



Scottish Government amendments to National Care Service Bill and the Expert Legislative Advisory Group

Dear Ms Haughey,

This is to alert you and members of the Health, Social Care and Sport Committee that considerable disquiet was expressed by members of the Expert Legislative Advisory Group during the whole process and not least at the last meeting, which took place on Thursday 27th June, three days after the Minister for Social Care, Mental Wellbeing and Sport, Maree Todd, sent you the Scottish Government's proposed amendments to the NCS Bill.

More specifically, a large number of attendees expressed concerns about Annex A to Ms Todd's letter, "ELAG Summary of Outputs Report". This was first because there had been no opportunity for us, as members of the Group, to see or comment on the content of the report before it was submitted to you. And second because people did not believe its content reflected what had been discussed at the ELAG meetings rather than what the Scottish Government decided to take from them. In short, we did not hear a single person/organisation at the final meeting express support either for the report or the proposed amendments.

Common Weal hopes to produce a more detailed critique of the ELAG process in due course and hopes that other organisations will also do so but for now we believe it is important to register a number of flaws in the process and their consequences:

- 1) During the discussion and advisory period, the ELAG was never given sight of any of the Scottish Government's proposed amendments to the NCS and very little information about what it was proposing to change or why (there was a reference to the Verity House agreement with Cosla). Instead, as the outputs report states, the Scottish Government asked the ELAG to discuss the policy "themes" it had chosen.
- 2) While the outputs report claims the discussions were broad and lists the themes discussed, that presents a very partial description of the process. It was the Scottish Government who determined the themes discussed and there was no opportunity for participants to propose other areas for discussion, let alone propose alternative amendments (such as those in our Briefing Paper "Fixing the National Care Service" which we sent you on 6th June.) To take just one example, we doubt that many of

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those present at the ELAG meetings would have supported the clause under Information Sharing which enables Scottish Ministers to introduce criminal sanctions for staff who fail to share information but that clause, without any discussion, is still in the Bill.

3) In the absence of any concrete proposals, there was no opportunity to establish either a consensus or majority view on what amendments to the NCS Bill were required – something that might have helped the Scottish Parliament in its deliberations on the bill. This omission also enabled the Scottish Government to take what it chose from the discussions. For example, most of the discussion at the ELAG meeting about the composition of the NCS Board was about how to make it more representative and accountable, whereas the Scottish Government's amendments do the opposite, giving Scottish Ministers unprecedented powers to control the composition, membership and work of the board.

In short, we believe the Health, Social Care and Sport Committee need to be aware that the Scottish Government determined the agenda for the ELAG meetings and decided what it wanted to take from them – the opposite of "legislative advice".

Yours Sincerely,

Craig Dalzell

Head of Policy & Research, Common Weal