

# Care Reform (Scotland) Bill

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## Marshalled List of Amendments selected for Stage 3

The Bill will be considered in the following order—

Sections 36 to 48

Long Title

Amendments marked \* are new (including manuscript amendments) or have been altered.

### Before section 36

**Jackie Baillie**

2 Before section 36, insert—

#### <CHAPTER

#### DIGITAL CARE RECORD

#### Ministers to facilitate creation of records

- 5 (1) The Scottish Ministers must exercise their powers under this Part so that every person who receives health care or a social service in Scotland can have a digital care record.
- (2) The purpose of a digital care record is to—
- 10 (a) enable Scottish health and social care information to be shared securely and efficiently amongst providers of health care and social services so that people’s experiences of health care and social services are as safe and seamless as possible, and
- (b) ensure that people are, so far as practicable and consistent with data protection legislation, able to access their own Scottish health and social care information in a format accessible to them and exercise control over it.
- (3) For the avoidance of doubt—
- 15 (a) fulfilling the duty imposed by subsection (1) is not the only purpose for which the Scottish Ministers may exercise their powers under this Part,
- (b) in order to fulfil that duty, the Scottish Ministers may also exercise other functions.
- (4) In this section—
- 20 “health care” means a service for or in connection with the prevention, diagnosis or treatment of illness,
- “illness” is to be construed in accordance with section 108(1) of the National Health Service (Scotland) Act 1978,
- “Scottish health and social care information” means information concerning, or connected with, the provision in Scotland of health care or a social service,

“social service” has the same meaning as it has in Part 5 of the Public Services Reform (Scotland) Act 2010 (see section 46(2) of that Act).>

**Brian Whittle**

- 2A As an amendment to amendment 2, line 6, after <digital> insert <integrated>

**Brian Whittle**

- 2B As an amendment to amendment 2, line 9, after <services> insert <through a technology-agnostic interoperable solution,>

**Brian Whittle**

- 2C As an amendment to amendment 2, line 24, after <service,> insert <including, but not limited to—  
     ( ) health records,  
     ( ) social care records,  
     ( ) test and scan results,  
     ( ) prescriptions,  
     ( ) letters and other notifications relating to care,  
     ( ) appointments,>

**Section 36**

**Brian Whittle**

- 52 In section 36, page 1, line 7, leave out <may> and insert <must>

**Mark Ruskell**

- 53 In section 36, page 1, line 9, at end insert—  
     <( ) Regulations under subsection (1) must include—  
         (a) a right for the person to whom the care record belongs to control who may access information in that care record,  
         (b) a process for a guardian to control who may access information in the care record on behalf of another person,  
         (c) provision for the care record to be provided in a format that is accessible to the person.>

**Maree Todd**

- 3 In section 36, page 1, line 11, at end insert—  
     <( ) specify the purposes for which, and circumstances in which, information shared under a scheme may be used,>

## After section 36

**Katy Clark**

54 After section 36, insert—

### <Care services: freedom of information

- (1) The Freedom of Information (Scotland) Act 2002 is modified as follows.
- (2) In schedule 1 (Scottish public authorities), in Part 7—
  - (a) after paragraph 61B insert—

“61C. A care home service within the meaning of paragraph 2 of schedule 12 (care services: definitions) of the Public Services Reform (Scotland) Act 2010.”,
  - (b) after paragraph 105 insert—

“105ZA. A support service within the meaning of paragraph 1 of schedule 12 (care services: definitions) of the Public Services Reform (Scotland) Act 2010, with the exclusion of a local authority and a health body.”.>

## Section 37A

**Jackie Baillie**

4 In section 37A, page 2, line 6, leave out <or> and insert <and>

## Section 37B

**Maree Todd**

5 In section 37B, page 2, line 21, after <1978> insert <(“the NHS Act”)>

**Maree Todd**

6 In section 37B, page 2, line 22, leave out <that> and insert <the NHS>

**Maree Todd**

7 In section 37B, page 2, line 25, at end insert—

- <( ) a person providing services (whether directly or indirectly) pursuant to an agreement or other arrangement under any of the following provisions of the NHS Act—
- (i) section 2C (which relates to primary medical services),
  - (ii) section 17C (which relates to personal medical or dental services),
  - (iii) section 17J (which relates to general medical services),
  - (iv) section 25 (which relates to general dental services),
  - (v) section 26 (which relates to general ophthalmic services),
  - (vi) section 27 (which relates to pharmaceutical services),>

**Maree Todd**

- 8 In section 37B, page 2, line 27, leave out <National Health Service (Scotland) Act 1978> and insert <NHS Act>

**Section 37E**

**Jackie Baillie**

- 9 In section 37E, page 3, leave out lines 19 to 27 and insert—  
<“Scottish health and social care information” has the meaning given in section  
(Ministers to facilitate creation of records)(4).>

**Section 38**

**Maree Todd**

- 10 In section 38, page 4, line 5, leave out <(10)> and insert <(10A)>

**Maree Todd**

- 11 In section 38, page 4, line 16, leave out <from providing care>

**Maree Todd**

- 12 In section 38, page 4, line 34, leave out <from providing care>

**Maree Todd**

- 13 In section 38, page 5, line 5, leave out <from providing care>

**Maree Todd**

- 14 In section 38, page 5, line 12, leave out <from providing care>

**Maree Todd**

- 15 In section 38, page 5, line 37, leave out <from providing care>

**Jackie Baillie**

- 16 In section 38, page 6, line 5, after <Act> insert <, which must take account of a carer’s need to have time for rest and leisure>

**Maree Todd**

- 17 In section 38, page 6, leave out line 15 and insert—  
<( ) the words “from caring” are repealed,>

**Maree Todd**

- 18 In section 38, page 6, line 25, leave out subsection (10A) and insert—

<(10A)After section 41(2) (interpretation) insert—

“(3) In this Act references to a carer taking a break (however expressed) are references to the carer taking a break, either with or without the cared-for person, which entails—

(a) taking a break from providing any form of care to the cared-for person, or

(b) taking a break from the carer’s normal routine of providing care to the cared-for person by (either or both)—

(i) limiting the nature, extent, intensity, or duration of the care provided,

(ii) changing the circumstances (including the location) in which the care is provided.”.>

### **Section 38A**

#### **Maree Todd**

**19** In section 38A, page 7, line 4, at end insert—

<( ) In section 41(1) (interpretation), the definition of “terminally ill” is repealed.>

#### **Maree Todd**

**20** In section 38A, page 7, line 4, at end insert—

<( ) In section 42(2) (regulations), paragraph (b) is repealed.>

### **Section 38B**

#### **Maree Todd**

**21** In section 38B, page 7, line 10, at end insert—

<( ) In section 42(2) (regulations), paragraph (d) is repealed.>

### **Section 39**

#### **Maree Todd**

**22** In section 39, page 7, line 12, leave out <subsection (2)> and insert <subsections (2) and (2A)>

#### **Maree Todd**

**23** In section 39, page 7, line 13, at end insert—

<(2A) In section 41(1), the definition of “named person” is repealed.>

## Section 39A

### Maree Todd

- 24 In section 39A, page 7, line 20, after <include> insert <information about>

### Maree Todd

- 25 In section 39A, page 7, line 22, after <provision> insert <in its area>

### Maree Todd

- 26 In section 39A, page 7, line 23, leave out <an assessment of>

### Maree Todd

- 27 In section 39A, page 7, line 23, after <provision> insert <that is available in the local authority's area>

### Maree Todd

- 28 In section 39A, page 7, leave out line 27 and insert—  
<( ) outwith term time,>

### Maree Todd

- 29 In section 39A, page 7, leave out lines 29 and 30

## After section 39A

### Jeremy Balfour

- 1 After section 39A, insert—

#### <Duty of relevant bodies in relation to carers

- (1) The Carers (Scotland) Act 2016 is modified as follows.
- (2) After section 26, insert—

### “CHAPTER 3

#### DUTY OF RELEVANT BODIES IN RELATION TO CARERS

#### **26A Duty of relevant bodies to promote support take-up for carers**

- (1) A specified relevant body, in the exercise of its functions, must—
  - (a) consider if a carer may be eligible to receive financial or other support from another relevant body, and
  - (b) take such steps as it considers appropriate to promote take-up of that financial or other support to the carer.
- (2) The Scottish Ministers must by regulations specify the relevant bodies to which subsection (1) applies.

- (3) The Scottish Ministers may by regulations make further provision in relation to the duty under subsection (1), including—
- (a) a process for a relevant body to identify a carer’s eligibility to receive support,
  - (b) a process for information to be shared between specified relevant bodies about a carer to promote take-up of financial or other support,
  - (c) such other provision as the Scottish Ministers consider appropriate.
- (4) Regulations under this section are subject to the affirmative procedure.”.>

## **Section 40**

### **Jackie Baillie**

- 30** In section 40, page 8, line 9, leave out <use their best endeavours to>

### **Jackie Baillie**

- 31** In section 40, page 8, line 11, after <Supporter> insert <, unless—
- (i) doing so would be contrary to the resident’s wishes, or
  - (ii) nobody can be identified who is able and willing to be the resident’s Essential Care Supporter,>

### **Jackie Baillie**

- 32** In section 40, page 8, line 16, leave out <process> and insert <consultative process with the resident and others>

### **Brian Whittle**

- 55** In section 40, page 8, line 35, at end insert—
- <(2A) The duty must also be framed so that, where a provider of a care home service has suspended visits under subsection (2), the provider must, as soon as reasonably practicable, notify SCSWIS—
    - (a) that a suspension has been made,
    - (b) of the extent of the suspension, including whether the suspension is specific or general,
    - (c) of any amendments to a suspension already notified.
  - (2B) Notification under subsection (2A) must be provided in such manner and form and include such information as SCSWIS may require.
  - (2C) Before setting requirements under subsection (2B), SCSWIS must consult with—
    - (a) providers of a care home service,
    - (b) such other persons as SCSWIS considers appropriate.
  - (2D) SCSWIS must publicise any requirements which are for the time being set under subsection (2B).>

**Maree Todd**

33 In section 40, page 9, line 8, leave out from <the resident> to end of line 9 and insert <, before the suspension of visits is lifted, the resident will have—

(A) died, or

(B) undergone, or begun to undergo, a significant deterioration in physical or mental condition, or>

**Maree Todd**

34 In section 40, page 9, line 25, at end insert—

<(8) Facilitating external visits, as mentioned in subsection (1), does not entail a provider of a care home service—

(a) taking, or accompanying, a resident somewhere outwith accommodation provided by the care home service, or

(b) arranging or paying for someone else to do so.>

**Jackie Baillie**

35 In section 40, page 9, line 25, at end insert—

**<78BA Further provision to be made in connection with sections 78A and 78B**

(1) The Scottish Ministers must exercise the power under section 78(2) to impose a duty on the providers of care home services for adults to—

(a) review, following a valid request, its decision about the suspension of internal or external visits,

(b) notify SCSWIS when the provider suspends internal or external visits.

(2) The duties described by subsection (1) must be framed—

(a) to define what constitutes a valid request to a provider for the purposes of the duty,

(b) so that a provider of a care home service must have regard to the code published under section 78C in carrying out the duties.

(3) Subsection (1)(b) does not preclude the duty from being framed so as to create exceptions to the requirement to notify SCSWIS in relation to the suspension of internal or external visits.

(4) In this section—

(a) references to internal and external visits are to be construed in accordance with section 78B(1),

(b) references to suspending them cover doing so specifically or generally.>

**Jackie Baillie**

36 In section 40, page 9, line 28, leave out <and 78B(1)> and insert <, 78B(1) and 78BA(1)>

**Sandesh Gulhane**

56 In section 40, page 9, line 39, at end insert—

<(2A) The code must provide a process for—

- (a) complaints to be made in relation to any matter under section 78A or 78B by—
  - (i) residents,
  - (ii) carers,
  - (iii) Essential Care Supporters, and
  - (iv) such other persons as the Scottish Ministers consider appropriate,
- (b) complaints to be made in relation to the code, and
- (c) the resolution of any such complaints.>

**Brian Whittle**

57 In section 40, page 10, line 5, at end insert—

- <(iii) communicate timeously in writing with those affected about any change to visiting arrangements including the reasons for the change,>

**Jackie Baillie**

37 In section 40, page 10, line 6, after <in> insert <—

- (i)>

**Jackie Baillie**

38 In section 40, page 10, line 7, at end insert—

- <(ii) care home staff working collaboratively with residents and their friends and families to facilitate visits in the way that best supports residents' needs,>

**Brian Whittle**

58 In section 40, page 10, line 17, leave out from <, and> to <format,> in line 18

**Brian Whittle**

59 In section 40, page 10, line 24, at end insert—

<(4A) In carrying out a review of the code, the Scottish Ministers must—

- (a) have particular regard to any representations that have been made to them about the most recent version of the code by—
  - (i) providers of care home services for adults and their staff,
  - (ii) the residents of accommodation provided by those services,
  - (iii) those residents' family, friends and other visitors, and
- (b) invite, and take into account, views from SCSWIS on—
  - (i) whether, since the most recent version of the code was published—
    - (A) any trends have emerged in the suspension of internal or external visits (see section 78B(1)),

- (B) it has identified any areas of concern, or examples of good practice, in relation to the discharge of the duties imposed in accordance with sections 78A(1), 78B(1) and 78BA(1),
  - (C) meaningful regard is being had to the code by the providers of adult care home services,
- (ii) what changes to the code would be appropriate.>

**Brian Whittle**

60 In section 40, page 10, line 33, at end insert—

<(5A) When the Scottish Ministers publish a version of the code, they must also publish an adaptation of that version of the code designed to be understood by people with learning difficulties or other conditions affecting how they process information.>

**Sandesh Gulhane**

61 In section 40, page 10, line 35, at end insert—

**<78CA Report on suspension of care home visits**

- (1) SCSWIS must, in respect of each reporting period, prepare and publish a report on the suspension of care home visits.
- (2) A report under subsection (1) must include—
  - (a) information about the number of times care home visits have been suspended,
  - (b) an assessment of any trends that can be identified in the suspension of care home visits,
  - (c) examples of good practice or areas of concern in relation to the following of the code of practice under section 78C, where applicable,
  - (d) any recommendations for revisions to the code of practice under section 78C.
- (3) In this section, “reporting period” is the period of 1 year beginning with the day after Royal Assent and each subsequent period of 1 year.>

**Brian Whittle**

62 In section 40, page 11, line 6, at end insert—

**<78E Review of operation of duties imposed in accordance with sections 78A to 78BA**

- (1) The Scottish Ministers must prepare, and make publicly available, a report on the operation of the duties imposed on providers of care home services for adults in accordance with sections 78A(1), 78B(1) and 78BA(1).
- (2) The duty under subsection (1) must be fulfilled within 2 years of this section coming into force.”>

**After section 40**

**Jackie Baillie**

39 After section 40, insert—

*<Health and social care integration*

**Integration principles**

- (1) The Public Bodies (Joint Working) (Scotland) Act 2014 is modified as follows.
- (2) After section 53 insert—

**“53A Power to modify integration planning and delivery principles**

The Scottish Ministers may by regulations modify—

- (a) section 4 so as to change the integration planning principles,
  - (b) section 31 so as to change the integration delivery principles.”.
- (3) In section 69 (subordinate legislation), in subsection (2), for “and 20” substitute “, 20 and 53A”.>

**Brian Whittle**

- 63** After section 40, insert—

*<Reports on spending*

**Duty to report on spending**

- (1) The Carers (Scotland) Act 2016 is modified as follows.
- (2) After section 40, insert—

*“Reports on spending*

**40A Duty to report on spending**

- (1) As soon as practicable following the end of each financial year, the bodies listed in subsection (2) must prepare and publish a report in relation to their spending during that financial year in implementing the provisions of this Act.
- (2) The bodies referred to in subsection (1) are—
  - (a) integration joint boards established under the Public Bodies (Joint Working) (Scotland) Act 2014,
  - (b) any other body with functions delegated to it under the Public Bodies (Joint Working) (Scotland) Act 2014,
  - (c) health and social care partnerships.
- (3) A report under subsection (1) must include—
  - (a) the amount of public funding received for carer support,
  - (b) how that funding was used to fulfil duties under this Act,
  - (c) how that funding was used to further the aims of this Act,
  - (d) how that funding was used to support unpaid carers.”.>

**Section 41**

**Maree Todd**

- 40** In section 41, page 11, line 22, after second <of> insert <—

(i)>

**Maree Todd**

41 In section 41, page 11, line 24, after <2014,> insert <or

- (ii) a function that is exercisable by a health board or a special health board constituted under section 2(1)(a) or, as the case may be, (b) of the National Health Service (Scotland) Act 1978,>

**Brian Whittle**

64 Leave out section 41

**After section 41A**

**Jackie Baillie**

42 After section 41A, insert—

**<Ethical commissioning guidance**

- (1) The Public Bodies (Joint Working) (Scotland) Act 2014 is modified as follows.
- (2) After section 53, insert—

**“53A Ethical commissioning guidance**

- (1) The Scottish Ministers must issue guidance under section 53 on ethical commissioning.
- (2) In setting out what ethical commissioning entails, the guidance must address the fair treatment of workers (including workers recruited from overseas).
- (3) Before issuing any guidance under section 53 on ethical commissioning, the Scottish Ministers must consult—
  - (a) the persons mentioned in section 5(2), and
  - (b) each integration joint monitoring committee.”>

**Jackie Baillie**

43 After section 41A, insert—

**<Procurement strategies**

- (1) The Procurement Reform (Scotland) Act 2014 is modified as follows.
- (2) In section 15 (procurement strategy)—
  - (a) in subsection (5), after paragraph (c) insert—

“(ca) if the authority intends to carry out regulated procurements in connection with functions delegated to an integration authority, include a statement of the contracting authority’s general policy on how it intends to approach those procurements consistently with the integration authority’s strategic plan.”,

- (b) for subsection (7) substitute—

“(7) For the purposes of construing this section—

“living wage”, in subsection (5)(b)(iii), means remuneration which is sufficient to ensure an acceptable standard of living,

“integration authority”, in subsection (5)(ca), has the meaning given in section 59 of the Public Bodies (Joint Working) (Scotland) Act 2014,

“strategic plan”, in subsection (5)(ca), is to be construed in accordance with section 68(1) of that Act.”>

### After section 43

#### Sandesh Gulhane

65 After section 43, insert—

#### <Care Inspectorate: powers

- (1) The Scottish Ministers must by regulations provide powers to the Care Inspectorate with the purpose of—
  - (a) improving standards of local care,
  - (b) providing for a system of complaints handling in relation to the provision of care services, including powers of redress,
  - (c) ensuring adequate resources for the increased use of inspection volunteers.
- (2) For the purposes of subsection (1) “inspection volunteers” are individuals who—
  - (a) assist regulatory bodies or organisations in assessing and evaluating social care services,
  - (b) provide feedback by engaging with service users,
  - (c) report on the quality of social care and support provided, and
  - (d) help ensure that services meet required standards.>

#### Stephen Kerr

66 After section 43, insert—

#### <Social care workforce

#### Audit of the social care workforce

- (1) The Scottish Ministers must, in respect of each reporting period—
  - (a) undertake an audit of the social care workforce,
  - (b) prepare and lay before the Scottish Parliament a report on that audit.
- (2) A report under subsection (1) must in particular—
  - (a) identify any concerns in relation to the workforce, including in relation to capacity,
  - (b) include a plan to address any concerns identified.
- (3) In this section—

“reporting period” means—

  - (a) the period of seven years beginning with the day after Royal Assent,

- (b) each subsequent period of seven years,
- “social care workforce” means—
- (a) social care staff employed by a public, private or third sector organisation,
  - (b) personal assistants working through self-directed support,
  - (c) social workers involved in assessment, planning and coordination of care,
  - (d) support workers providing everyday care in residential, home-based or community settings,
  - (e) any other person deemed relevant by the Scottish Ministers.>

### **Section 43B**

#### **Sandesh Gulhane**

**67** In section 43B, page 15, line 37, at end insert—

- <(ia) advise them on professional standards and ethics in social work and social care standards, policy and services,
- (ib) promote continuous improvement of social work services and social care services,
- (ic) have responsibility for the professional development of the social work and social care workforce, including—
  - (A) education and training to be undertaken by a person before being employed in the social work or social care workforce,
  - (B) education and training to be undertaken by a person when employed in the social work or social care workforce,
- (id) represent the interests of persons working in social work and social care as determined by those persons,>

### **After section 43B**

#### **Paul Sweeney**

**68** After section 43B, insert—

#### **<CHAPTER**

#### **MINISTERIAL DUTIES TO MAKE PROVISION BY REGULATIONS**

#### *Delivery of care*

#### **Continuity of services for persons who have a disability**

- (1) The Scottish Ministers must, by regulations, make provision so that where—
  - (a) a person who has a disability moves home, causing the person’s only or principal home to cease to be in the area of one local authority (“authority A”) and come to be in the area of another (“authority B”), and
  - (b) authority A was, immediately before that move, providing a community care service to the person,

authority B is under a duty to provide the person with a service that is at least equivalent to that which was being provided to the person by authority A immediately prior to the person's moving home.

- (2) Under subsection (1) provision may be made—
  - (a) making the imposition of the duty described by that subsection depend on certain conditions being met (including, for example, conditions concerning notice being given to the local authorities concerned prior to a person moving home),
  - (b) specifying the duration of that duty,
  - (c) transferring some or all of the cost of complying with that duty from one local authority to another,
  - (d) about determining—
    - (i) what is to be treated as a person's only or principal home,
    - (ii) what constitutes equivalence in relation to social care services,
  - (e) disapplying or modifying any enactment so far as the Scottish Ministers consider that appropriate for the purpose of fulfilling their duty under subsection (1).
- (3) In this section—

“community care service” is to be construed in accordance with section 12A(8) of the Social Work (Scotland) Act 1968,

“moves home” includes doing anything that causes a change in which property falls to be treated as a person's only or principal home,

“person who has a disability” means a disabled person as defined by section 16 of the Disabled Persons (Services, Consultation and Representation) Act 1986.>

### **Paul Sweeney**

**69** After section 43B, insert—

#### **<Timescales for assessment of persons who have a terminal illness**

- (1) The Scottish Ministers must, by regulations, prescribe a timescale for carrying out in relation to a person who has a terminal illness—
  - (a) a first assessment of needs under section 12A of the Social Work (Scotland) Act 1968, and
  - (b) subsequent assessments of need under that section, recognising the importance of support being increased expeditiously as a terminal illness progresses.
- (2) For the purposes of subsection (1), a person has a terminal illness if, having had regard to the relevant guidance, it is the clinical judgement of an appropriate healthcare professional that the person has a progressive disease that can reasonably be expected to cause the individual's death.
- (3) In this section—

“appropriate healthcare professional” has the meaning given to that expression by regulations under section 31(2) of the Social Security (Scotland) Act 2018,

“relevant guidance” means the latest guidance made publicly available in accordance with paragraph 1(3) of schedule 5 of that Act.>

## Section 13

### Maree Todd

- 44 In section 13, page 16, leave out lines 13 to 15 and insert <advocacy services.>

### Brian Whittle

- 71 In section 13, page 16, line 15, at end insert—

<(1A) Regulations under subsection (1) must include provision—

- (a) setting standards applicable to independent advocacy services provided under or by virtue of the regulations, and
- (b) for persons providing such services to comply with those standards (including a requirement for arrangements made by any public authority for the provision of independent advocacy services by another person to require such compliance by that other person).

(1B) Standards set by virtue of subsection (1A)(a) may, in particular, include provision in relation to—

- (a) the training and experience that an individual providing independent advocacy services must have,
- (b) service quality,
- (c) quality assurance processes,
- (d) record keeping.>

### Brian Whittle

- 70 In section 13, page 16, line 15, at end insert—

<( ) Regulations under subsection (1) must make provision for—

- (a) providers of such independent information, advice, and independent advocacy to—
  - (i) collect anonymised data on the reasons for individuals seeking these services, and
  - (ii) provide that anonymised data to the Scottish Ministers, in a form that maintains the independence of the individual providers of these services,
- (b) Scottish Ministers, at least once every five years, to—
  - (i) review the data provided under paragraph (a),
  - (ii) prepare and publish a report in relation to the data, such report to include any recommendations that the Scottish Ministers consider appropriate in relation to the improvement of the social care system,
- (c) a report under paragraph (b)(ii) to—
  - (i) include any recommendations that the Scottish Ministers consider appropriate in relation to the improvement of the social care system,
  - (ii) be shared with—
    - (A) each local authority,

- (B) each health board constituted under section 2(1)(a) of the National Health Service (Scotland) Act 1978.>

**Mark Ruskell**

- 72 In section 13, page 16, line 16, leave out <subsection (1),> and insert <this section—
- (a) “advocacy services” means services of support and representation that are made available for the purpose of enabling the individual to whom they are provided to have as much control of, or capacity to influence, that individual’s care and welfare as is, in the circumstances, appropriate,
  - (b) advocacy services are “independent” if the person providing them is not one of the persons mentioned in subsection (3),
  - (c)>

**Mark Ruskell**

- 73 In section 13, page 16, line 18, at end insert—
- <(3) The persons referred to in subsection (2)(b) are—
- (a) the Scottish Ministers,
  - (b) a local authority,
  - (c) a health board constituted under section 2(1)(a) of the National Health Service (Scotland) Act 1978,
  - (d) a person of a description specified by the Scottish Ministers by regulations.>

**After section 13**

**Maree Todd**

- 45 After section 13, insert—
- <Independent information and advice**
- (1) The Scottish Ministers may by regulations make provision for and about the provision, in relation to public social care services, of independent—
    - (a) information, and
    - (b) advice.
  - (2) In this section, “public social care services” is to be construed in accordance with section 13(2).>

**Jackie Baillie**

- 46 After section 13, insert—

<CHAPTER

MINISTERIAL FUNCTIONS TO MONITOR, REPORT ETC.

*Projected care needs*

**Report on projected care needs**

- (1) A report on projected social care needs in Scotland over the applicable period must be prepared and made publicly available by the Scottish Ministers before the end of—
  - (a) 2026,
  - (b) the year falling 5 years after the previous year in which this duty had to be fulfilled (the first of which is 2031).
- (2) The “applicable period”, in relation to a report under subsection (1), is the period of 10 years beginning with the year after that in which the report is first due to be made publicly available in accordance with that subsection.>

**Katy Clark**

74 After section 13, insert—

<Market monitoring

**Report on social care market**

- (1) The Scottish Ministers must, by the end of each reporting period make publicly available a report on the state of the social care market in Scotland.
- (2) A report under subsection (1) may, in particular, include information about—
  - (a) the composition of the market by reference to such factors such as the scale of the economic operators in the market and their status as for-profit bodies, public bodies or third sector bodies (as defined in section 37(1) of the Community Justice (Scotland) Act 2016),
  - (b) the level of profit being made by operators in the market,
  - (c) the tax status of the operators in the market.
- (3) In this section—

“reporting period” means each period of 3 years beginning with 1 April on the year after the year that this section comes into force,

“social care market” means the market for the provision of social care services,

“social care services” are the following—

  - (a) support services,
  - (b) care home services,
  - (c) adult placement services,
  - (d) housing support services.
- (4) The services listed in the definition of “social care services” in subsection (3) are to be construed in accordance with schedule 12 of the Public Services Reform (Scotland) Act 2010.
- (5) The Scottish Ministers may, by regulations, modify this section so as to change the definition of “social care services”.>

**Katy Clark**

75 After section 13, insert—

**<Power to obtain information for the purposes of section (*Report on social care market*)**

- (1) The Scottish Ministers may require a person to supply them with information that—
  - (a) is in the person's control, and
  - (b) may be relevant to the Scottish Ministers' function of reporting under section (*Report on social care market*).
- (2) A requirement under this section is imposed on a person when the Scottish Ministers give the person written notice specifying—
  - (a) the information the person is required to supply,
  - (b) the way in which the person is required to supply it,
  - (c) the time by which the person is to supply it.
- (3) The Scottish Ministers may report the following matters to the Court of Session—
  - (a) a person has refused, or failed without reasonable excuse, to comply with a requirement imposed under subsection (1),
  - (b) the Scottish Ministers suspect a person has deliberately destroyed or altered information following the imposition of a requirement to supply it under subsection (1).
- (4) After receiving a report under subsection (3), and hearing any evidence or representations on the matter, the Court may (either or both)—
  - (a) make any order for enforcement that it considers appropriate,
  - (b) deal with the matter as if it were a contempt of court.>

**Carol Mochan**

76 After section 13, insert—

*<Fair work in the care sector*

**Fair work strategy**

- (1) The Scottish Ministers must prepare and publish a strategy for monitoring and promoting fair work in the care sector.
- (2) A strategy under subsection (1) must set out—
  - (a) what constitutes fair work in the care sector,
  - (b) how the Scottish Ministers intend to monitor the extent to which fair work in the care sector is being achieved, including their plans and processes for—
    - (i) collecting and recording data, and requiring others to collect and record data, on the practices and arrangements in place in relation to fair work in the care sector,
    - (ii) analysing that data to assess the extent to which the practices and arrangements achieve, or contribute to achieving, fair work in the care sector,

- (iii) reviewing that data to assess whether there is any improvement in the extent to which the practices and arrangements achieve, or contribute to achieving, fair work in the care sector, and
    - (iv) using that data in preparing and publishing a report under section (*Report on fair work*)(1),
  - (c) what action (if any) the Scottish Ministers intend to take to—
    - (i) promote fair work in the care sector where they identify a need to improve the extent to which the practices and arrangements in place achieve, or contribute to achieving, fair work in the care sector (for example, issuing guidance on what constitutes good practice), and
    - (ii) review the effect of any such action taken to promote fair work in the care sector.
- (3) A strategy under subsection (1) may—
  - (a) include any other information the Scottish Ministers consider appropriate, and
  - (b) be in any form they consider appropriate and, in particular, may be part of another document.
- (4) The Scottish Ministers must—
  - (a) prepare and publish the first version of the strategy under subsection (1) before the end of the period of 18 months beginning with the day on which this section comes into force, and
  - (b) before the end of each review period—
    - (i) review the strategy, and
    - (ii) if they consider it appropriate, prepare and publish a new version of the strategy under subsection (1).
- (5) In preparing and reviewing the strategy, the Scottish Ministers must consult the persons mentioned in section 5(2) of the Public Bodies (Joint Working) (Scotland) Act 2014.
- (6) For the purposes of subsection (5), it is immaterial that anything done by way of consultation was done before this section comes into force.
- (7) In this section—
 

“fair work in the care sector” means fair work for individuals employed in the provision of a service provided in pursuance of—

  - (a) a function conferred by virtue of an enactment listed in the schedule of the Public Bodies (Joint Working) (Scotland) Act 2014, or
  - (b) a function that—
    - (i) may be delegated by virtue of section 1(6) of that Act, or
    - (ii) must be delegated by virtue of section 1(8) of that Act,

“review period” means the period of 3 years beginning with the day on which the latest version of the strategy was published.>

**Carol Mochan**

### **<Report on fair work**

- (1) The Scottish Ministers must, as soon as reasonably practicable after the end of the reporting period, prepare and publish a report on fair work in the care sector.
- (2) The report must include—
  - (a) an assessment of the extent to which fair work in the care sector, as set out in the strategy published under section (*Fair work strategy*)(1), has been achieved during the reporting period,
  - (b) an assessment of whether there has been any improvement in the extent to which fair work in the care sector has been achieved during the reporting period, and
  - (c) if that assessment is that there has been little or no improvement in the extent to which fair work in the care sector has been achieved—
    - (i) why that is the case, and
    - (ii) what action (if any) the Scottish Ministers intend to take to promote, or further promote, fair work in the care sector before the end of the next reporting period.
- (3) The report may include any other information the Scottish Ministers consider appropriate.
- (4) In this section—

“fair work in the care sector” has the meaning given in section (*Fair work strategy*)(7),

“reporting period” means—

  - (a) the period of one year beginning with the day on which the first version of the strategy under section (*Fair work strategy*)(1) was published, and
  - (b) each subsequent period of one year.>

### **Mark Ruskell**

78 After section 13, insert—

#### *<Independent advocacy*

##### **Report on independent advocacy services**

- (1) The Scottish Ministers must, before the end of each review period—
  - (a) undertake a review of the provision, in relation to public social care services, of independent advocacy services funded by them, and
  - (b) prepare a report on that review.
- (2) A report under subsection (1)(b) must include—
  - (a) an assessment of the extent of provision of independent advocacy services made available—
    - (i) at the beginning of the review period,
    - (ii) at the end of the review period,
  - (b) an assessment of whether the availability of provision of independent advocacy services has increased during the review period,
  - (c) if that assessment is that the provision of independent advocacy services has not increased—
    - (i) why that is the case, and

- (ii) what steps (if any) the Scottish Ministers intend to take to ensure the availability of independent advocacy services increases before the end of the next review period.
- (3) The Scottish Ministers must, as soon as reasonably practicable after preparing the report—
  - (a) publish the report, and
  - (b) lay a copy of it before the Scottish Parliament.
- (4) For the purposes of this section—
  - (a) the “review period” means—
    - (i) the period of 2 years beginning with the day on which this section comes into force, and
    - (ii) each subsequent period of 4 years until a date specified in regulations made by the Scottish Ministers,
  - (b) expressions used in this section that are also used in section 13 are to be construed in accordance with subsection (2) of that section.>

**Brian Whittle**

**81** After section 13, insert—

**<PART**

ANNUAL REPORT

**Annual report**

- (1) The Scottish Ministers must, as soon as reasonably practicable after the end of each reporting period—
  - (a) prepare and publish a report on the outcomes of the operation of this Act, where data is otherwise not collect and published by the Scottish Ministers, including but not limited to—
    - (i) the delivery of a shared digital health and care record,
    - (ii) the number of young carers identified and supported to take sufficient breaks,
    - (iii) the number of unpaid adult carers identified and supported to take sufficient breaks,
    - (iv) the number of unpaid adult carer support plans prepared within and outside the timescales brought forward in regulations under section 6(5A) of the Carers (Scotland) Act 2017 (inserted by section 38A),
    - (v) the number of young carer statements prepared within and outside the timescales brought forward in regulations under section 12(7A) of the Carers (Scotland) Act 2016 (inserted by section 38B),
    - (vi) the number of unpaid carers, both adult and young, who have accessed short break services through local authorities and health and social care partnerships,
    - (vii) impacts on service standards, created by regulations under this Act, in relation to the creation of the National Chief Social Work Adviser and National Social Work Agency under section 43B,
  - (b) lay the report before the Scottish Parliament.

- (2) In this section, “reporting period” is the period of 5 years beginning with the day after Royal Assent and each subsequent period of 5 years.>

**Jackie Baillie**

79 After section 13, insert—

*<Sectoral bargaining*

**Sectoral bargaining**

- (1) To the extent permitted by any other enactment, the Scottish Ministers must negotiate employment conditions for social care workers in Scotland through sectoral bargaining.
- (2) The Scottish Ministers must give effect to any minimum rate agreed through sectoral bargaining under subsection (1) when—
  - (a) determining funding to be allocated to adult social care in the annual Local Government Finance Settlement, and
  - (b) issuing guidance in the Local Government Finance Circular.
- (3) In this section, “sectoral bargaining” means the application to all contracted or commissioned social care services of the required pay and other conditions of employment that have been negotiated and agreed by employers and trade unions through the relevant national body established by employers associations and trade unions and recognised by the Scottish Government for that purpose.>

**Jackie Baillie**

80\* After section 13, insert—

*<Sectoral bargaining*

**Sectoral bargaining: guidance etc.**

- (1) The Scottish Ministers must, no later than 2 years after this section comes into force, prepare and publish guidance for contracting authorities on sectoral bargaining in social care procurement.
- (2) Guidance under subsection (1) must include information—
  - (a) on the process of sectoral bargaining,
  - (b) on aims in relation to contract conditions,
  - (c) to be included in contract notices,
  - (d) to be included in bid documents,
  - (e) on the required criteria for an award to be made,
  - (f) on the management of contracts, and
  - (g) on steps to be taken by contracting authorities to ensure contracted providers comply with collective agreements.
- (3) Contracting authorities must have regard to any guidance published under this section.
- (4) The Scottish Ministers must take whatever other steps they consider necessary to support compliance with collective agreements.
- (5) The Scottish Ministers must lay a copy of any guidance published under this section before the Scottish Parliament.

- (6) In this section, “sectoral bargaining” means the application to all contracted or commissioned social care services of the required pay and other conditions of employment that have been negotiated and agreed by employers and trade unions through the relevant national body established by employers associations and trade unions and recognised by the Scottish Government for that purpose.>

## Section 46

### Maree Todd

- 47 In section 46, page 16, line 30, leave out <section 13> and insert <any of the following provisions>

### Maree Todd

- 48 In section 46, page 16, line 30, after <Act> insert <: sections 13(1) and (*Independent information and advice*)>

### Paul Sweeney

- 48A As an amendment to amendment 48, line 1, after <sections> insert <(Continuity of services for persons who have a disability),>

### Paul Sweeney

- 48B As an amendment to amendment 48, line 1, after <sections> insert <(Timescales for assessment of persons who have a terminal illness),>

### Mark Ruskell

- 82 In section 46, page 16, line 31, at end insert—  
<( ) Regulations under any of the following provisions are subject to the negative procedure: sections 13(3)(d) and (*Report on independent advocacy services*)(4)(a)(ii).>

### Maree Todd

- 49 In section 46, page 16, line 33, leave out <13,>

### Paul Sweeney

- 83 In section 46, page 16, line 33, after <37C> insert <, (*Continuity of services for persons who have a disability*)>

### Paul Sweeney

- 84 In section 46, page 16, line 33, after <37C> insert <, (*Timescales for assessment of persons who have a terminal illness*)>

### Maree Todd

- 50 In section 46, page 16, line 33, after <37C> insert <, 13(1), (*Independent information and advice*)>

**Katy Clark**

- 85 In section 46, page 16, line 33, after <37C> insert <, (*Report on social care market*)>

#### **Section 47**

**Jackie Baillie**

- 51 In section 47, page 17, line 2, leave out subsection (1) and insert—  
<( ) The following come into force on the day after Royal Assent: section (*Report on projected care needs*) and this Part.>

**Katy Clark**

- 86 In section 47, page 17, line 2, at end insert—  
<( ) Section (*Care services: freedom of information*) comes into force two years after Royal Assent.>

#### **After section 47**

**Brian Whittle**

- 87 After section 47, insert—  
**<Commencement: further provision**  
(1) The Scottish Ministers must before making any regulations under section 47(2) prepare and publish a report on the estimated costs arising from the Bill for this Act as passed.  
(2) The Scottish Ministers must lay a copy of the report before the Scottish Parliament.>

#### **Section 48**

**Brian Whittle**

- 88 In section 48, page 17, line 6, leave out <Care Reform> and insert <Social Care and Support>



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