

EXPLANATORY NOTES

Care Reform (Scotland) Act 2025 (asp 9)

£8.90

These notes relate to the Care Reform (Scotland) Act 2025 (asp 9)
which received Royal Assent on 22 July 2025

CARE REFORM (SCOTLAND) ACT 2025

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Care Reform (Scotland) Act 2025. They do not form part of the Act and have not been endorsed by the Parliament.

2. These Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section, or a part of a section, does not seem to require any explanation or comment, none is given.

NOTE ON INTERPRETATION

Interpretation legislation

3. The Act's freestanding text (that is its sections) fall to be interpreted in accordance with the Interpretation and Legislative Reform (Scotland) Act 2010.

4. Text that the Act inserts into other enactments falls to be interpreted in accordance with the interpretation legislation that applies to that enactment. For example, text inserted into the Regulation of Care (Scotland) Act 2001 falls to be interpreted in accordance with the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999.

OVERVIEW OF THE ACT

5. The Act is divided into the following Parts:

- Part 1 gives the Scottish Ministers powers to allow information about people's health and social care to be shared and to make that information more consistent and better integrated. It also imposes a duty on the Scottish Ministers to use those powers to enable everyone who receives health or social care in Scotland to have a digital care record.
- Part 2 is divided into three Chapters: the first contains modifications to existing laws relating to the provision and regulation of care; the second confers regulation-making powers on the Scottish Ministers; the third confers further duties on the Scottish Ministers in connection with care, principally to monitor and report on certain matters and produce strategies and guidance.
- Part 3 contains provisions usually found at the end of an Act, namely the power to make ancillary regulations, further elaboration in relation to regulation-making powers elsewhere in the Act and the sections dealing with commencement and short title.

PART 1: HEALTH AND SOCIAL CARE INFORMATION

Overview of Part 1

6. Part 1 gives the Scottish Ministers two main powers:

- Section 2 gives them a power to make regulations allowing information to be shared so that public health and social care services can be provided efficiently and effectively.
- Section 3 gives them a power to set standards for the processing of health and social care information.

7. The first section in the Part (section 1) describes one purpose for which the Scottish Ministers must use those powers. That is to enable everyone who receives health care or a social service in Scotland to have a digital care record.

Chapter 1: Digital care record

8. Section 1 imposes a duty on the Scottish Ministers to use their powers under Part 1 to enable everyone who receives health care or a social service in Scotland to have a digital care record. A person's digital care record will draw together information about the person from health care and social service providers. In order to have a digital care record, service providers will therefore need to share information. Regulations under Chapter 2 will be able to provide a lawful basis for that. Furthermore, the information shared by service providers will need to be shared in common standards and formats so that the data can be integrated into a record that is interoperable amongst providers. Chapter 3 gives the Scottish Ministers the power to require the adoption of common formats across the health and social care sectors in Scotland by setting information standards.

9. Subsection (3) of section 1 makes clear that the powers in the Part can be used for other purposes too, and that the Scottish Ministers can use powers besides those conferred by the Part to fulfil their duty to ensure the availability of digital care records.

Chapter 2: Information sharing schemes

10. Section 2 gives the Scottish Ministers power by regulations to establish a scheme for sharing information to improve the efficiency and effectiveness of public health and social care services. The regulations will provide a lawful basis for information relevant to the delivery of those services to be shared.

11. In this context, a public health or social care service is one that is provided in exercise of certain statutory functions set out in subsection (3). The first category of functions mentioned in subsection (3) can broadly be described as publicly funded social care; these are the functions of a local authority that it can delegate to an integration authority under the Public Bodies (Joint Working) (Scotland) Act 2014. The second category of functions mentioned in subsection (3) can broadly be described as publicly funded health care; these are the functions of National Health Service health boards and special health boards which are largely (but not exclusively) set out in the National Health Service (Scotland) Act 1978. In many cases, particularly in the context of social care, the statutory functions set out in subsection (3) are exercised to commission services from the private or third sector. Services (for example a care home

service) delivered by the private or third sector on that basis are nevertheless public health and social services for the purposes of section 2 because they are being delivered on behalf of a public-sector body as part of its discharging a statutory function mentioned in subsection (3).

12. Subsection (4) of section 2 underscores that an information-sharing scheme under subsection (1), which must have as its purpose enabling the sharing of information in order to make public health and social care services more efficient and effective, need not only be a scheme for sharing information between persons providing services directly to individuals. It might, for example, be a scheme requiring information to be shared with the Scottish Ministers in order to help them exercise their statutory function of ascertaining what numbers of social workers are required within Scotland (see section 58(1)(a) of the Regulation of Care (Scotland) Act 2001). The purpose for the Scottish Ministers exercising their powers under section 58(1)(a) of the Regulation of Care Act is to enable them to develop policies to ensure that there are sufficient numbers of social workers in order, ultimately, to improve the efficiency and effectiveness of the delivery of health and social care services.

13. Regulations under section 2 will be subject to the affirmative procedure (see section 38).

Chapter 3: Information standards

14. Sections 3 to 7 make provision about information standards. An information standard (as defined by section 3) is a document setting out how Scottish health and social care information is to be processed, which includes how it is stored, formatted, indexed and so forth. Section 3(2) allows for an information standard to set requirements by reference to other documents, including ones that may not yet exist which means, for example, that an information standard could require compliance with an internationally recognised technology standard (such as one produced by the International Standards Organisation) including future revisions of it. The concept of "Scottish health and social care information" has the same meaning in Chapter 3 as it does in Chapter 1 (see sections 7(1) and 1(4)).

15. An information standard must specify to whom the requirements about information processing that it sets out applies (see section 3(3)(a)). Different requirements set out in the same information standard document may be made to apply to different persons. The effect of being a person to whom an information-standard requirement applies is that the person falls under a legal duty to comply with it (see section 5).

16. Section 5(2) allows the Scottish Ministers to make regulations imposing civil (as opposed to criminal) sanctions for breaching the duty to comply with an information-standard requirement. Those regulations will be subject to the affirmative procedure (see section 38).

17. A requirement in an information standard may only be made to apply to a person mentioned in section 4(1). The list of persons in that section covers both public and private sector providers of health and social care services in Scotland. It also covers, at paragraph (l), those who provide to the providers of health and social care services products and services that are used for or in connection with electronically processing health or social care information. For example, an IT company providing a health board with cloud storage for keeping patient records would fall within paragraph (l) where the company provided that cloud service knowing it was to be used by the health board for storing patient records. Any requirement in an information standard that might apply to an IT company in such a case could, however, only apply in relation to its processing of Scottish health and social care information as defined; an information standard cannot set requirements in relation to the processing of any other kind of information.

18. Section 6 allows for information standards to be withdrawn. The legal duty to comply with the requirements in an information standard stop applying once the standard is withdrawn. The withdrawal of an information standard is to be effected by putting a notice to that effect on the information-standards website.

19. Every information standard that is produced must be available to the public on the information-standards website (see section 3(4)) unless and until it is withdrawn (see section 6(2)(a)). While there ceases to be a requirement to include withdrawn information standards on the information-standards website, there is no prohibition on their continuing to appear there. It is the notice on the website that the standard has been withdrawn that is determinative of its status.

20. The information-standards website is defined in section 7. Once section 7 comes into force, the Scottish Ministers will be under a duty to use regulations to amend that section so that it specifies on its face the internet domain name of the site (see subsection (2)(a)). Thereafter, the Scottish Ministers will be able to change the specified domain name by further regulations (see section (2)(b)). Regulations specifying the domain name of the information-standards website will have to be laid before the Scottish Parliament in accordance with section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010.

PART 2: REFORMS CONNECTED TO DELIVERY AND REGULATION OF CARE

Overview of Part 2

21. Part 2 is divided into 3 chapters.

22. The sections comprising Chapter 1 deal with a variety of matters related to the delivery and regulation of care, but have in common that they do so by textually amending other enactments. They are therefore grouped as one Chapter on the basis that most users of the statute book will be interested in legislation as amended by those sections, as opposed to the amending instructions per se.

23. Chapter 2 confers regulation-making powers on the Scottish Ministers, enabling them to:

- impose certain requirements in relation to the discharge of local authorities' social care functions (see sections 26 and 27),
- make provision about independent advocacy, information and advice in relation to social care (see sections 28 and 29).

24. Chapter 3 imposes further (non-regulation making) duties on the Scottish Ministers:

- Section 30 requires them to periodically produce a 10-year projection of social care need in Scotland.
- Section 31 requires them to periodically report on the state of the social care market in Scotland. Connected to this is section 32, which gives them a power to require the supply of information needed to produce those reports.

- Section 33 requires them to produce, and periodically review, a fair-work strategy for the care sector. Section 34 then requires them to periodically report on the realisation of fair work in the sector.
- Section 35 requires them to periodically report on the state of independent advocacy available in relation to social care.
- Section 36 requires them to produce guidance on sectoral bargaining in social care procurement and take other steps, where they consider it necessary, to support compliance with collective agreements.

Chapter 1: Modifications to other enactments

Carers

Rights to breaks for carers

25. Section 8 amends the Carers (Scotland) Act 2016 to ensure that carers get the support that they need to take sufficient breaks. Subsections (12) to (15) of section 8 make changes to other statutes in consequence of the changes made to the Carers Act.

26. Subsections (2) and (4) ensure that being able to take sufficient breaks is an "identified personal outcome" for every carer. (What is meant by a carer taking a break is addressed by subsection (11).) They also ensure that where a carer is unable to take such breaks, the need for support to do so is an "identified need" of the carer. (See sections 4 and 5, as read with sections 8 and 14, of the Carers Act.)

27. Subsection (8) places a new duty on local authorities to provide the support that a carer needs to enable the carer to take sufficient breaks. Subsections (6) and (7) ensure that this duty is not subject to local or national eligibility criteria.

28. Subsection (9) confers on the Scottish Ministers a new power, and a duty to exercise it, to make further provision by regulations in connection with the support to be provided to a carer under the new duty. The regulations may, for example, make provision about what is meant by the expression "sufficient breaks". This replaces a more limited power in section 25(2) of the Carers Act. Regulations under this replacement power are subject to the affirmative procedure (see section 42(2)(h) of the Carers Act).

29. The new duty applies where the support that a carer needs cannot be met by the services or assistance referred to in paragraphs (a) or (b) of section 24(1) of the Carers Act. Although paragraph (a) refers to services or assistance provided to the cared-for person, this does not include any such care provided in order to enable the carer to take a break. By virtue of paragraph (b), where the need for support can be met by services or assistance provided generally to persons in the area where the carer resides, then that support will not need to be provided under the new duty.

30. Subsections (3) and (5) ensure that every adult carer support plan and every young carer statement under the Carers Act (see sections 9 and 15 of that Act) includes information about the support provided, or to be provided, to meet any identified need for support to enable the carer to take sufficient breaks.

31. Subsection (10) ensures that local carer strategies under section 31 of the Carers Act must set out plans to promote a variety of providers of support to relevant carers, and to promote the variety of support provided. Local authorities are already required to promote these things under section 19(2) of the Social Care (Self-directed Support) (Scotland) Act 2013. In addition, this subsection ensures that local carer strategies take account of the support needed to enable relevant carers to take breaks from providing care (see also section 25(5) of the Carers Act).

Adult carer support plan

32. Section 9 amends the Carers (Scotland) Act 2016 to give the Scottish Ministers a power to make regulations setting the timescale within which a local authority must prepare an adult carer support plan. Section 6 of the Carers Act defines what an adult carer support plan is and imposes a duty on local authorities to offer them to persons they identify as adult carers. The expression "adult carer" is defined by section 3 of the Carers Act.

33. Regulations made under the new power to set timescales that section 9 will amend into the Carers Act will be subject to the negative procedure (as defined by section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010) as a result of section 42(3) of the Carers Act.

34. Subsections (3) to (5) of section 9 make adjustments in consequence of the new power:

- Subsection (3) provides for the repeal of section 7 of the Carers Act. It contained a power for the Scottish Ministers to make regulations setting a timescale for the preparation of adult carer support plans in cases where the cared-for person was terminally ill. As the new power that section 9(2) of the Act inserts will allow regulations to be made setting timescales for all cases, the more limited version of the power in section 7 is redundant.
- The definition of "terminally ill" in the Carers Act will be made redundant by the repeal of its sections 7 and 14 (see paragraph 37 below) as they are the only two sections in which the expression is used.
- Section 42(2) of the Carers Act contained a cross-reference to section 7 of that Act. Subsection (5) provides for its repeal.

Young carer statement

35. Section 10 amends the Carers (Scotland) Act 2016 to give the Scottish Ministers a power to make regulations setting the timescale within which a local authority must prepare a young carer statement. Section 12 of the Carers Act defines what a young carer statement is and imposes a duty on local authorities to offer them to persons they identify as young carers. The expression "young carer" is defined by section 2 of the Carers Act.

36. Regulations made under the new power to set timescales that section 10 will amend into the Carers Act will be subject to the negative procedure (as defined by section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010) as a result of section 42(3) of the Carers Act.

37. Subsections (3) and (4) of section 10 make adjustments in consequence of the new power:

- Subsection (3) provides for the repeal of section 13 of the Carers Act. It contained a power for the Scottish Ministers to make regulations setting a timescale for the preparation of young carer support statement in cases where the cared-for person was terminally ill. As the new power that section 10(2) of the Act inserts will allow regulations to be made setting timescales for all cases, the more limited version of the power in section 13 is redundant.
- Section 42(2) of the Carers Act contained a cross-reference to section 13 of that Act. Subsection (4) provides for its repeal.

Enactments relating to carers: minor modifications

38. Section 11 makes minor changes to two enactments. Subsections (2) and (3) remove some unnecessary definitions from the Carers (Scotland) Act 2016. Subsection (5) removes two unnecessary words from the Social Care (Self-directed Support) (Scotland) Act 2013.

Short break services statement

39. Section 12 amends section 35 of the Carers (Scotland) Act 2016 to make further provision about the information to be included in a short breaks services statement. A short breaks services statement is a document that every local authority in Scotland must produce describing the short breaks services available in Scotland for carers and cared-for persons.

Promotion of support for carers

40. Section 13 inserts a new section 26A into the Carers (Scotland) Act 2016. The new section will impose a duty on bodies classified by regulations as "relevant bodies" to encourage carers to take-up financial or other support from other bodies that are classified as relevant bodies.

41. Regulations under the new section 26A of the Carers Act will be subject to the affirmative procedure (as defined by section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010).

Care homes: visits to or by residents

42. The Scottish Ministers have a power to make regulations under section 78(2) of the Public Services Reform (Scotland) Act 2010 imposing requirements in relation to care services (a term defined in section 47 of that Act). Section 14 of the Act inserts new sections 78B to 78D into the Public Services Reform Act to require Ministers to exercise their power under section 78(2) to impose four new duties on the providers of care home services for adults:

- a duty to use their best endeavours to identify for every care home resident at least one person as an essential care supporter for the resident (see inserted section 78B)
- a duty to facilitate visits to and by care home residents (see inserted section 78C)
- a duty to review decisions to suspend visits to and by residents (see inserted section 78D(1)(a))

- a duty to notify Social Care and Social Work Improvement Scotland (commonly known as the Care Inspectorate) following a decision to suspend visits (see inserted section 78D(1)(b))

43. Section 14 of the Act also inserts a new section 78E into the Public Services Reform Act requiring the Scottish Ministers to produce, and periodically review, a code of practice that the providers of care home services for adults will have to have regard to when fulfilling the new duties imposed in accordance with the requirements of new sections 78B, 78C and 78D.

44. Section 14 also inserts a new section 78F into the Public Services Reform Act. This provides definitions of key expressions used in the preceding inserted sections.

45. Finally, section 14 inserts a new section 78G into the Public Services Reform Act. This requires the Scottish Ministers to report on the operation of the duties imposed in accordance with inserted sections 78B, 78C and 78D. The report has to be made publicly available within two years of inserted section 78G coming into force. That inserted section of the Public Services Reform Act will come into force when section 14(2) of the Care Reform Act comes into force and inserts it. Section 14(2) of the Care Reform Act is to come into force on a day appointed by the Scottish Ministers by regulations (see section 39).

Health and social care integration principles

46. Section 15 amends the Public Bodies (Joint Working) (Scotland) Act 2014 to confer on the Scottish Ministers a regulation-making power to modify the integration planning principles and the integration delivery principles in that Act. The exercise of that regulation-making power is subject to the affirmative procedure (see section 69 of the Joint Working Act; for the meaning of the affirmative procedure see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010).

47. The integration planning principles (which are set out in section 4 of the Joint Working Act) are principles to which local authorities and health boards must have regard when preparing an integration scheme under section 1 or 2 of the Joint Working Act.

48. The integration delivery principles (which are set out in section 31 of the Joint Working Act) are operative in the following circumstances:

- an integration authority must have regard to the principles when preparing or reviewing its strategic plan (see sections 30 and 37 of the Joint Working Act)
- a perception that a strategic plan is preventing, or may prevent, compliance with the principles (amongst other things) is grounds for the constituent authorities in respect of an integration authority to direct it to replace its strategic plan (see section 38 of the Joint Working Act)
- a person carrying out an integration function for the area of a local authority must have regard to the principles in carrying out the function (see section 40 of the Joint Working Act)
- improving compliance with the principles is one of the reasons for which the Scottish Ministers can permit an integration joint board not to direct another person to carry out a function under section 26 of the Joint Working Act (see section 27(7)(b) of that Act)

- reviewing and evaluating compliance with them is a purpose for which an inspection can be carried out by Social Care and Social Work Improvement Scotland (commonly known as the Care Inspectorate) under section 53 of the Public Services Reform (Scotland) Act 2010) or by Healthcare Improvement Scotland under section 10I or 10J of the National Health Service (Scotland) Act 1978

Commissioning

Reserving right to participate in procurement by type of organisation

49. The Public Contracts (Scotland) Regulations 2015 were made to implement Directive 2014/24/EU of the European Parliament and of the Council on public procurement. They impose obligations on public bodies in relation to how they award public contracts for the execution of works, the supply of products and the provision of services.

50. Section 16 amends the 2015 Regulations to insert a new regulation 76A. This will allow, in certain circumstances, the list of bidders for a contract to be limited to those who meet a particular description.

51. Inserted regulation 76A includes a power to modify its own terms by further regulations, so that the Scottish Ministers can alter the types of contract that can be restricted and the type of body that bidding can be limited to. Regulations under proposed regulation 76A will be subject to the negative procedure by virtue of regulation 83A of the 2015 Regulations. The negative procedure is defined by section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010.

Threshold for Public Contracts (Scotland) Regulations 2015 to apply

52. Section 7 in Chapter 3 of Part 2 of the Public Contracts (Scotland) Regulations 2015 sets out obligations on public bodies in relation to how they award contracts for services of the kind listed in schedule 3 of the Regulations (which is titled social and other specific services). In order for the Regulations to apply in relation to a public service contract for those services, the estimated value of the contract must be equal to or greater than the threshold amount specified in regulation 5(1)(d). At the time these Explanatory Notes were prepared, that amount was £663,540.

53. Section 17 of the Act inserts a new regulation 5B into the 2015 Regulations, conferring on the Scottish Ministers a power to make regulations modifying the threshold amount specified in regulation 5(1)(d). By virtue of regulation 83A of the 2015 Regulations, regulations under the new power to modify the threshold will be subject to the negative procedure (as defined by section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010).

Ethical commissioning guidance

54. Section 18 amends the Public Bodies (Joint Working) (Scotland) Act 2014 in order to impose a duty on the Scottish Ministers to exercise their power under section 53 of that Act to issue guidance on ethical commissioning. Guidance under section 53 of the Joint Working Act is guidance to which local authorities, health boards, integration joint boards and integration joint monitoring committees must have regard to when carrying out their functions arising under or in relation to the Joint Working Act. What ethical commissioning entails is left to the guidance to set out, but the amendment made by section 18 does require that the guidance address the fair treatment of workers.

Procurement strategies

55. Section 19 amends section 15 of the Procurement Reform (Scotland) Act 2014 to expand the range of matters that a contracting authority's procurement strategy has to cover if the authority intends to carry out regulated procurements in connection with functions delegated to an integration authority. Specifically, where a contracting authority does intend to carry out such procurements in the period to which the procurement strategy relates (which is one financial year), the strategy must include a statement on how the authority intends to approach those procurements consistently with the strategic plan of the integration authority in connection with whose functions the procurement is to be carried out.

56. "Contracting authority" and "regulated procurement" are terms defined in sections 1 and 2 (respectively) of the Procurement Reform Act. The term "integration authority" is defined in section 59 of the Public Bodies (Joint Working) (Scotland) Act 2014 and the requirement for every integration authority to have a strategic plan arises from section 29 of that Act.

Regulation of social services

Scottish Social Services Council's power to require information

57. Section 20 inserts a new section 50A into the Regulation of Care (Scotland) Act 2001 in order to enable the Scottish Social Services Council to require persons to provide it with information. The Scottish Social Services Council, which is established under section 43 of the Regulation of Care Act, is the regulatory body for social workers and social services workers in Scotland.

58. Section 57B of the Regulation of Care Act provides a basis for the Scottish Social Services Council to require the employers of social service workers to provide it with information. As the new section 50A will enable the Council to require any person to provide it with information, the specific power in section 57B to require employers to provide information will no longer be needed. Accordingly, section 20 of the Act goes on to provide for the repeal of section 57B of the Regulation of Care Act.

Delegation of functions under Part 1 of the Regulation of Care (Scotland) Act 2001

59. Section 58 of the Regulation of Care (Scotland) Act 2001 confers various functions on the Scottish Ministers in relation to the social service workforce, including the functions of ascertaining the workforce's size and training needs, and promoting education and training. Subsection (4) of section 58 provides that the Scottish Ministers can delegate any of their functions under the section to the Scottish Social Services Council and can authorise other persons to exercise those functions.

60. Section 21 of the Act amends section 58(4) of the Regulation of Care Act to make clear that it permits the Scottish Ministers to delegate, or authorise another person to exercise, a function to a limited extent, as well as fully. For example, the Scottish Ministers might authorise another person to exercise their functions around promoting training but only in respect of certain categories of social services workers.

Cancellation of care service's registration

61. Section 22 modifies section 64 of the Public Services Reform (Scotland) Act 2010 to enable the Scottish Ministers to prescribe by order circumstances in which Social Care and Social Work Improvement Scotland (commonly known as the Care Inspectorate) can move directly to proposing to cancel a care service's registration without first issuing an improvement notice and waiting for the period specified in that notice to expire.

62. Section 47 of the Public Services Reform Act defines care services. Section 80 of that Act makes it a criminal offence to provide a care service without being registered with the Care Inspectorate. Under the Public Services Reform Act as enacted, the process for the Care Inspectorate to cancel a care service provider's registration ordinarily requires first sending the provider an improvement notice under section 62, which warns the provider that unless there is a significant improvement within a period specified in the notice, the Care Inspectorate intends to cancel the registration. Only after that period has expired can the Care Inspectorate formally propose to cancel the registration under section 64. Where a formal proposal to cancel registration is made, the provider has 14 days in which to make representations to the Care Inspectorate (see section 72 of the Public Services Reform Act).

Assistance in inspections from Healthcare Improvement Scotland

63. Section 23 inserts a new section 57A into the Public Services Reform (Scotland) Act 2010 to authorise Healthcare Improvement Scotland to assist Social Care and Social Work Improvement Scotland (commonly known as the Care Inspectorate) in carrying out an inspection of a care service and to charge for any assistance provided.

Protection of adults at risk of harm: information sharing

64. Section 24 modifies the Adult Support and Protection (Scotland) Act 2007 in a number of respects.

65. It inserts a new section 5A so that:

- a relevant health care service can provide information to a local authority if it comes to know or suspect a person is an adult at risk of harm (the concept of an adult at risk is defined for the purposes of the Adult and Support Protection Act in section 3 of that Act)
- a relevant health care service can, of its own accord, provide information to public bodies and office-holders mentioned in section 5(1) of the Adult Support and Protection Act in order to enable or assist a local authority in carrying out inquiries under section 4 of that Act (which is to say inquiries into the wellbeing, property or financial affairs of a person whom a local authority knows or believes to be at risk of harm and potentially in need of protection)
- conversely, the public bodies and office-holders mentioned in section 5(1) can share information for the same purpose with relevant health care services

66. Relevant health care service, in this context, is defined by subsections (4) and (5) of the new section 5A. Broadly, it means an undertaking that consists of or includes the provision of services by various categories of medical professional and allied health professionals. For example, a private hospital would be a relevant health care service because it is an undertaking that consists of the provision of services by doctors and nurses.

67. Subsection (6) of the inserted section 5A enables the Scottish Ministers to modify the definition of "relevant health care service" by regulations. Regulations made under that power will be subject to the affirmative procedure (as defined by section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010), as a result of section 78(4) of the Adult Support and Protection Act being amended by subsection (6) of section 24 of the Act. Section 78(4) is to be read in accordance with paragraph 5 of schedule 3 of the Interpretation and Legislative Reform (Scotland) Act 2010.

68. Section 24 also inserts a replacement subsection (2) into section 44 of the Adult Support and Protection Act. The effect is to allow the Scottish Ministers to make orders specifying persons who must be allowed to attend meetings of an adult support and protection committee established under section 42 of the Adult Support and Protection Act. This differs from the position under the replaced subsection (2) in two respects. First, in its original form subsection (2) allowed the Scottish Ministers to specify by order only public bodies and office-holders, which is narrower than a power to specify persons of any kind. Second, in its original form subsection (2) required attendance to be afforded to representatives of those specified by order, whereas the replacement subsection (2) allows for personal attendance by a person who has been specified by order.

69. Section 24 also inserts a new section 45A into the Adult Support and Protection Act. This enables a relevant health care service to provide information on request to an adult protection committee. In this context, "relevant health care service" has the same meaning as it has in the inserted section 5A (see paragraph 66 above).

70. Finally, section 24 amends section 46 of the Adult Support and Protection Act. As enacted that section allowed the Scottish Ministers, by order, to specify public bodies and office-holders to whom adult support and protection committees must send copies of their biennial reports. The amendment to section 46 extends that order-making power so that it can be used to specify persons of any kind.

National Chief Social Work Adviser and National Social Work Agency

71. Section 25 inserts a new section 5ZA into the Social Work (Scotland) Act 1968. It requires the Scottish Ministers to designate a member of their staff as the National Chief Social Work Adviser to perform certain tasks and further requires them to organise other members of their staff into a supporting agency called the National Social Work Agency.

Chapter 2: Ministerial regulation-making functions

Delivery of care

Continuity of services for persons who have a disability

72. Section 26 requires the Scottish Ministers to make regulations with the effect that a local authority is under a duty to provide care to a disabled person who moves to its area that is at least equivalent to the care that was being provided to the person by the local authority from whose area the person moved. The duty to provide equivalent care in any given case may be time limited, and subject to other qualifications, specified in the regulations.

73. The care services that a local authority will be duty bound by the regulations to match are "community care services", which is a concept defined by section 12A(8) of the Social Work (Scotland) Act 1968. It does not include services for children. It does include services

under Part 2 of the Social Work Act, which is the principal basis for local authorities providing social care, as well as certain support services under the Mental Health (Care and Treatment) (Scotland) Act 2003.

74. Regulations under section 26 will be subject to the affirmative procedure and may modify other enactments (see section 38).

Timescales for assessment of persons who have a terminal illness

75. Section 27 requires the Scottish Ministers to impose timescales within which local authorities must assess, and periodically re-assess, the community care service needs of persons with a terminal illness. The meaning of "community care services" is discussed in paragraph 73 above.

76. The determination of whether someone has a terminal illness for this purpose is to be made on the same basis as it is made for determining the person's entitlement, on that ground, to a form of disability assistance under the Social Security (Scotland) Act 2018.

77. Regulations under section 27 will be subject to the affirmative procedure and may modify other enactments (see section 38).

Advocacy, information and advice

Independent advocacy

78. Section 28(1) requires the Scottish Ministers to make regulations about the provision of independent advocacy in relation to public social care services. Regulations under section 28(1) will be subject to the affirmative procedure and may modify other enactments (see section 38).

79. For this purpose:

- a public social care service is any service provided in pursuance of the social care functions of local authorities listed in the schedule of the Public Bodies (Joint Working) (Scotland) Act 2014.
- an advocacy service is independent if it is not provided by any person listed in subsection (6). That subsection confers a power on the Scottish Ministers to specify by regulations other persons who cannot provide advocacy services that qualify as "independent" for the purposes of the section. Regulations doing so are subject to the negative procedure (see section 38).

80. The power under subsection (1) to make provision about independent advocacy services is broad. Subsections (2) to (4) direct particular purposes for which it must be used.

81. Subsection (4) requires the Scottish Ministers to use the regulation-making power:

- to impose on providers of independent information, advice and advocacy services a duty to provide the Scottish Ministers with anonymised data about the persons accessing those services, and

- to impose on themselves a duty to report on a 5 yearly basis on the data provided. There is also a duty on the Scottish Ministers to report periodically on independent advocacy services in section 35.

82. Subsection (4) refers to "providers of "such independent information, advice and independent advocacy services". There is no prior reference in the section, as enacted, to independent information and advice services. There was, however, a reference to those services in the section of the Bill, as amended at Stage 2, that would go on to be enacted as section 28. At Stage 3 of the Bill process (which is also the stage at which subsection (4) was added), the allusion to those services was moved by amendment into the provision enacted as section 29.

Independent information and advice

83. Section 29 empowers the Scottish Ministers to make regulations about the provision, in relation to public social care services, of independent information and advice.

84. Regulations under section 29 are subject to the affirmative procedure and may modify other enactments (see section 38).

85. The reference to public social care services is to be construed in the same way as in section 28, which is to say any service provided in pursuance of the social care functions of local authorities listed in the schedule of the Public Bodies (Joint Working) (Scotland) Act 2014.

Chapter 3: Further Ministerial functions

Projecting care needs

86. Section 30 requires the Scottish Ministers to periodically make publicly available their assessment of social care needs over a 10 year period. The phrase "social care needs" is not defined for the purposes of the section and therefore falls to be given its ordinary meaning (having regard to the context).

87. The first report is to be prepared in 2026, and will therefore provide a projection for 2027 to 2037.

88. The next report is to be prepared 5 years after the last was due. Therefore, the second report will have to be laid before the end of 2031 and will provide a projection for the period 2032 to 2042.

Market monitoring

89. Section 31 requires the Scottish Ministers to periodically report on the state of the market for social care services in Scotland.

90. The phrase "social care services" for this purpose is defined in subsection (3). Subsection (5) gives the Scottish Ministers a power to change the definition by regulations. Such regulations will be subject to the affirmative procedure (see section 38) and, according to the terms of subsection (5) itself, are to effect any change by modifying section 31.

91. Section 32 is connected to section 31. It allows the Scottish Ministers to require persons to provide them with the information that they will need in order to prepare reports under section 31 (for example, information about the profits being made by service providers). If a person does not comply with a requirement to supply information imposed under section 32, and has no reasonable excuse for that, the Scottish Ministers can report the failure to the Court of Session. Relatedly, the Scottish Ministers can report a suspicion that information has been deliberately destroyed or altered following the Ministers' requesting it. The Court has the power to make an order for compliance with the Ministers' request, and additionally (or alternatively) the Court can sanction the failure to comply with the Ministers' request, or the destruction or alteration of the information, as though that were itself a contempt of court.

Monitoring and promoting fair work

Overview of sections 33 and 34

92. Sections 33 and 34 are connected provisions concerned with fair work in the care sector.

93. The "care sector", in this context, is the sector comprised by persons providing services under:

- functions conferred by virtue of enactments listed in the schedule of the Public Bodies (Joint Working) (Scotland) Act 2014, which (broadly) means the social care services provided by local authorities in Scotland,
- functions that may, or must, be delegated by health boards under section 1(6) or (8) of that Act, which (broadly) covers services commonly described as community health services.

94. What constitutes "fair work", in this context, is to be set out by the Scottish Ministers in their strategy under section 33.

Fair work strategy

95. Section 33 requires the Scottish Ministers to prepare and publish a strategy for monitoring and promoting fair work in the care sector. Amongst other things, the strategy is to set out how the Scottish Ministers intend to monitor whether fair work in the sector is being achieved in order that they can report on that under section 34. The strategy also has to describe what action (if any) the Scottish Ministers intend to take to promote fair work in the sector and to review the efficacy of such action.

96. The first strategy under section 33 has to be published by the end of the period of 18 months beginning with the section's coming into force. The date on which the section comes into force is to be specified by regulations (see section 39). Thereafter, the Scottish Ministers have to review the strategy at least once every 3 years. They can publish new versions of the strategy where they consider that appropriate.

Report on fair work

97. Section 34 requires the Scottish Ministers to report annually on fair work in the care sector. Amongst other things, the report must include their assessment of the extent to which fair work is being realised in the sector, and a statement of what action (if any) they intend to

take before the end of the next annual reporting period to promote it. The first annual reporting period is the period of 1 year beginning with the publication of the first version of the fair work strategy under section 33.

Monitoring advocacy provision

98. Section 35 requires the Scottish Ministers to periodically report on the provision, in relation to public social care services, of independent advocacy services funded by them. In this context, "public social care services" and "independent advocacy" have the meanings given in section 28 (see paragraph 79 above).

99. Subsection (4) requires the first report to be published within 2 years of the section coming into force. The date on which the section comes into force is to be specified by regulations (see section 39). Thereafter, reports are to be produced at least every 4 years.

100. Subsection (4)(b)(ii) allows the Scottish Ministers to make regulations specifying an end date for the reporting duty. Those regulations will be subject to the negative procedure (see section 38).

Advancing sectoral bargaining

101. Section 36 imposes duties on the Scottish Ministers to:

- publish guidance on sectoral bargaining in social care procurement,
- take whatever other steps they consider appropriate to support compliance with collective agreements.

102. The expression "collective agreements" is not defined for this purpose and so take its ordinary meaning in the context. The expression "sectoral bargaining" is defined by subsection (6).

103. Subsection (3) imposes a duty on contracting authorities to have regard to guidance published by the Scottish Ministers. The expression "contracting authorities" is not defined for this purpose and so takes its ordinary meaning in the context.

PART 3: FINAL PROVISIONS

Ancillary provision

104. Section 37 confers a power to make ancillary provision by regulations on the Scottish Ministers.

105. Section 38 provides that regulations made under section 37:

- may modify the Act itself,
- are subject to the affirmative procedure if they textually amend an Act of the Scottish Parliament or the UK Parliament, but otherwise are subject to the negative procedure.

Regulation-making powers

106. Section 38 makes further provision about the regulation-making powers that the Act confers on the Scottish Ministers.

107. Subsection (1) makes clear that the powers can be used to make different provision for different purposes and also for different areas.

108. Subsection (2) provides that certain regulation-making powers conferred by the Act can be used to modify enactments. The word enactment is defined for this purpose by schedule 1 of the Interpretation and Legislative Reform (Scotland) Act 2010, it includes Acts of the Scottish Parliament and Acts of the UK Parliament. There is a general presumption that a regulation-making power cannot be used to modify an Act of Parliament. Subsection (2) overcomes that presumption in relation to the powers it specifies. However, it confines the power to modify the Act itself to ancillary regulations under section 37. Elsewhere, the Act allows for certain regulation-making powers modifying specific provisions of itself (see sections 4(2) and 31(5)).

109. Subsections (3) to (5) set out the parliamentary scrutiny procedure that is to apply to regulations made under the powers that the Act confers. Those subsections refer to:

- the negative procedure, which is defined by section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010, and
- the affirmative procedure, which is defined by section 29 of that Act.

Commencement

110. Section 39 deals with the coming into force of the Act's provisions. The formal provisions in Part 3, and the duty to report on projected care needs in section 30, will come into force on the day after the Bill for the Act receives Royal Assent (which means they come into force on 23 July 2025). All of the other provisions fall to be commenced by the Scottish Ministers by regulations.

111. Regulations that do nothing beyond commencing provisions of the Act will have to be laid before the Scottish Parliament in accordance with section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010.

Short title

112. Section 40 assigns the short title of the Act, which is the Care Reform (Scotland) Act 2025.

PARLIAMENTARY HISTORY

113. The following is a list of the proceedings in the Scottish Parliament on the Bill for the Act and significant documents connected to the Bill published by the Parliament during the Bill's parliamentary passage. Note that the title of the Bill changed during its parliamentary passage at Stage 2 from the National Care Service (Scotland) Bill to the Care Reform (Scotland) Bill.

Proceedings and reports	**Reference**
Bill as introduced	SP Bill 17 National Care Service (Scotland) Bill [as introduced] Session 6 (2022)
Explanatory Notes	SP Bill 17 National Care Service (Scotland) Bill [explanatory notes] Session 6 (2022)
Policy Memorandum	SP Bill 17 National Care Service (Scotland) Bill [policy memorandum] Session 6 (2022)
Financial Memorandum	SP Bill 17 National Care Service (Scotland) Bill [financial memorandum] Session 6 (2022)
Delegated Powers Memorandum	SP Bill 17 National Care Service (Scotland) Bill [delegated powers memorandum] Session 6 (2022)
Stage 1	
Health, Social Care and Sport Committee, 28 June 2022	SP OR Health, Social Care and Sport Committee 28 June 2022
Criminal Justice Committee, 21 September 2022	SP OR Criminal Justice Committee 21 September 2022
Health, Social Care and Sport Committee, 4 October 2022	SP OR Health, Social Care and Sport Committee 4 October 2022
Local Government, Housing and Planning Committee, 4 October 2022	SP OR Local Government, Housing and Planning Committee 4 October 2022
Health, Social Care and Sport Committee, 25 October 2022	SP OR Health, Social Care and Sport Committee 25 October 2022
Finance and Public Administration Committee, 25 October 2022	SP OR Finance and Public Administration Committee 25 October 2022
Health, Social Care and Sport Committee, 1 November 2022	SP OR Health, Social Care and Sport Committee 1 November 2022
Finance and Public Administration Committee, 1 November 2022	SP OR Finance and Public Administration Committee 1 November 2022
Delegated Powers and Law Reform Committee, 1 November 2022	SP OR Delegated Powers and Law Reform Committee 1 November 2022
Health, Social Care and Sport Committee, 8 November 2022	SP OR Health, Social Care and Sport Committee 8 November 2022

Proceedings and reports	**Reference**
Finance and Public Administration Committee, 8 November 2022	SP OR Finance and Public Administration Committee 8 November 2022
Criminal Justice Committee, 9 November 2022	SP OR Criminal Justice Committee 9 November 2022
Education, Children and Young People Committee, 9 November 2022	SP OR Education, Children and Young People Committee 9 November 2022
Social Justice and Social Security Committee, 10 November 2022	SP OR Social Justice and Social Security Committee 10 November 2022
Health, Social Care and Sport Committee, 15 November 2022	SP OR Health, Social Care and Sport Committee 15 November 2022
Education, Children and Young People Committee, 16 November 2022	SP OR Education, Children and Young People Committee 16 November 2022
Social Justice and Social Security Committee, 17 November 2022	SP OR Social Justice and Social Security Committee 17 November 2022
Health, Social Care and Sport Committee, 22 November 2022	SP OR Health, Social Care and Sport Committee 22 November 2022
Local Government, Housing and Planning Committee, 22 November 2022	SP OR Local Government, Housing and Planning Committee 22 November 2022
Criminal Justice Committee, 23 November 2022	SP OR Criminal Justice Committee 23 November 2022
Education, Children and Young People Committee, 23 November 2022	SP OR Education, Children and Young People Committee 23 November 2022
Health, Social Care and Sport Committee, 29 November 2022	SP OR Health, Social Care and Sport Committee 29 November 2022
Local Government, Housing and Planning Committee, 29 November 2022	SP OR Local Government, Housing and Planning Committee 29 November 2022

Proceedings and reports	**Reference**
Delegated Powers and Law Reform Committee, 29 November 2022	SP OR Delegated Powers and Law Reform Committee 29 November 2022
Finance and Public Administration Committee report	Finance and Public Administration Committee 10th report, 2022, National Care Service (Scotland) Bill - Stage 1 Report (SPP 277)
Health, Social Care and Sport Committee, 5 December 2022	SP OR Health, Social Care and Sport Committee 5 December 2022
Health, Social Care and Sport Committee, 13 December 2022	SP OR Health, Social Care and Sport Committee 13 December 2022
Local Government, Housing and Planning Committee, 13 December 2022	SP OR Local Government, Housing and Planning Committee 13 December 2022
Education, Children and Young People Committee report	Education, Children and Young People Committee 11th report, 2022, Stage 1 report on the National Care Service (Scotland) Bill (SPP 274)
Health, Social Care and Sport Committee, 20 December 2022	SP OR Health, Social Care and Sport Committee 20 December 2022
Criminal Justice Committee, 21 December 2022	SP OR Criminal Justice Committee 21 December 2022
Delegated Powers and Law Reform Committee, 10 January 2023	SP OR Delegated Powers and Law Reform Committee 10 January 2023
Delegated Powers and Law Reform Committee, 24 January 2023	SP OR Delegated Powers and Law Reform Committee 24 January 2023
Criminal Justice Committee, 25 January 2023	SP OR Criminal Justice Committee 25 January 2023
Delegated Powers and Law Reform Committee, 31 January 2023	SP OR Delegated Powers and Law Reform Committee 31 January 2023
Delegated Powers and Law Reform Committee report	Delegated Powers and Law Reform Committee 13th report, 2023, Report on the Financial Memorandum for the National Care Service (Scotland) Bill (SPP 313)
Criminal Justice Committee, 8 February 2023	SP OR Criminal Justice Committee 8 February 2023

Proceedings and reports	**Reference**
Criminal Justice Committee report	Criminal Justice Committee, National Care Service (Scotland) Bill: report from the Criminal Justice Committee (published only as an annex to a letter dated 10 February 2023 from the Convener of the Criminal Justice Committee to the Convener of the Health, Social Care and Sport Committee report)
Health, Social Care and Sport Committee, 9 May 2023	SP OR Health, Social Care and Sport Committee 9 May 2023
Finance and Public Administration Committee, 26 September 2023	SP OR Finance and Public Administration Committee 26 September 2023
Health, Social Care and Sport Committee, 3 October 2023	SP OR Health, Social Care and Sport Committee 3 October 2023
Health, Social Care and Sport Committee, 24 October 2023	SP OR Health, Social Care and Sport Committee 24 October 2023
Health, Social Care and Sport Committee, 31 October 2023	SP OR Health, Social Care and Sport Committee 31 October 2023
Health, Social Care and Sport Committee, 7 November 2023	SP OR Health, Social Care and Sport Committee 7 November 2023
Health, Social Care and Sport Committee, 12 December 2023	SP OR Health, Social Care and Sport Committee 12 December 2023
Health, Social Care and Sport Committee, 16 January 2024	SP OR Health, Social Care and Sport Committee 16 January 2024
Health, Social Care and Sport Committee, 23 January 2024	SP OR Health, Social Care and Sport Committee 23 January 2024
Finance and Public Administration Committee, 23 January 2024	SP OR Finance and Public Administration Committee 23 January 2024
Finance and Public Administration Committee, 25 January 2024	SP OR Finance and Public Administration Committee 25 January 2024
Health, Social Care and Sport Committee, 6 February 2024	SP OR Health, Social Care and Sport Committee 6 February 2024

Proceedings and reports	**Reference**
Health, Social Care and Sport Committee, 20 February 2024	SP OR Health, Social Care and Sport Committee 20 February 2024
Health, Social Care and Sport Committee report	Health, Social Care and Sport Committee 4th report, 2024, Stage 1 report on the National Care Service (Scotland) Bill (SPP 530)
Chamber, 28 February 2024	SP OR 28 February 2024
Chamber, 29 February 2024	SP OR 29 February 2024
Stage 2	
Health, Social Care and Sport Committee, 26 March 2024	SP OR Health, Social Care and Sport Committee 26 March 2024
Health, Social Care and Sport Committee, 24 September 2024	SP OR Health, Social Care and Sport Committee 24 September 2024
Health, Social Care and Sport Committee, 1 October 2024	SP OR Health, Social Care and Sport Committee 1 October 2024
Health, Social Care and Sport Committee, 8 October 2024	SP OR Health, Social Care and Sport Committee 8 October 2024
Health, Social Care and Sport Committee, 26 November 2024	SP OR Health, Social Care and Sport Committee 26 November 2024
Marshalled List of Amendments for Stage 2	SP Bill 17 National Care Service (Scotland) Bill [marshalled list of amendments for stage 2] Session 6 (2025)
Groupings of Amendments for Stage 2	SP Bill 17 National Care Service (Scotland) Bill [groupings of amendments for stage 2] Session 6 (2025)
Health, Social Care and Sport Committee, 25 February 2025	SP OR Health, Social Care and Sport Committee 25 February 2025
Second Marshalled List of Amendments for Stage 2	SP Bill 17 National Care Service (Scotland) Bill [second marshalled list of amendments for stage 2] Session 6 (2025)
Second Groupings of Amendments for Stage 2	SP Bill 17 National Care Service (Scotland) Bill [second groupings of amendments for stage 2] Session 6 (2025)
Health, Social Care and Sport Committee, 4 March 2025	SP OR Health, Social Care and Sport Committee 4 March 2025
Bill as amended at Stage 2	SP Bill 17A Care Reform (Scotland) Bill [as amended at Stage 2] Session 6 (2025)
Supplementary Delegated Powers Memorandum	SP Bill 17A Care Reform (Scotland) Bill [supplementary delegated powers memorandum] Session 6 (2025)

Proceedings and reports	**Reference**
Supplementary Financial Memorandum	SP Bill 17A Care Reform (Scotland) Bill [supplementary financial memorandum] Session 6 (2025)
Revised Explanatory Notes	SP Bill 17A Care Reform (Scotland) Bill [revised explanatory notes] Session 6 (2025)
Stage 3	
Finance and Public Administration Committee, 27 May 2025	SP OR Finance and Public Administration Committee 27 May 2025
Delegated Powers and Law Reform Committee report	Delegated Powers and Law Reform Committee 38th report, 2025, Delegated powers provisions in the National Care Service (Scotland) Bill at Stage 1 (SPP 803)
Marshalled List of Amendments for Stage 3	SP Bill 17A Care Reform (Scotland) Bill [marshalled list of amendments for stage 3] Session 6 (2025)
Supplement to the Marshalled List of Amendments for Stage 3	SP Bill 17A Care Reform (Scotland) Bill [supplement to the marshalled list of amendments for stage 3] Session 6 (2025)
Timed Groupings of Amendments for Stage 3	SP Bill 17A Care Reform (Scotland) Bill [timed groupings of amendments for stage 3] Session 6 (2025)
Chamber, 10 June 2025	SP OR 10 June 2025
Bill as passed	SP Bill 17B Care Reform (Scotland) Bill [as passed] Session 6 (2025)
Post passage	
Royal Assent, 22 July 2025	2025 asp 9

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