



The Scottish Parliament
Pàrlamaid na h-Alba

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7 November 2023

Dear Minister,

National Care Service (Scotland) Bill: Ongoing Stage 1 scrutiny

I am writing further to your attendance at the Health, Social Care and Sport Committee on Tuesday, 3 October, and further oral evidence the Committee has subsequently taken as part of its ongoing Stage 1 scrutiny of the National Care Service (Scotland) Bill.

As you will be aware, at the Scottish Government's request, the Committee previously agreed to postpone the Stage 1 deadline for consideration of the Bill to 31 January 2024 with the hope being that it might be possible to schedule a Stage 1 debate on the Bill in December 2023. As set out in correspondence from you to the Committee, dated 17 April, this delay to the timetable for passage of the Bill was intended to "find compromise and reach consensus with those who have raised concerns during the Stage 1 scrutiny undertaken so far".

In your letter of 12 July, you informed the Committee that, related to the Scottish Government's proposals for creation of a National Care Service, "An initial consensus proposal between the Scottish Government and Cosla (on behalf of local government) has been formed on a partnership approach that will provide for shared legal accountability".

Subsequently, your letter of 20 September informed the Committee that “Following that initial agreement, officials from Scottish Government and Cosla, and NHS leaders, are continuing to work together to develop more detailed proposals which will in due course inform proposed Government amendments to the Bill”.

Based on evidence you, representatives of COSLA, local government and others have most recently given to the Committee, it is clear that the proposed shift to a model of shared accountability will necessitate significant amendments to the Bill as introduced.

At this stage, the Committee is of the view that it does not have sufficient information regarding the precise implications for the Bill as introduced of the proposed shift towards a model of shared legal accountability to be able to recommence consideration and agreement of its Stage 1 report.

I am therefore writing to you now to request the following:

- That, in response to this letter, the Scottish Government provides a description of the purpose and effect of the amendments it intends to bring forward at Stage 2 including details of the specific sections of the Bill it would expect to have to amend and any associated costs;
- That the Scottish Government gives a commitment that it will introduce the text of its proposed amendments at a suitably early point in the Stage 2 timetable to enable the Committee to undertake detailed scrutiny of those amendments ahead of the formal proceedings at which the amendments are moved and disposed of;
- That the Scottish Government provides an answer to the following specific questions regarding implications of the accord with COSLA on shared legal accountability for the Bill as introduced:
 1. Is it correct to assume that sections 2 and 3 of the Bill will need to be substantially amended to reflect legal accountability for the proposed National Care Service being shared between local government and the Scottish Government rather than transferred to Scottish Ministers?
 2. Further to question 1), can the Scottish Government indicate what consequential amendments may be required to other sections of Part 1 of the Bill?
 3. Is it still the intention that Ministers will have the power to create and abolish care boards as set out in section 4 of the Bill?
 4. Does the Scottish Government still plan to abolish integration joint boards and to transfer their functions to these care boards? In this context, does it still intend to substantially amend or repeal the Public Bodies (Joint Working) (Scotland) Act 2014 to give effect to these reforms?
 5. If plans for local care boards have changed, what consequential amendments will be required to Part 1 of the Bill to reflect this change of approach?

6. Does the Scottish Government intend to introduce provisions for the creation of a national care board via Stage 2 amendments to the Bill as introduced or via alternative means?
7. Is it still the Scottish Government's intention to establish a national social work agency within Government rather than making separate provision for it on the face of the Bill?
8. Does the Scottish Government intend to introduce any amendments to sections 11 and 12 (The National Care Service charter), section 13 (independent advocacy) or sections 14 and 15 (Complaints) as a consequence of the new consensus agreement with COSLA?
9. Will the new consensus agreement with COSLA necessitate any amendments to Chapter 5 of Part 1 of the Bill (regarding functions connected to the provision of care)?
10. Is it correct to assume that Chapter 6 of Part 1 (related to the allocation of care functions etc.) will also need to be substantially amended to reflect the new consensus agreement with COSLA; in particular on the basis that, under this new model, there will no longer be any transfer of functions, staff or assets from local authorities as part of the proposed creation of a national care service?
11. Does the Scottish Government still intend to carry out a public consultation on the potential future inclusion of children's services and justice services within the scope of the proposed National Care Service? If a decision is taken in future to include these services within the scope of the proposed National Care Service, does the Scottish Government intend that, like other services, they will now be subject to shared legal accountability and that no transfer of functions, staff or assets from local government will take place?
12. As a consequence of the new consensus agreement with COSLA, does the Scottish Government intend to make any changes to the regulation-making powers conferred on Scottish Ministers by the Bill as introduced? If so, what would these be?
13. As part of its planned Stage 2 amendments, does the Scottish Government have any plans to modify or expand those provisions of the Bill related to procurement and ethical commissioning?
14. What effect, if any, does the Scottish Government expect the new consensus agreement with COSLA and the model of shared legal accountability to have on the scale, focus and timetable of any co-design work to be undertaken as part of the proposed creation of a National Care Service? In connection with this, to what extent and in what ways will the outputs from engagement on co-design undertaken so far be used to inform the Scottish Government's proposed amendments to the Bill as introduced at Stage 2?

To enable the Committee to reach a timely decision on next steps for its Stage 1 scrutiny of the National Care Service (Scotland) Bill, I would request that you provide a detailed response to this letter **no later than Wednesday, 6 December**.

Yours sincerely,

A handwritten signature in cursive script, reading "CHaughey", enclosed in a thin rectangular border.

Clare Haughey MSP

Convener, Health, Social Care and Sport Committee