways and ensure that people get the care that they need, in the right place for them.

Regarding reporting and the requirement suggested in amendment 145 for a parliamentary statement, we already have monthly reporting on delayed discharge by Public Health Scotland and members will be well aware that there are regular exchanges in the Parliament chamber about those figures and the challenges associated with improving flow and integration across health and social care services. It is not clear what more such a requirement would add to accountability, including to the local accountability of local authorities.

On that basis, I cannot support Brian Whittle's amendment 145 and I urge members not to do so.

The Convener: I invite Brian Whittle to wind up and to press or seek to withdraw amendment 145.

Brian Whittle: The minister makes a really interesting point about collaborative working, which is exactly how the problem should be tackled. It is a problem that the Government already committed to eradicate some time ago, so whatever the Government is doing now is not working. Some of that collaborative work should be about the implementation and adoption of technology, which was the subject of another of my amendments that the minister asked members to vote against.

I am trying to create a focus on delayed discharge because it is a significant issue, not only for social work but in the NHS. I think that a reduction of 25 per cent per year is eminently doable if we do the right things and if we do the collaborative work that the minister suggests, so I press amendment 145.

The Convener: The question is, that amendment 145 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 145 disagreed to.

Amendment 146 not moved.

Amendment 147 moved—[Brian Whittle].

The Convener: The question is, that amendment 147 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 147 disagreed to.

Section 44—Interpretation

Amendment 60 moved—[Maree Todd]—and agreed to.

Section 45—Ancillary provision

Amendment 148 not moved.

Section 45 agreed to.

Section 46—Regulation-making powers

Amendments 61 to 63 moved—[Maree Todd].

The Convener: Does any member object to a single question being put on amendments 61 to 63?

Members: Yes.

The Convener: Therefore, we will decide on the amendments separately.

The question is, that amendment 61 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

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

Abstentions

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

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

Amendment 61 agreed to.

Amendments 62 and 63 agreed to.

The Convener: Amendment 149, in the name of Jackie Baillie, has already been debated with amendment 100. I note that Ms Baillie is not in the room. Does any member wish to move amendment 149?

Amendment 149 not moved.

Amendments 150 and 151 not moved.

Amendment 64 moved—[Maree Todd]—and agreed to.

11:00

Amendment 152 moved—[Paul Sweeney].

The Convener: The question is, that amendment 152 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)

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 4, Against 5, Abstentions 0.

Amendment 152 disagreed to.

Amendment 153 moved—[Paul Sweeney].

The Convener: The question is, that amendment 153 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. My casting vote is to vote against amendment 153.

Amendment 153 disagreed to.

Amendment 154 not moved.

Amendments 65 and 66 moved—[Maree Todd]—and agreed to.

Amendment 155 not moved.

Section 46, as amended, agreed to.

Section 47—Commencement

Amendment 156 not moved.

Section 47 agreed to.

After section 47

Amendment 157 moved—[Brian Whittle].

The Convener: The question is, that amendment 157 be agreed to. Are we agreed?

Members: No.

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)
Mackay, Gillian (Central Scotland) (Green)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)

The Convener: The result of the division is: For 4, Against 6, Abstentions 0.

Amendment 157 disagreed to.

Section 48—Short title

The Convener: Amendment 40, in the name of Alex Cole-Hamilton, has already been debated with amendment 1. I remind members that 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.

Amendment 40 moved—[Alex Cole-Hamilton].

The Convener: The question is, that amendment 40 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

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)
Mackay, Gillian (Central Scotland) (Green)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Whittle, Brian (South Scotland) (Con)

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

Amendment 40 disagreed to.

Amendment 158 moved—[Brian Whittle].

The Convener: The question is, that amendment 158 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)
Mackay, Gillian (Central Scotland) (Green)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)

The Convener: The result of the division is: For 4, Against 6, Abstentions 0.

Amendment 158 disagreed to.

Amendment 67 moved—[Maree Todd].

The Convener: The question is, that amendment 67 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

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

Against

Mochan, Carol (South Scotland) (Lab)
Sweeney, Paul (Glasgow) (Lab)

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

Amendment 67 agreed to.

Amendment 159 not moved.

Section 48, as amended, agreed to.

Long title

Amendment 68 moved—[Maree Todd]—and agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill. I will suspend the meeting briefly to allow witnesses to change places.

11:08

Meeting suspended.

11:10

On resuming—

Subordinate Legislation

Community Care (Personal Care and Nursing Care) (Scotland) Amendment Regulations 2025 [Draft]

The Convener: Our third agenda item is consideration of an affirmative instrument. The purpose of the instrument is to increase the value of payments for free personal care and nursing care by 2.37 per cent. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 4 February 2025 and made no recommendations in relation to it.

We will have an evidence session with the Minister for Social Care, Mental Wellbeing and Sport and supporting officials on the instrument. Once our questions have been answered, we will proceed to a formal debate on the motion.

I welcome the minister, Maree Todd. I also welcome her Scottish Government officials, Geraldine Campbell, who is the unit head for adult social care charging, care at home and dementia, and Alice Hall, who is the deputy director for adult social care, local improvement and transformation. I invite the minister to make a brief opening statement.

Maree Todd: Thank you for the opportunity to speak to the committee regarding a proposed amendment to the Community Care (Personal Care and Nursing Care) (Scotland) Regulations 2002. The draft regulations that are before the committee make routine annual increases to the rates for free personal and nursing care. Those payments help to cover the cost of those services for self-funding adults in residential care.

This year, we propose to apply an uplift that is based on the gross domestic product deflator, which has been used historically as the inflationary measure to increase the rates. It will mean that the weekly payment rates for personal care for self-funders will rise from £248.70 to £254.60, and the nursing care component will rise from £111.90 to £114.55. The most recent official statistics show that more than 11,000 self-funding residents aged 18 and above received free personal and nursing care in 2023-24. They should all benefit from these changes. I am happy to take questions from the committee.

Sandesh Gulhane: I declare my interest as a practising NHS GP.

A GDP deflator, which has been used previously, was used as the measure, and I note that, in the past, the Scottish Government has put in more money than the GDP deflator said was

owed. Is the uplift of 2.37 per cent sufficient for personal care to continue as it is? Why are we using the GDP deflator as opposed to other economic measures?

Maree Todd: The member is absolutely correct to say that the GDP deflator was used in previous years—from 2011 to 2015—and we then had a number of years when the rates remained static, before we went back to the GDP deflator. Over the past few years, including during the pandemic, there have been above GDP deflator increases. There was an increase of 7.5 per cent in 2021-22, of 10 per cent in 2022-23 and of 9.5 per cent in 2023-24. In 2024-25, we went back to the GDP deflator increase, which, in that year, was 6.68 per cent. Historically, we have used that measure as the benchmark for the uplift, and we are very pleased that we have been able to allocate additional resources to fund free personal and nursing care.

The member will understand that we are operating in an extremely challenging financial context. As such, although there is no doubt that I would have preferred to increase it beyond that, it is simply not possible this year.

11:15

Sandesh Gulhane: I will go back to my second question. Why is the Government using the GDP deflator as opposed to any other economic measure?

Maree Todd: We have always either used the GDP deflator itself or used it to calculate an above-inflation rise. Over the number of years that we have done this, we have used it either in itself or to calculate an increased rate. The reason that we are not having an above-inflation rise this year is the challenging financial context in which we are operating. In that context, I am pleased that we are able to raise it in line with the GDP deflator and make an increase that will benefit all the people who are accessing personal care and social care and paying for it themselves.

The Convener: As no other member has indicated that they wish to ask a question, we will move to agenda item 4, which is the formal debate on the instrument on which we have taken evidence.

I remind the committee that officials may not speak in the debate. I invite the minister to speak to and move motion S6M-16242.

Motion moved,

That the Health, Social Care and Sport Committee recommends that the Community Care (Personal Care and Nursing Care) (Scotland) Amendment Regulations 2025 [draft] be approved.—[*Maree Todd*]

The Convener: As no member has indicated—oh, Sandesh Gulhane wishes to speak.

Sandesh Gulhane: I would like further clarification as to why we are using the GDP deflator. I know that it has been used historically, but why has that particular measure been used as opposed to any other measure? I put that question to the minister twice, but the actual reason for using the GDP deflator as opposed to any other economic outcome measure was not clear. Although I agree that it has been used historically, the question why still stands.

Brian Whittle: Although we will obviously support an increase in care payments, there is a valid concern about the long-term sustainability of these types of increases, especially if the underlying financial pressures on the care system are not addressed. I therefore have the same concerns as my colleague Sandesh Gulhane around why we use this particular method to ensure these increases. There is conditional support, but I would definitely like to understand how we ensure long-term sustainability as we go forward.

The Convener: I invite the minister to sum up.

Maree Todd: The GDP deflator, which is a measure of general inflation in the domestic economy, has historically been used to increase the free personal and nursing care payments annually.

As I stated in response to Dr Gulhane's earlier question, inflationary increases were made from 2011 to 2015. The rate remained static in 2016-17 due to forecasts of inflation rates being too high, and ministers agreed to keep that rate for 2017-18. There was then a return to inflationary rises.

I agree that evidence in recent years has shown that the cost of providing FPNC has increased significantly and the rate has not kept pace with that. In order to address that, for three years, above-inflation—that is, above the GDP deflator—increases were made to rates on the basis of the need to balance affordability and take into account the rising cost of care home placements. There was a return to inflationary rises last year, and I propose that this year, as last year, we use the GDP deflator.

I hope that that answers members' questions. We are proposing an inflationary rise for next year largely due to the need to balance budget constraints with the wish to raise it at all.

The Convener: The question is, that motion S6M-16242 be approved. Are we agreed?

Motion agreed to,

That the Health, Social Care and Sport Committee recommends that the Community Care (Personal Care and

Nursing Care) (Scotland) Amendment Regulations 2025 [draft] be approved.

The Convener: That concludes consideration of the instrument.

At our meeting next week, we will hold an evidence session with sportscotland.

11:20

Meeting continued in private until 11:23.

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