



OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

Health, Social Care and Sport Committee

Tuesday 9 May 2023

Session 6



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HEALTH, SOCIAL CARE AND SPORT COMMITTEE
16th Meeting 2023, Session 6

CONVENER

*Clare Haughey (Rutherglen) (SNP)

DEPUTY CONVENER

*Paul Sweeney (Glasgow) (Lab)

COMMITTEE MEMBERS

*Stephanie Callaghan (Uddingston and Bellshill) (SNP)

*Sandesh Gulhane (Glasgow) (Con)

*Emma Harper (South Scotland) (SNP)

*Gillian Mackay (Central Scotland) (Green)

*Carol Mochan (South Scotland) (Lab)

*David Torrance (Kirkcaldy) (SNP)

*Evelyn Tweed (Stirling) (SNP)

*Tess White (North East Scotland) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Donna Bell (Scottish Government)

Anna Kynaston (Scottish Government)

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 9 May 2023

[The Convener opened the meeting at 09:00]

Decision on Taking Business in
Private

The Convener (Clare Haughey): Good morning, and welcome to the 16th meeting in 2023 of the Health, Social Care and Sport Committee. I have received no apologies.

Agenda item 1 is to decide whether to take agenda items 5 and 6 in private. Do members agree to do so?

Members indicated agreement.

National Care Service (Scotland)
Bill (Stage 1 Timetable)

09:00

The Convener: Agenda item 2 is an evidence session with the Minister for Social Care, Mental Wellbeing and Sport on the timetable for stage 1 scrutiny of the National Care Service (Scotland) Bill. I welcome to the meeting the minister, Maree Todd and, from the Scottish Government, Donna Bell, who is director of social care and national care service development, and Anna Kynaston, who is deputy director for the national care service.

I invite the minister to make a brief opening statement.

The Minister for Social Care, Mental Wellbeing and Sport (Maree Todd): Thank you for inviting me to discuss the proposals for stage 1 timetabling of the National Care Service (Scotland) Bill. I will explain briefly why the Scottish Government has proposed to extend stage 1 to after the summer recess.

The bill sets out the legal changes that the Scottish Government believes are needed to strengthen and integrate social care and social work. To make that happen, we are committed to the NCS and ensuring that the Scottish ministers are accountable for delivering consistency and quality of care and support throughout Scotland that meets people's needs.

We have heard repeatedly from people with direct experience of social care and community healthcare that the system needs to change to address standards and consistency across the country. However, it has been very clear during the bill's stage 1 process that, in order to deliver, we need to listen to the concerns of our key partners and stakeholders—which include, but are not limited to, local government and the unions—on part 1 of the bill. I am pleased to see that we have far more consensus on parts 2 and 3, because they cover key legal changes to support Anne's law.

To achieve the next stage of our listening process, we will continue to work in partnership with local government, the national health service and other key partners. We are further expanding our efforts with a series of engagement events across the country this summer.

If Parliament agrees to the extension of stage 1, we will use the additional time to reach consensus and compromise on the bill. We expect the details of that to be available by the end of the summer. Therefore, I cannot comment now on what that

consensus might look like or what impact that might have on the bill.

Change of this scale is unique. Additional time before the stage 1 debate will allow the Scottish Parliament and the Scottish Government the necessary time to consider all the evidence to best inform the development of the bill.

Of course, other NCS elements will need to be adjusted for any new timetable, such as providing the committee with a draft of the charter, which I now intend to do after the summer. An extension provides an opportunity to have a more detailed and in-depth co-design process that better reflects the needs of people with lived experience.

I will provide an update in writing to the committee before the start of the summer recess on what detail we have at that point.

In addition, I want to highlight that we are not waiting for a national care service to deliver positive change in the social care sector. As a Government, we will continue to drive forward improvements across the sector, including improving terms and conditions for our valued workforce, to make the profession attractive and bring even more talent into the sector.

The Convener: Thank you very much for your statement, minister.

You mentioned further engagement that will be carried out over the summer. Can you be a bit more precise about that? Can you give the committee an idea of the expected timeline for that engagement, who you are looking to engage with and when you expect to have completed that part of the exercise?

Maree Todd: We expect to engage with all our key partners. We have already had a brief informal discussion with some of our local authority partners and unions, but we expect to have more formal and regular engagement with all of them in the summer.

We are also looking to set up regional opportunities for people who have an interest in the care service to gather together so that we capture the experience of the entirety of the country. As members might imagine, being a Highland MSP, I am keen to hear about the experience of social care in every part of the country as well as from each of our individual valued stakeholders.

Anna Kynaston or Donna Bell, do you want to say a little bit more about the regional engagement that is planned for the summer?

Anna Kynaston (Scottish Government): During the summer, we will be holding minor co-design events that are targeted at people. They will start in the second week of June and finish in

the middle of September, probably to accommodate the pressures of tourism. We will use those events to go out and deepen the conversation about some of the co-design themes that we discussed with the committee in December. In September, we will pull together a series of reports so that everybody across Scotland can see the evidence that we have captured.

The Convener: It sounds as though you are almost separating that out from public consultation-type of events and further discussions with the Convention of Scottish Local Authorities and the trade unions. Are you considering having further discussions or consultations with other parties? I am thinking of social care providers.

Maree Todd: Yes, we are considering the social care providers and the third sector. I have no doubt that we will also hear formally from groups that represent the users of social care.

We are keen to hear from anyone and everyone who wants to engage with us and who feels that we need to understand their perspective. I am also keen to achieve consensus. There is an awful lot that we agree on. In my few short weeks in this role, I have found that nearly everyone agrees that the way in which we are delivering social care is not really working for all the people who are trying to access it. It also does not deliver for all the people who work in social care. Those are my two key priorities in terms of what I want to ensure that the national care service delivers.

The Convener: You said that you anticipate that you will publish reports in September or in the autumn. I assume that some of those reports will be slightly later if some of the events are being held in September.

Maree Todd: Yes, although we expect to capture the learning as we go, and we will be happy to give you an update on where we are and what the plans are before the close of Parliament and the summer recess. We want to make sure that you are aware of the work that is going on and can plan your work, because I know that the committee has a great deal of legislation going through. The bill is one of the most important things in the suite of work that I am doing, and I think that it is one of the most important priorities for the Government and Parliament, but it has to be balanced with a host of other work. We are therefore keen to keep the committee informed so that you can balance your workload.

The Convener: I am sure that the committee welcomes that reassurance. As you say, we have other work that we need to plan for.

Emma Harper will pick up on the theme of the nature of the planned work.

Emma Harper (South Scotland) (SNP): The words “co-design” and “co-production” are often used interchangeably but, in this case, we are pursuing co-design. Just yesterday, I had a conversation with an elected member who used “co-production” and “co-design” as if they were interchangeable. I am interested to hear about what the co-design process really is and how distinct it is from co-production.

Maree Todd: There are three distinct phases to the national care service collaborative design. Understanding is about building a shared understanding of the current challenges. Sense making is about what and how we can deliver improvement. Agreement is about whether the proposed changes address the issues that people raise. Those are the standard clear phases to what we are proposing with the national care service.

In addition, once we have reached that consensus point at which we understand how things work and what needs to change, and we have an agreed way forward on changing, then there will be the drafting of regulations and more operational detail on how we will do things differently.

That has to be within a legal framework, which is a slightly tricky aspect of co-design. Things have to be developed within our legal competence. There is then a review: we come back to make sure that we have co-designed aligns with what our aims and intentions were.

Co-production cannot happen in all areas, because it requires collective decision making on changes that require the Parliament to decide. That is slightly tricky. Co-design is more about agreeing arrangements, whereas co-production is the collective development of the idea. Anna Kynaston, does that make sense? Do you want to say more?

Anna Kynaston: Co-production is about collective decision making. In this case, we have to co-design, because we are co-designing agreements that come to the Parliament for decision. There is a technical difference between co-production and co-design.

Emma Harper: When you made your opening statement, minister, you talked about the fact that you are a Highland MSP. The Highlands is a rural area. I am an MSP for South Scotland, which is also rural. There are complexities in designing impactful changes, so I am glad to hear about the processes that will be undertaken, especially those that will look at services.

In Dumfries and Galloway, there are no council-run care homes, but in the Borders, for instance, there is a mix of private and council-run care homes. Is that going to affect the work that is

taken forward? Will that look at the fact that individual areas have specific needs?

Maree Todd: Absolutely. As you said, I am a Highland MSP. I represent the northernmost constituency on the mainland of Scotland, and I live in the rural west Highlands. If anybody in the Parliament knows that one size will not fit all, it is me. I know how important it is for people to be able to remain in their own communities. That is a strong priority for me.

Even within Highland, things happen differently. Care looks different on the rural west coast from how it looks in Inverness. That is necessary, and it is dictated by geography and by the available workforce and estate.

We are keen to reduce unnecessary variation. Around Scotland, things are done very differently among the 32 local authority areas. For example, for the social work profession, there are often very different contracts, pay, conditions and offers of continuing professional development. There is no real need for such variation. Things could be standardised and supported nationally.

That would help us with some of the challenges in local authority areas. In one local authority area, a starting social worker is paid £5,000 a year less than they would be in the neighbouring area—and, of course, that local authority has real problems with recruitment and retention. Taking a more national approach, standardising what is required and expected from that profession and what rewards and values will be placed around it would be a very sensible way forward.

It is important to understand that. I will never advocate for everything to be dictated from Edinburgh, but everybody could acknowledge that there are advantages to doing things nationally as well as times at which we really have to make sure that the operational detail is down to local authorities.

Emma Harper: I have one final question on this wee section. Things such as the regional forums will help to identify the differences that you described, such as differences in pay. As a former nurse educator, I am interested in support for career pathways and career progression, and I think that a national standard approach would give more weight to career pathways for social workers and carers. Will the forums and the plans for regional approaches help to determine that a standardised approach to education will be part of the national aspect?

09:15

Maree Todd: Absolutely. Donna Bell will probably want to say a bit more about this, but we are very keen to hear from people who are

employed in the care system about what works for them and what does not work for them. Over the past few years, the Scottish Government has done a lot of work on ensuring that everyone working in social care is in a regulated profession. Everybody is registered with the Scottish Social Services Council and there are continuous professional development requirements, but we could do more to support individuals to fulfil their potential in their role and more to make it clear what career paths are available for people to progress to other roles in the national care service, which is a really important aspect of it.

As someone who worked as a health professional in the national health service, I know that the level of variation across the country in the social work profession—in terms of the postgraduate qualifications that are required to do different roles, and the different types of training—definitely raises concerns about governance, quality and standards, and the lack of clarity for the people who are pursuing those professions. People might become qualified in a certain area in one local authority but find that those skills are not transferable to others and that they do not have the right qualifications to work in the next-door local authority. We need to maximise the opportunities for people and reward them for the extra efforts that they are putting into postgraduate qualifications, and we need to make sure that things are clear in terms of governance and what standards we expect everybody to meet across the country. That is something that we can definitely do, nationally.

We are keen to hear from people who are working in social care because we know that, although there is an awful lot of political focus on pay and conditions—rightly so; that is a really high priority—there is also concern about the differences in what is expected in terms of training, what the minimum standards of training are and what potential there is for people to do extra all over the country. It would be good to give some clarity around that.

Donna Bell (Scottish Government): The work under the banner of the NCS will help us to develop a lot of that activity. Picking up on the point that Ms Todd made about making sure that we are focusing absolutely on the here and now, work is now under way under the joint statement of intent with COSLA.

There is work on workforce planning and workforce development, which includes things such as learning and development and career pathways, and that is already starting to deliver. The national induction work is already in place, other continuous professional development work is starting to deliver, and we have a move towards the national induction framework. Work is under

way now to make sure that we are starting to deliver on training and development and the clear pathways that are attached to that.

The Convener: We move to Evelyn Tweed.

Evelyn Tweed (Stirling) (SNP): I am okay on this theme, thanks.

The Convener: Before we move on to the next theme, minister, I have a question about your invitation to committee members to participate in the events that you are looking at organising. Do you foresee any conflicts of interests in committee members being participants in those events, given that we will be scrutinising the bill at stage 1?

Maree Todd: I had not until you asked me. I am certainly willing to go away and reflect on that.

I think that it is really important that the committee is involved. It is quite a different way of doing things, and I want to be sure that the committee understands what is happening in those events and understands the power that participants have to shape a service that meets their needs.

I am happy to reflect on whether there are conflicts of interest and to listen to the committee's thoughts on that if it has concerns about it. I think that it would be valuable for members of the committee to come and see what we are doing, but we can reflect on whether they should be participants or observers. Observing would take away any concern around conflicts of interest. I am more than happy to consider that.

I suppose that, as a committee, you will have a formal role to come back to us and say that you think that things should be done in a certain way or that you have concerns about a particular area. Being observers of the events rather than participants would take away any concern about that. We will have a think about that.

The Convener: Thank you, minister. I am going to move on to the position regarding the Convention of Scottish Local Authorities, the unions and the other key stakeholders. We have touched on that a little bit already. I will go to Tess White first.

Tess White (North East Scotland) (Con): In its submission to the consultation, COSLA said:

“We do not think that a centralised approach will deliver higher quality social care services. Indeed, we know that there is significant variation across NHS services which continue to face many of the same pressures as those experienced in social care.”

Do you disagree with COSLA? Have you attempted to address COSLA's concerns about centralisation?

Maree Todd: Pausing and re-engaging is part of the process of addressing COSLA's concerns.

We hear those concerns loud and clear, and we are keen to work with COSLA to see where we can achieve consensus and agreement.

I understand the point about the national health service having variation. However, the NHS has been trying to tackle the question of unnecessary variation for many years. I think that I have said already to the committee that there are times when variation is necessary, perhaps because of geography, the estate or what is available in the local area, but there are other times when variation is simply down to historical practice. Such variation can present a barrier to people trying to access care.

One example that is often cited to me is that of younger people who have a social care package and who want to move around the country. Perhaps the person lives in Ullapool in the north-west Highlands, where I live, and they want to go to university in Edinburgh. The systems are so completely different that it is almost impossible for them to move—they are almost limited to remaining in their own geography because the systems are so difficult to navigate. I think that we can improve on that.

That is not what it is like in the NHS. There are not those barriers. There are some barriers, but it is not quite such an impossible task and, for the user, it does not feel as though they have to learn to navigate an entirely new system. There is enough commonality between the ways in which healthcare is delivered in each area for the system to appear navigable and coherent to the people who are trying to access the care.

There are things that we can improve on. The people who access social care are very clear that things need to change and improve. We hear them, and I am sure that COSLA hears them, too. We will find a way to work together to ensure that those improvements happen.

Tess White: Okay. Thank you.

The Convener: I will bring in Gillian Mackay next.

Gillian Mackay (Central Scotland) (Green): I have a question on the final theme, convener.

The Convener: That is okay. We will come back to you.

Paul Sweeney (Glasgow) (Lab): Thank you for joining us today, minister.

Although I accept the need to undertake appropriate scrutiny during the development of the proposed legislation, does the minister accept that there is currently a severe and acute crisis in the social care sector? Recently, I dealt with a case concerning Balmanno House care home in Glasgow, which cited food costs, utility costs and

recruitment challenges as the reason for its going into administration. Surely it is not acceptable for us to lose that capacity of 40-odd beds in Glasgow.

What immediate measures is the minister considering to improve resilience, particularly where assets are owned by social enterprises or charities, which are the focus of community wealth building in local areas rather than profit-extracting models? How can we take immediate steps to retain that capability in the sector?

Maree Todd: You are absolutely right that we do not need to wait for a national care service to make improvements, some of which are needed urgently. However, in the medium to long term, we have to consider the sustainability of our services.

I am in the same position in the constituency that I serve, in that three care homes there have closed in the past couple of months, although none of those was a social enterprise—they were all private enterprises. A vast number of beds have gone from quite a rural area. Therefore, there has been a huge impact on the availability for local people, which has a real impact on where they can be cared for at the end of their lives. When a care home in the west Highlands closes, it means that a person is likely to have to take a six-hour round trip to visit their mum in the next-nearest care home. It is a really challenging situation. The real challenge that we face in the Highlands is with staff and labour shortages.

There is no doubt that social care faces massive challenges at the moment. We need to support and nurture our service, and we need to try to make some improvements right now. That is why I say that improving the pay and conditions for social care staff must be a high priority for all of us. How we achieve that improvement will probably involve us making difficult decisions over the next few months.

Ethical commissioning and ethical procurement—the ability to have an impact on the care that we obtain through the money that we spend centrally—is the way to ensure that we continue to get that social benefit, that pay and conditions are of a certain standard for everybody who is employed in social care, and that we have an impact in local communities. As you know, and as you have said, no third sector organisations currently provide that. We want everyone in social care to use that public money for public good.

Paul Sweeney: I thank the minister for that. She has made an important point about pay in the sector being a big challenge.

A couple of weeks ago, I visited the Prince & Princess of Wales Hospice in Glasgow. It has a 16-bed facility. A third of that cannot be used because of staff shortages, particularly of

specialist nurses. It seems perverse to me that, when we have delayed discharges in hospitals and people are dying in rather unpleasant clinical conditions, people cannot be offered that appropriate setting because of those staffing issues. A lot of that is driven by inadequate pay and retention in the sector.

Does the minister accept that we really must move beyond the £12 an hour by 2026 target to get things moving in the sector and to retain that capacity? From a health economics perspective, it is a bit absurd to look at that simply in isolation, given that more than a billion pounds has been spent on delayed discharges in acute hospitals in the past decade.

Maree Todd: Yes, we absolutely need to improve pay and conditions urgently. That is a really high priority. However, that is not the only challenge for the workforce. In my part of the country, Brexit has devastated our rural communities. Far fewer people are coming to live in the rural Highlands, and I suppose that we have lost a tranche of that workforce. People have moved from social care into other roles or have left the country.

We are short of labour across the board, and it is particularly difficult to attract people into social care. We are asking people to do a really tough skilled job, and we want them to deliver care with compassion. The job needs to be competitive against jobs in retail and in hospitality, which is a big competitor up my way. Furthermore, there needs to be security and a chance of career development. We need to do more than just pay.

As I said, the issue is a high priority, and things will only deteriorate further if we do not stabilise the situation now.

Paul Sweeney: One of the big concerns that has been raised, particularly by stakeholders, trade unions and COSLA, is the balance of power between ministers and health and social care partnerships, which have traditionally been the leading bodies in social care. Will the minister revise the initial proposals on the centralisation of control and ensure that the role of health and social care partnerships or equivalent local municipal commissioning is preserved?

Maree Todd: Operational delivery will undoubtedly be by local organisations. Health and social care partnerships and local care boards will be involved in designing and delivering local services. However, currently, there is a perception among the general population and within politics that ministers have responsibility. Ministers do not have direct responsibility for all sorts of things. I am asked questions in Parliament all the time that are the responsibility of local health and social care partnerships. There needs to be clarity about

who is responsible. I think that there is a general wish for ministers to be held responsible for decisions but, if we are going to be held responsible, we need to have the powers to make a difference. That is the challenge.

09:30

I am keen to hear from local government over the summer about how it thinks partnership should work. I have no interest in Edinburgh designing in operational detail the minuscule micromanagement of services in every local area, but clear lines of governance are needed. Even for national workforce planning, central Government needs to have a better grasp and understanding of what the national workforce picture looks like. We do not have that because we do not have the responsibility for it.

Paul Sweeney: You have made an important point about detail. The devil is always in the detail. People might think that ministerial control could mean the loss of managerial authority or of the ability to design local services, but it might simply mean setting national standards. That could all be set out in the bill.

In our previous evidence sessions, there were concerns about the lack of detail in the framework bill. Does the minister accept that that was a deficiency and that the pause could offer an opportunity to get into the detail of how the balance will work—for example, by looking at the structures, the lines of authority between health and social care partnerships, ministers and Parliament, and ratifying the charter for the national care service? Are those things that we could improve?

Maree Todd: Certainly. The officials might want to say a little more about that.

People were undoubtedly keen for us to put a little more meat on the bones, but we have committed to co-design. We are keen for the people who access the services and work in the services to be part of the process. That is why we went for a framework bill in the first place.

The pause offers us an opportunity to put a little more meat on the bones so that people can better understand the ambition of the bill, what the detail around that ambition will be, and how the service will look. This is such a different way of doing things that it has been a little hard for everybody to get their heads around it—I will admit that it has been a little hard for me to get my head around it in my new portfolio. The pause offers an opportunity to give a bit more detail, clarity and understanding.

One thing that I am very clear about is that the national care service has to deliver the ambition,

and we must be able to articulate that well to the country. There are many times when I think, “The national care service would enable us to do that,” or “The national care service is the answer to the problem that you’re raising,” but that understanding is not out there among our citizens and partners. I need to do a better job of articulating the case and explaining that the national care service is the answer to many of the social care concerns that are raised and articulated. I hope that the next few months will give us an opportunity to be clearer about the benefits that the national care service will bring.

I do not think that my officials have anything to add.

Emma Harper: I will pick up on some of the issues about engaging with COSLA and the unions. We took evidence from the Scottish Partnership for Palliative Care and heard that

“The national care service is a real opportunity to be part of improving people’s experiences of living with serious illness, and of dying and bereavement.”—[Official Report, Health, Social Care and Sport Committee, 13 December 2022; c 5.]

Age Scotland said that the Scottish Government has made it clear that there is a commitment to involving people with lived experience.

I would be interested in hearing about engagement with unions. I read a statement from Unison that said that

“the bill leaves profiteering at the heart of care”

and I know that there are concerns about employment and pensions. In contrast with the position of the Health and Social Care Alliance Scotland, the Scottish Partnership for Palliative Care and Age Scotland, who all welcome the bill, others have concerns and may feel that they need to have a voice. Can you speak about that, minister?

Maree Todd: I am certainly more than happy to speak about that. I had some brief discussions with representatives from Unison at the parliamentary event that happened a couple of weeks ago. I am very keen to hear from it and other unions that operate in the sector and represent staff who work in the sector about their concerns, and I want us to understand each other’s perspectives on what advantages or disadvantages a national care service and the approach that we propose could bring.

Most of the concern on pensions appears to be around the possibility that people who are employed by local authorities would have their employment transferred to the national care service. There is no plan for that to happen wholesale or automatically or anything like that. Those will be individual decisions for local care

boards to make, if they feel that employment needs to transfer. There would then be a process of ensuring that pay and conditions are transferred over.

The landscape is complex. The biggest employers in social care in Scotland, by quite a long chalk, are private care companies; then we have the local authorities and direct employees, and the third sector is the smallest. Is that the order? Yes. Less than 20 per cent of the staff are unionised, and it is largely local authority employees who are unionised.

In general, there is a concern that the social care workforce is disempowered and does not have a clear voice in negotiations on pay and conditions. There is definitely agreement across the board—even across the board politically—that pay and conditions need to be better. There is a real opportunity for us all, including the unions, to work together to try to improve that situation.

I do not have strong feelings about the ideology of who should be allowed to be contracted to deliver care. I want that contract to deliver a high quality and high standard of care to the individual who is receiving it. I know that there are private businesses out there who are delivering excellent quality care, and I want to make sure that everyone who is delivering social care that has been contracted with public money is providing a high standard and that their staff have reasonable pay and conditions.

That built-in standardisation of the contract, the procurement and the ethical commissioning is part of the advantage of a national care service. There is an opportunity to talk about profiteering. There is an opportunity to build into those contracts constraints around how businesses operate, to ensure that they operate to a financial standard and with financial ethics that we would want to put public money into.

Sandesh Gulhane (Glasgow) (Con): Good morning, minister. Prior to the pause, would you agree that key stakeholders such as COSLA were against the current form of the NCS?

Maree Todd: Many key stakeholders expressed concerns. I think that you missed my opening statement, but—

Sandesh Gulhane: I did not, minister.

Maree Todd: Okay; so you know that I said that there was a great deal of consensus over parts 2 and 3 of the bill. The debate is largely around part 1 of the bill, and that is where we need to achieve consensus over the next few months.

Sandesh Gulhane: Do you agree that key stakeholders such as COSLA were against the current form of the NCS?

Maree Todd: They certainly raised concerns, yes. This is how we develop legislation in this country, is it not?

Sandesh Gulhane: If it were not for a change of leadership, we might be pressing ahead with the current form. Will you give us the assurance that, if key stakeholders such as COSLA are against the proposals that are developed, you would not press ahead?

Maree Todd: My aim over the next few months is to achieve consensus. There will need to be compromise on both sides about what we come up with, but I will not proceed without an alignment with close partners.

In any area where we are developing legislation, we are not a Government that imposes our view on the country. We work with the country to develop legislation that aligns with the problem that we are trying to solve. That is how we proceed. Generally, we build things carefully.

Even if there had not been a change in Government, there would have been a pause because so many concerns were raised during stage 1 evidence—including by a couple of committees in the Parliament, not just COSLA. Any Government would have to reflect, take on board such concerns and find a way forward that is in agreement with the Parliament; otherwise, we would never get the bill through the Parliament.

Emma Harper: In its report on the bill, which I have in front of me, COSLA made a positive statement. It said that it recognised that a national care service in some form

“could provide national leadership on matters such as workforce planning, training, terms and conditions, national standards, ethical procurement, registration, inspection, and improvement.”

However, COSLA had concerns, and it asked for the bill to be amended. That means that you will need to work with COSLA and with the relevant representatives, as you have indicated. I just wanted to clarify that.

Maree Todd: Absolutely. Routinely, in this country, for all legislation, we put forward a proposal; we consult on a general idea for a bill; we put forward a bill and consult on its actual detail; we take evidence; and we amend. That legislation evolves as it passes through the Parliament, which has its role in scrutinising and amending it.

One of the fundamental differences with this bill is the process of co-design, which involves working with people who access care or who work in care to ensure that they are absolutely integral to the development of the legislation. That is, possibly, slightly different to the way in which we have developed other legislation.

Emma Harper: We need people to be empowered to understand that they will be part of the co-design process and that the bill is a framework that we will build on. Is that what we are asking people to believe and trust—that they will be part of the co-design?

Maree Todd: Absolutely.

The Convener: We move on to the next theme that the committee wishes to explore: local and national responsibility and accountability.

Stephanie Callaghan (Uddingston and Bellshill) (SNP): Minister, you have already offered clarity on a number of the points that I was going to raise.

During stage 1 scrutiny, the Scottish Government confirmed its intention that the integration joint boards will be replaced by new local care boards. Is that replacement still the intention?

To follow on from that, what reassurance can you give local government stakeholders that care boards will be suitably aligned with local government?

Maree Todd: That is still the intention. Again, I am keen to hear views on that. There are a couple of things. We have not yet decided on the composition of the care boards. I expect to hear from stakeholders about who they think needs to be represented and I absolutely expect local government to have a say.

A question that has come up very early in my time in this ministerial role is whether geographical representation needs to be even more local. In Highland, for example, there is the question of whether care looks different in the rural west Highlands to how it looks in the city of Inverness, which has an all-singing, all-dancing hospital on the doorstep.

I hear that about Glasgow as well. Glasgow is an enormous local authority and NHS area and, between one side of the city and the other, there are very distinct communities with very distinct needs. Do we somehow need to capture that in the local delivery, in order to ensure that it delivers for the people?

We are open to discussing those issues as things evolve, and all the stakeholders who have an interest will have a say in how it is designed.

09:45

Stephanie Callaghan: To follow on from that, are you expecting the representation on care boards to be quite standard or expecting variation, or are you not quite sure about that yet? How does that fit in with eliminating variation across local authority areas?

Maree Todd: There is a tension there. We need to have clarity on who is responsible and we need to have clear lines of governance. However, we need to capture local delivery as well as providing accountability. We will engage in those conversations over the course of the next few months and beyond. We will be making decisions about the exact composition of care boards a little later.

You can see some of the challenge, but it is one that we are up for and we need to have that conversation about how best to make it work and how best we can reflect those different needs and different communities while still achieving a certain standard of care and a clarity over governance arrangements. Those are the things that we are really keen to do.

Stephanie Callaghan: I have a question about methodology. Are you looking at using “The Scottish Approach to Service Design”? I can see Donna Bell nodding away there, so the answer to that is yes. Are the public sector and other stakeholders in a good place to coalesce around that just now?

Donna Bell: Yes, I think so. As the minister said, it is a different approach and, at this scale, a much wider cohort of people need to get around the table and understand the process. We have some really good learning, both from the Promise and from Social Security Scotland; bringing that knowledge to the table in advance of and during the work that we are doing gives us a good sense of the capacity, the wish and the will to engage on this basis.

The Convener: We will move to Tess White next.

Tess White: Thank you. Is this in relation to the financial memorandum, convener?

The Convener: No—we are looking at national responsibility and accountability next.

Tess White: Fine. I will wait until we get to the financial memorandum.

Paul Sweeney: A major point of concern was around TUPE—Transfer of Undertakings (Protection of Employment) Regulations 1981—transfer of local government employees. Is that still something that is planned or will that be removed from the revised bill? It was clearly a sticking point.

Maree Todd: I think that we still need to have the power—it still needs to be possible for people to move—but it is certainly not the wholesale aim to transfer people from local authority employment into national care service employment. If any transfer happens, there will be TUPE arrangements in place. We are also mindful of the concerns that have been raised about pensions

and pension rights transferring. We are certainly keen to look at that area more closely in order to give people reassurance that they will not lose out by changing their employer.

Paul Sweeney: On the point that you mentioned earlier about resilience, care home closures happen from time to time. Closure can mean a loss of significant capacity within an area and the local authority might not have the ability to intervene. However, we know from what happened with the railway, for example, that when a franchise fails an operator of last resort comes in and takes over the asset so that it is protected. Could a similar model be developed within the national care service, so that a care home that went into administration could be purchased by the Government in order to protect the asset?

Maree Todd: That option is in the bill. Anna Kynaston can say more on that.

Anna Kynaston: We have a section in the bill that covers the operator of last resort, so that can be an option in the future.

Sandesh Gulhane: Minister, you spoke earlier of being a Highland and rural MSP, but the national care service has been described quite a lot as being centralising and negatively affecting rural and Highland communities disproportionately. Nick Morris of the NHS chairs group said:

“The logical conclusion that is suggested by the NCS proposals at the moment is that the island communities would have less control of the NHS elements of care, because it would all go to a care board.”—[*Official Report, Health, Social Care and Sport Committee*, 8 November 2022; c 29.]

Do you agree with Mr Morris’s interpretation and do you feel that that is where the NCS is?

Maree Todd: Islands have particular challenges in delivering social care. There is an ageing demographic, particularly in the Western Isles, and a lack of young people to work in the national care service, which provides a particularly challenging set of circumstances for our island communities.

I am absolutely clear that one size does not fit all. We cannot have exactly the same system working all over Scotland, because that is not possible. In some areas, there are not enough people to work in the way that it is possible for care to be delivered in urban areas.

We need to make sure that we there are no unintended consequences that make things tougher for our island areas. I know that some of our island local authorities had real concerns when we introduced self-directed support. We are keen to work with them to ensure that we get the balance right between empowerment of the individual who is accessing care, while having

their wish to have their needs and choices respected, and the possibility of there being a more limited range of options in rural and island communities.

Sandesh Gulhane: When will you be able to give us more detail on how local care boards will be drawn up? For example, who would sit on them?

Maree Todd: Anna, are you able to say where that is in the timetable?

Anna Kynaston: The current timetable requires that we get at least stage 1 approval for the bill so that we know that the principles of the bill have been approved and we can start negotiating on detail. Over the course of the summer we will, at the nine events, be out speaking to people in the workforce about what they think local care boards should look like and what “community” means to them. That will add to the evidence base to allow decisions to be made. Putting forward the detail of regulations is currently planned for 2025, but that is obviously subject to the bill timetable.

Sandesh Gulhane: At the moment, the local care board is a concept that you will firm out once you have had further discussions at those nine events. Is that correct?

Anna Kynaston: The local care board is more than a concept. It is a proposed delivery model, and we need to understand its governance.

Sandesh Gulhane: There is no detail to it; “local care board” is just a title.

Anna Kynaston: We need to understand and put in place what people want regarding governance. We need to make sure that there are clear lines of accountability, and we need to understand what “local” means to people. That has been covered by a number of people today in relation to differences between “local” and localities underneath local authorities, and how we can better represent the needs of Scotland’s communities.

The Convener: Evelyn Tweed has questions on the financial memorandum.

Evelyn Tweed: Good morning. Can you outline for the committee the Government’s current thinking on the financial memorandum? Can you give us an update on work on that?

Maree Todd: The Finance and Public Administration Committee has written to ask for an updated memorandum; I will respond to it very soon. We would usually update the financial memorandum after stage 1 and before stage 2. I do not want to have to give multiple updates of the financial memorandum between now and the usual time when you would get an update. If there is going to be a period of pause, engagement and

possibly further changes made to the bill, it makes sense to wait until those changes are woven in before we update the financial memorandum.

Evelyn Tweed: Obviously, the committee had outlined various concerns. Will your response deal with those concerns? Will you be able to offer reassurance?

Maree Todd: We will certainly try to do that. As I said, one of the reasons for pausing and re-engaging is that Parliament, as well as all our stakeholders, expressed some concerns.

We need to be able to better articulate the advantages of the national care service and to put more meat on the bones in relation to how it will work and what it will cost, so we will work together with stakeholders in order to reassure them and Parliament. I am keen that we provide sufficient reassurance so that we are able to make progress.

Evelyn Tweed: Do you feel that you will, after you do the engagement activities over the summer, have more meat on the bones, as it were, and be able to offer reassurances?

Maree Todd: Absolutely; that is the hope. I think that I will be able to give more reassurance and more clarity on what we think the costs will be.

Evelyn Tweed: Thank you.

Tess White: I will ask two questions, if I may, minister.

We have just mentioned the Finance and Public Administration Committee, which asked whether you could get back to it by 12 May with a revised financial memorandum. I understand why you will not be able to do that. However, you have talked about the differences from one region to another in the terms and conditions of social workers. Harmonising those terms and conditions has huge cost implications. I just looked at “The Scottish Approach to Service Design”. It says on page 10 that it is important to be able to define what “good” would look like, so will you be including the cost of harmonising terms and conditions in your consideration at this stage?

Maree Todd: Do you want to come in on that, Donna?

Donna Bell: Yes, I am happy to come in on that point.

Ministers have talked to the Finance and Public Administration Committee in depth about the matter. The bill does not require us to harmonise terms and conditions; it does, however, require us to apply many fair work principles.

The financial memorandum needs to be limited to the set-up costs that will be incurred as a result of enactment of the bill; the point is that the

financial costs of the bill must be represented in the financial memorandum. Harmonisation costs would not be a result of the legislation so we would not put them in.

Tess White: Okay. I have a follow-up question on that. Do you accept, though, Ms Bell, that those costs could go into billions of pounds?

Donna Bell: I think that costing of harmonisation is under way at the moment. Ms Todd has already referenced the commitment to consideration of fair work, pay and terms and conditions, so that is a matter for the budget rather than for the financial memorandum.

Tess White: So, you do not know the costs yet.

I will move on to my second question. In October, Michelle Thomson said that the financial memorandum showed that the bill does not represent any value for money at all to the taxpayer. Kenny Gibson added that it was like

“using a sledgehammer to crack a nut”—[*Official Report, Finance and Public Administration Committee, 25 October 2022; c24.*]

Have you taken on board the concerns of your colleagues with regard to the revised financial memorandum and what are you, as the new minister, going to do differently?

Maree Todd: Yes, we have taken on board the concerns of Parliament. What we are doing differently is engaging again with stakeholders to see where we can achieve consensus, to see where we can put a little bit more detail into what the way forward is expected to be and to provide reassurance to colleagues within Parliament and stakeholders and partners outside Parliament so that everybody is clear on what is going to happen over the next few years, as we develop and bring into being a national care service.

I am keen that we clearly articulate what the advantages might be because I think that, among all the concerns that have been raised, some of the advantages have been lost. I recognise that it is my job to make sure that I clearly articulate those advantages both to parliamentarians and to the wider citizenship.

Tess White: Okay, thank you.

The Convener: We will move on to the impact of the delay on current services. Carol Mochan has some questions on that theme.

Carol Mochan (South Scotland) (Lab): Good morning. I am keen to have a robust discussion on the matter. There is no doubt that what has come out of the discussions is that the national care service proposals do not address what needs to be sorted now, and that there are many things that we can do to help with social care, which is in absolute crisis, as we have heard.

I was very heartened to hear the minister's contribution on the professionalism of the workforce and how we make sure that that workforce has good training. However, from talking to the trade unions, there is absolutely no doubt that we need to look at pay and terms and conditions across the board. The unions are very keen to look at sectoral collective bargaining. I am interested to know from the minister and officials whether there is a plan to look at that and whether they will commit to it for the social care workforce.

10:00

Maree Todd: Absolutely. I am keen to work with the unions, and I am committed to improving pay and conditions. One of the advantages of having a bit more time is that we will be able to understand one other's perspectives.

In my early discussions with Unison, it became clear that when we in Government are talking about sectoral bargaining, we are talking about something that is different to what the unions are talking about. When unions talk about sectoral bargaining, they are talking about bargaining for all local authority employees together, whereas the Government was talking about bargaining for all social care employees together. There is a fundamental difference. As I outlined earlier, the vast majority of people who work in social care are employed by private enterprises, not by local government. Therefore, it is almost immediately clear that we need to spend a bit more time understanding one other's perspectives.

I am pretty confident that our aims align, however. I want people who work in social care to have better pay and conditions. I want them to be empowered, and I want their voices to be listened to. I am pretty certain—I am confident—that the unions want that as well, so I think that we will find ways to ally together on many issues. Both sides want what is best for the workforce, so we will work together on the areas on which we do not agree. I am genuinely confident that we will find a way forward.

Carol Mochan: I do accept that that is what you want to do. The problem for me is that often, in Parliament, we do lots of talking, but we need action. Therefore, I am keen to have a timetable saying when we might be able to move towards better pay and terms and conditions for staff.

Maree Todd: There is a budget cycle that we will be involved in. There are negotiations and discussions going on within Government about budget at the moment.

Last year was a really challenging financial year for the Scottish Government, in that the budget was set and fixed very early on in the year, then the Tory cost of living crisis, energy costs, the

increase in people's wages and inflation meant that, very quickly—within months of that budget being set—it was worth significantly less than it had been at the time when it was set. That was hugely impactful with regard to our having to make tough decisions and work hard to rebalance that budget in-year.

We are being quicker in the negotiations this year—the same financial headwinds are not blowing at the moment—and we are working really hard across Government to make the changes as soon as possible.

Carol Mochan: Do you accept that we need to be brave with some of the stuff that my colleague Paul Sweeney mentioned in relation to the economics of health and social care and breaking the cycle of huge overspend and delayed discharge, and that the way to resolve that is to make those decisions?

Maree Todd: Absolutely. I will say that the focus on delayed discharge is slightly unhelpful. When I think about social care, I think about the entire picture. Much as in healthcare, we need to get involved in prevention. I am sure that you agree with that.

We need to think about spending the money upstream. We need to go back to the Christie principles and think not just about the back door of the hospital—when people have reached crisis, been admitted to hospital and we are then unable to move them out of hospital. We need to think about all the things that help people to live healthy independent lives at home, with support in their own community, before they ever reach crisis point and have to go into hospital. I am absolutely certain that we can do better at that.

Carol Mochan: That sounds good. I do not know whether the minister would commit to coming back within a short timeframe to lay out some of her suggestions for that.

Maree Todd: I think that I will be back and forward to the committee a lot; you will see plenty of me over the next wee while. I know that the subject is an interest of yours, and I am keen to find political allies in making such brave changes and investments.

I see social care not as a drain but as an investment in our society. I feel as though I have a vested interest. In particular—to go back to my being a highlander—I want to grow old in my own community. It is brutal when people have to be uprooted from their communities and go elsewhere for care at the end of their lives. I am keen for the system to work well and to deliver for its citizens, of whom I am one.

Carol Mochan: I have a very short last question on private profit in care, which you mentioned

earlier. We need to discuss that again. I hope that you will understand that social care is not about private profit, and that we need to work hard to make sure that that is removed from the system.

Maree Todd: I am more than happy to work on the detail of that. Within the NHS, general practitioners are private contractors and run profit-making businesses, but they do so in a way that upholds the standards and ethos of the national health service, and they deliver a high-quality service to patients. Most people do not realise that GPs are private businesses.

Private business can work really well in healthcare, and I am sure that they can do so in social care. We need the contract to be absolutely focused on the areas that are important to us, including quality standards, governance and the fair work ethos. There may well be room for building in something about ethical investments and financial regulations, so that people are not using public money to play the stock market.

Gillian Mackay: Good morning, minister. We around the table can agree on plenty that is in the bill: for example, on Anne's law. How do we make progress towards that?

Obviously, we want national standards. Some areas have further to go than others to meet such standards. What work can be done, especially over the summer—before the legislation comes in—to have conversations with local authorities and care homes to ensure that we meet the standards that we want in the legislation, before it is in place?

Maree Todd: You are absolutely right to raise the issue of Anne's law. Everybody is passionately behind that and wants it to become a reality as soon as possible. Those are the tensions that we balance. We know that we need to pause and reflect before moving forward, but that cannot be for an infinite period, because there is urgency around issues such as making progress on Anne's law.

Over the next few months, we need to reflect on the scope and phasing of the bill. I need to think about what I can do that does not require primary legislation—for example, how I can tackle some of the more immediate pressures in social care that do not need primary legislation to fix them. When we introduce primary legislation, we all know that it is not like a magic wand; it does not change things overnight and its implementation has to be phased. What, therefore, needs to be the highest priority? What do we need to do first? What can wait a little longer and how do we achieve that nationally? Do we need to pilot some aspects locally before we make the step to national delivery?

I hope to have a bit more clarity on all that, and a bit more consensus, as I have said, on what we expect to do and how far and how fast we expect to go over the next few months.

Gillian Mackay: That is great—thanks, minister.

I recently hosted a meeting of the cross-party group on carers with a particular focus on young carers and how they interact with this process, and what they want to see from the national care service. Are there plans to take evidence, particularly from young carers, over the summer? That is an ideal time, because young carers might not be in school or university or other places, so some—only some—of the pressures will be less. Obviously, those pressures are multifaceted, but that would seem to be an ideal time to take some of that evidence and to hear those voices. Will the minister commit to doing some of that work over the summer?

Maree Todd: Absolutely. I am always keen to hear the perspective of young carers. You are absolutely right: we need the voices of unpaid carers to be at the core of the development. I say time and again that the voice of lived experience helps us. It is key to the way that we develop policy in Scotland. It helps us to get the policy right in the first place, and then those people hold our feet to the fire with regard to delivery, because they are still involved. It is a really good way of doing things. It is better to get it right first time.

Gillian Mackay: That is great. Thanks.

The Convener: There are a couple of brief supplementary questions on points that you raised earlier, minister. Stephanie Callaghan has a question about self-directed support.

Stephanie Callaghan: Thanks very much for allowing me back in, convener.

Minister, you mentioned self-directed support, and many of the witnesses have spoken about self-directed support being an excellent initiative and the legislation being excellent. That initiative is along the same lines as the national care service and it has the same kind of ethos behind it, because it is all about people having agency and control, and putting what matters to them at the centre.

With that in mind, is there a focus on building on that initiative and replicating its successes? It has worked incredibly well in some places and not so well in other places where it has not been properly embedded. Is any work being done on that?

Maree Todd: Donna Bell might want to come in on that, because it was her baby.

Stephanie Callaghan: Well done, Donna.

Donna Bell: A huge amount of work is under way. New guidance was published a few months

ago, and colleagues and the team have been working with partners around the self-directed support improvement programme. That is to do exactly as you say, which is to ensure that the legislation—I think that Derek Feeley described it as world-leading legislation—is embedded, enacted and delivered across the country. There has been a lot of activity on that so far, but we expect a lot more in the coming months.

It is important to note again the enthusiasm from people who use the support and services and from the professionals who see the benefits of a coherent approach to self-directed support.

Tess White: Minister, you recognise that many people want clarity, and you are working towards consensus, which is commendable. The design principles that the Scottish Government and you are following say that it is important to know what good looks like. However, you would not buy a car or a house if you did not know what it looked like.

Too many stakeholders are nervous about the use of secondary legislation, which is set out by the bill. Scottish Borders Council said:

“We have a concern over the sweeping powers proposed by the draft primary legislation without a clear expression of what is actually being proposed, and the further ability to make further radical but as yet unspecified change to the Health and Social care system. Through secondary legislation.”

I accept that you will have 15 consultations over the summer and through to mid-September, but what are you actually going to do differently to put some “meat on the bones”, to use your words?

Maree Todd: We will provide progress updates as those events take place. After each event, we will provide an update on what we think we have learned. I guess that, in co-design, there is a process of agreeing what everybody has learned, so we will absolutely be providing some detail on that as we go.

10:15

I understand the concern about the lack of scrutiny of secondary powers, and I am mindful that the process that is laid out is a minimum standard. I am comfortable with making sure that we engage on the secondary powers as well and that there is a process of assuring that everybody understands what is required.

I get your analogy about buying a car, but it is not quite the same. We are designing and building the car; we are not going out to a showroom and buying one. That is kind of the point.

There has to be a process of checking in with stakeholders at regular points throughout the process to make sure that everybody is comfortable with the direction of travel. With the

pause, we have demonstrated that we are willing to do that. In fact, we are keen to do it, because we want the change to work. We see the change as absolutely vital for Scotland. The only way in which we will manage to deliver it is by working closely with all the stakeholders and partners to deliver it together.

The Convener: I thank the minister and the other panel members for their contributions. We will have a brief suspension to allow the officials to change over.

10:16

Meeting suspended.

10:19

On resuming—

Powers of Attorney Bill

The Convener: We move on to another evidence session with the Minister for Social Care, Mental Wellbeing and Sport. This time, it is on the Powers of Attorney Bill legislative consent memorandum.

I welcome back Maree Todd. I also welcome from the Scottish Government Douglas Kerr, who is a lawyer in the legal directorate; Peter Quigley, who is adults with incapacity team leader in the mental health law and incapacity unit; and Sarah Saddiq, who is a policy manager in the mental health law and incapacity unit.

The purpose of the Powers of Attorney Bill is to enable modernisation of the process for making and registering a lasting power of attorney made under the Mental Capacity Act 2005.

The Delegated Powers and Law Reform Committee considered the legislative consent memorandum relating to the bill at its meeting on 18 April, and it raised no issues.

I invite the minister to make a brief opening statement.

Maree Todd: Good morning, and thank you for inviting me to speak about the Powers of Attorney Bill and the associated legislative consent memorandum.

Powers of attorney appointments are incredibly powerful and useful. They allow people to retain control over aspects of their lives in circumstances in which they might not otherwise be able to make decisions or take actions. They ensure that people have the opportunity to make provision for a future in which they might no longer have the mental capacity to understand what is happening to them and therefore to make decisions about the things that they care about.

The Powers of Attorney Bill is intended to modernise the process for making and registering English and Welsh lasting powers of attorney. The bill also adds chartered legal executives to the list of individuals who can certify a copy of a power of attorney.

The bill is a private member's bill. It was introduced by Stephen Metcalfe MP in the House of Commons on 15 June 2022. The bill passed the committee stage in the House of Commons on 1 March 2023 with broad cross-party support. It has now completed its passage through the House of Commons, and it is awaiting a second reading in the House of Lords.

Clause 1 introduces the schedule, which contains various provisions that will allow for a simpler process for making and registering a lasting power of attorney. That will increase access by allowing lasting powers of attorney to be made and registered electronically in England and Wales.

Most of the provisions of the schedule extend only to England and Wales, but one provision of the schedule extends to Scotland and requires the consent of the Scottish Parliament. That is paragraph 8, which concerns proving the content and registration of an electronically registered lasting power of attorney throughout the United Kingdom.

Clause 2 amends section 3 of the Powers of Attorney Act 1971 to enable chartered legal executives to certify a copy of a power of attorney. That extends throughout the United Kingdom. That provision also requires the consent of the Scottish Parliament. The provision will increase the channels through which consumers can certify a copy of a power of attorney and promote consumer choice. That is why we are asking Parliament to provide its consent to those amendments to Scots law.

It is right that we support a bill that increases the accessibility of powers of attorney. We know from the work that Scottish Mental Health Law Review has undertaken that using powers of attorney can encourage people to think through how they might want their health, welfare and financial affairs to be managed in the future. That means that adults who use powers of attorney are better placed to be as involved as possible in decisions about their lives, even if their circumstances change.

I am pleased to recommend supporting the bill, because it aligns with the key Scottish Government priorities of increasing accessibility of powers of attorney and ensuring that the most vulnerable people in society are protected.

With the prevalence of dementia increasing and our population ageing, power of attorney documents will become ever more important in ensuring that people can continue to live the lives that they want to live. That is why I have recommended that Parliament consent to the relevant provisions of the bill.

The Convener: Thank you very much, minister.

As no other member has a question, I will ask a small question. The minister might well want to write to the committee on this issue if she is not able to address it directly today.

Ahead of the session, the committee received submissions from the Law Society of Scotland, the Faculty of Advocates and the Office of the Public Guardian in Scotland. The Law Society of

Scotland raised one issue relating to the recognition of Scottish powers of attorney in England and Wales, which is causing practical difficulties and is the source of “frequent complaints”, which the Law Society of Scotland advises the committee the UK bill will not resolve. Are there any plans for the Scottish Government to consider that issue? If so, what would the timescale be?

Maree Todd: The legislation currently allows for the recognition of Scottish powers of attorney in England and Wales. Paragraph 13 of schedule 3 to the Mental Capacity Act 2005 states that

“if the correct process has been followed for the Power of Attorney to be created in Scotland, it would be legally recognised in England and Wales without the need for further action from either the Court of Protection or Office of the Public Guardian ... for England and Wales.”

Given that there is already legislation in place that provides recognition of Scottish powers of attorney in England and Wales, I am not persuaded that further legislation is the answer. However, this is about ensuring that institutions and organisations have awareness and are educated on the legal status of Scottish powers of attorney.

I would liken the debate to the debate about accepting Scottish £10 notes in England. They are legal tender, but they look unfamiliar and people are not aware of them. The point is that it is not the law that we need to change; we need to change the understanding of what the Scottish powers of attorney are and of the fact that they look just a little bit different.

We would be keen to commit to working with third-party organisations to raise awareness through publicity about the validity of Scottish powers of attorney in England and Wales rather than change the law, because the law already allows for recognition of those powers.

The Convener: I thank the minister for her answer.

As no other members of the committee have any questions, I thank the witnesses for their attendance.

Subordinate Legislation

National Health Service (Optical Charges and Payments) (Scotland) Amendment Regulations 2023 (SSI 2023/244)

10:26

The Convener: Agenda item 4 is consideration of a negative instrument: the National Health Service (Optical Charges and Payments) (Scotland) Amendment Regulations 2023. The purpose of the instrument is to increase NHS optical voucher values by 4.5 per cent from 1 June 2023. The instrument amends the National Health Service (Optical Charges and Payments) (Scotland) Regulations 1998. That will ensure that the values of NHS optical vouchers issued in Scotland continue to match the values of those issued elsewhere in the UK.

The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 2 May 2023 and made no recommendations in relation to it. No motion to annul has been lodged in relation to the instrument.

As members have no comments to make, I propose that the committee make no recommendations in relation to the negative instrument.

Members *indicated agreement.*

The Convener: That concludes the public part of our meeting.

10:27

Meeting continued in private until 11:06.

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