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Finance and Public Administration Committee

Report on the Financial Memorandum for the National Care Service (Scotland) Bill

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Finance and Public Administration Committee

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Introduction

1. **This report sets out the conclusions of the Finance and Public Administration Committee in relation to our scrutiny of the estimated costs arising from the Financial Memorandum for the National Care Service (Scotland) Bill.**

2. **The National Care Service (Scotland) Bill was introduced by the Scottish Government on 20 June 2022 and seeks to provide Scottish Ministers with powers to transfer social care responsibility from local authorities to a new, national service.**

3. **A joint call for views involving all those parliamentary committees conducting scrutiny of various elements of the Bill, ran between 8 July and 2 September 2022 and received 218 submissions, around a third of which provided comments on the FM in relation to the Bill [1]. The FPA Committee also took evidence from three panels of witnesses on 25 October [2] and 1 November [3], before hearing from the Minister for Mental Wellbeing and Social Care on 8 November [4]. The Committee thanks all those who took the time to contribute their views, which have helped to shape our findings.**

4. **This report is intended to inform the Stage 1 consideration of the Health, Social Care and Sport Committee as the lead Committee but also to be read as a standalone report, which requires the Scottish Government to formally respond to our recommendations. The Finance and Public Administration Committee has taken this approach given its significant concerns about the level of detail in the Financial Memorandum ('FM') which accompanies the Bill and in light of its recommendations which call on the Scottish Government to act prior to the conclusion of the Stage 1 process (currently scheduled for March 2023). This includes the FPA Committee's request that the Scottish Government provides the Committee with a revised FM, including updated financial costings before the Stage 1 debate to provide greater transparency over the range of cost estimates to which the Bill would give rise.**

5. **'Framework bills' tend to set out principles for a policy, leaving substantial detail on how that policy will work in practice to subsequent secondary legislation. This presents challenges for parliamentary scrutiny. This Bill is no different. In fact, the FM that accompanies the Bill provides more limited cost estimates than members of this Committee would have anticipated. We hope that our recommendations will prompt the Scottish Government to provide much needed clarity on the overall and specific costs to which the Bill would give rise.**

6. **While we make recommendations on specific issues throughout, our overall conclusions on the FM can be found at the end of this report. In so doing, we also draw on some of our previous recommendations made as part of our post-legislative scrutiny of a previous FM, aimed at helping to inform and improve the Scottish Government's development of FMs and to support more effective scrutiny in future.**

Purpose of the Bill

Overview

7. The National Care Service (Scotland) Bill ('the NCS Bill' or 'the Bill') was introduced by the Scottish Government on 20 June 2022 [5], with the purpose of improving the quality and consistency of social services in Scotland [6]. The Policy Memorandum [6] on the Bill explains that "over many years, various issues have demonstrated that social services and the integration of health and social care services are not working as well as they should". In response, the Scottish Government established an Independent Review of Adult Social Care, chaired by Derek Feeley[i], in September 2020 "to consider the problems in a systematic way" [7]. The Review found that, while "there is much about adult social care support in Scotland that is ground-breaking and worthy of celebration, … the story of adult social care support in Scotland is one of unrealised potential" [8]. It suggests "there is a gap, sometimes a chasm, between the intent of … ground-breaking legislation and the lived experience of people who need support", adding "we have inherited a system that gets unwarranted local variation, crisis intervention, a focus on inputs, a reliance on the market, and an undervalued workforce". The Review concluded that, "if we want a different set of results, we need a different system".

8. The Bill seeks to implement some of the key recommendations from the Independent Review of Adult Social Care (the 'Feeley Review'), which reported in February 2021, that is: to create a National Care Service "to drive national improvements; to ensure strategic integration with the NHS; to set national standards, terms and conditions; and to bring national oversight and accountability". The Bill also enables Scottish Ministers to create new 'care boards', gives them powers to achieve more consistency and better integration in relation to records about people's health and social care, introduces a right to breaks from unpaid caring, and gives people living in care homes a right to maintain contact with family and friends (so-called Anne's Law[ii]).

9. The Scottish Government explains that "the Bill creates a framework for the NCS but leaves space for more decisions to be made at later stages through co-design with those who have lived experience of the social care system, and flexibility for the service to develop and evolve over time" [6]. It adds that some of these future decisions will be implemented through secondary legislation, others through policy and practice.

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i Derek Feeley is a former Scottish Government Director General for Health and Social Care and the Chief Executive of NHS Scotland.

ii Anne's Law is named after Anne Duke, whose family campaigned for better visiting rights during the pandemic.

Scottish Government consultation on the proposals

10. The Scottish Government consulted on its proposals in response to the Feeley Review between August and November 2021, and that consultation received 1,291 responses [9] . According to the Policy Memorandum, there was “broad agreement with the Scottish Government’s proposals to bring together social care and community health services for all ages under a National Care Service accountable to Scottish Ministers” [6] , and that people expected that this be delivered as soon as possible. The Minister for Mental Wellbeing and Social Care noted in his evidence that “the Scottish Government said that we would publish the Bill [to create a National Care Service] within the first year of the current session of this Parliament, which we have done” [4] .

11. One of the questions posed by the Finance and Public Administration Committee [‘the Committee’) in its call for views on all FMs is whether consultees feel that they have had sufficient time to contribute to the relevant Scottish Government consultation and to comment on the financial assumptions made. An overwhelming number of respondents to the joint call for views answered ‘no’ to this question, with many noting that there was insufficient time for consultation for such a significant ‘flagship’ bill. COSLA, for example, noted in evidence that “one cannot deny that there has been an engagement and consultation process”, however, “the proposed change is huge [and so this] is not a standard policy consultation for which the Government can simply roll out the national standards for community consultation and engagement” [2] . It adds that the process involved a ‘one-size-fits-all’ approach, when different approaches should have been taken depending on the level of interest, involvement, and impact on consultees. South Lanarkshire Council had similar views, suggesting in addition that “the outcome that we are being pointed towards, which is a huge change, does not seem to have varied across the period of engagement and consultation” [2] .

12. The Scottish Government’s Bill Team told the Committee that “the time given for the consultation was in line with the time given for any other consultation on legislation”, adding that the ‘co-design’ nature of the Bill would allow people “plenty of opportunity to engage” on the detail. It suggested that “clearly, there are mixed views on the co-design process, but what we hear from people who use and work in the services is that they welcome the approach” [2] .

13. The Minister subsequently made the point that, “just because the consultation is over, that does not mean that engagement discontinues”, adding “it will continue throughout the process” [4] .

14. While the Committee notes that the consultation on the proposals ahead of the Bill being introduced was in line with the length of usual Scottish Government consultations, we agree with stakeholders that, for a flagship policy with such significant financial considerations, this consultation period should have been longer. We ask the Scottish Government to take on board this feedback for future proposed legislation of such significance.

Funding priorities

15. There was some discussion during our evidence-gathering about the merit of spending significant sums on structural reform and organisational change as opposed to allocating this money to the front-line delivery of services and building on existing arrangements. While this Committee is focused on scrutiny of the financial costs arising from the Bill, we consider that this debate does inform decisions around spending priorities, and we therefore explore some of the evidence gathered on this issue below.

16. The FM states that alternatives to the provisions set out in the Bill were considered, including (1) not transferring responsibility for social care to Scottish Ministers or establishing an NCS at national level or reforming Integration Joint Boards (IJBs), (2) the health board or local authority in an area agreeing to take full responsibility for the provision of care, and (3) creating an NCS to act as an advisory body at national level with statutory responsibility for social care provision remaining with local authorities. The Scottish Government notes that none of these alternatives would require changes to legislation, and concludes that “in all cases, the lack of national leadership, oversight and accountability would continue, and therefore the scale and impact of the changes in the Independent Review of Adult Social Care (the Feeley Review) proposed could not be achieved” [6] . It suggests that these approaches therefore carry a risk that the current challenges facing the social care system will continue and concludes that “the NCS can only effectively fulfil its purpose to improve social care if there is a clear line of accountability for improvement to the Scottish Ministers which can be exercised locally by care boards”.

17. Witnesses to the Committee also put forward alternative arrangements to those set out in the Bill, including local authority representative bodies who suggested that the existing structure could take on new powers and a new national care service could sit within existing structures. CIPFA Integrated Joint Boards Chief Finance Officer Section (CIPFA IJB CFOs) agreed, indicating “we would like a hybrid model that builds on what we already have—rather than starting again—and for money to be put into front-line social work services and service provision” [2] . It further said that it would “invest in the things that need to be invested in, such as capacity and fair work”. NHS Borders told the Committee that it had concerns “about the scale of organisational change and whether that will add the value that we believe is needed to deliver the improvement in social care that we all want to see” [3] . It went on to say that “there are things to be learned but I think there is an opportunity to address that through the existing legislation, to build on that with local partners by understanding how they can make decisions better together and addressing some of the cultural and behavioural differences”.

18. The Minister has confirmed that the Scottish Government would “increase our social care spend by some £840m by the end of the parliamentary session” [4] . However, the Fraser of Allander Institute warned the Committee that, “if the service is underfunded, it is unlikely to be any better than the system it seeks to replace” [10] .

19. Audit Scotland suggested that “focusing on such a major transformation may divert attention from addressing the immediate challenges within the social care sector,

including workforce issues and unmet demand for support", adding that "it will take considerable time and investment and the focus on improving lives should not be lost amid structural changes" [11] .

20. Given the magnitude of the potential costs from the creation of the NCS and the concerns regarding the uncertainty associated with the costs of the Bill, many respondents questioned the financial implications of the proposed reforms at a time when budgets are already stretched, with some also questioning whether the money would be better spent on improving services within the current delivery arrangements. CIPFA noted, for example, that the Scottish Government is committing a significant sum from its own budget at a time when savings are being sought from many departments and projects through the Scottish Government's Emergency Budget Review. It states that "this raises serious questions about the affordability of this major transformation project at a time when the Scottish Government as a whole is facing serious financial uncertainty as a result of the wider financial and economic climate" [12] . CIPFA concluded that "a much greater level of detail is essential to conclude whether this is a worthwhile investment". COSLA raised similar concerns, noting that "the establishment of the NCS body alone will cost up to £250 million, with subsequent overall NCS running costs of up to £500 million per year spent solely on structural reform rather than directly on improvements." [13]

21. We recognise that there are differing views amongst stakeholders on whether the aims of the Bill to improve quality and consistency of social care can be better achieved through the structural reform proposed in the Bill, through a hybrid model, or through diverting these funds to front-line services. It will be for the Health, Social Care and Sport Committee, as lead committee, to consider whether the case has been made for this Bill or whether other alternative proposals could achieve better outcomes. Whatever the final agreed model, this Committee requests that clear costings are provided. We set out more detailed recommendations on this later in this report.

Use of a 'framework bill'

Overview

22. As referred to earlier in this report, the draft legislation under consideration is a ‘framework bill’ which “lays the foundations for a national care service, allowing for the substantive detail to be co-designed, chiefly with people who access support, those who deliver it and unpaid carers, later” [14] . The UK Government Cabinet Office Guide to Making Legislation describes ‘framework legislation’ as “a bill that leaves the substance, or significant aspects, of the policy to delegated legislation [and] might amount to a series of powers providing for a wide range of things that could be done with the detail on what will be done, left to be set out in the regulations” [15] .

23. The Scottish Government has confirmed that the detail in relation to the NCS will be implemented through secondary legislation, as well as through policy and practice.

24. Its rationale for using a ‘framework bill’, as set out in the FM, is that it “is committed to engaging with people with experience to co-design the detail of the new system, to finalise new structures and approaches to minimise the historic gap between legislative intent and delivery”. The FM notes it is “for that reason the Bill creates a framework for the NCS but leaves space for more details to be made at later stages through co-design with those who have lived experience of the social care system, and flexibility for the service to develop and evolve over time” [16] .

25. The Scottish Government’s Bill Team further explained to the Committee that current legislation is not being implemented consistently and fairly, “therefore, for good reason, we have taken a different approach to the development of the Bill, which obviously has implications for the FM because we have significant co-design work to do” [2] . It suggested that “clear business plans will be developed for the detail of the plans, which will allow parliamentary scrutiny” and confirmed that the Scottish Government is “aware of and are actively managing the risks that are associated with the programme”. She went on to say that “I think we are comfortable with the approach that we have taken, and I know that Ministers are comfortable with it”, adding that “there is an opportunity to work concurrently to develop the detail while making sure that the Bill is effective, that it is good law, and that it is implementable” [2] .

26. A small number of witnesses appeared to accept that the approach taken by the Scottish Government of using a ‘framework bill’ would in effect mean less detail on cost estimates in the FM, even if that was not the most desirable outcome. The Fraser of Allander Institute, for example, told the Committee that “we think that the Government has gone through a reasoned process to produce the FM, although … the documents do not contain all the detail that we would have liked and we have had to go searching for that” [3] . Audit Scotland noted that, “in embarking on this path, there is a question about the range of costs that we are likely to incur and whether we can demonstrate that this is affordable and sustainable” [3] . It stressed that “fundamentally, what is important is that, as the Government goes forward and as the legislation goes through Parliament, there is an understanding of the full

range of cost and of financial benefit".

27. The majority of witnesses considered that a business case or business cases should have been brought forward prior to primary legislation to enable effective scrutiny by Parliament. For example, CIPFA IJB CFOs said that "while there is acknowledgement in the FM of additional work being required, … this work should have been significantly progressed as due diligence prior to publication of the FM to ensure the public and Parliament can provide informed opinions" [17] . It added that, "had the FM been informed by a business case on implementing the NCS this would likely have given a more informed and robust financial assessment of estimated cost implications."

28. The Committee notes that two recent Scottish Government 'flagship' bills that introduced an element of structural reform (of police and fire and rescue services, and social security administration) were preceded by business cases which helped to inform the costings in the associated FMs. While concerns were still raised at the time, particularly in relation to the cost estimates for the Police and Fire Reform (Scotland) Bill, it is fair to say that the outline business case set out in that FM supported greater parliamentary scrutiny as well as providing a baseline for monitoring costs and savings going forward.

29. In the case of the NCS Bill, business cases are still under development and the timing of their publication is yet to be confirmed. The Scottish Government's Bill Team told the Committee on 25 October that "the intention is to publish the Programme Business Case later this year" [2] . However, in a follow-up letter to the Committee on 10 November, the Minister said that "we anticipate publishing [this Programme Business Case] in early 2023" [18] .

30. This suggests there has been some slippage in the programme and in the development of more detailed cost estimates based on the co-design approach. Indeed, in his letter to the Committee of 10 November, the Minister noted that, as part of the Scottish Government's Emergency Budget Review announced on 2 November, "rephasing has resulted in £15m of savings for financial year 2022-23" [18] . He explained that this rephasing "is to ensure that we have right skills in place to take the programme forward, and to move at a pace that allows for meaningful engagement with people with living and lived experience". He went on to confirm that "the requirement has already been identified in conjunction with the budget setting process" for next year.

31. The Committee believes that the Scottish Government should not bring forward primary legislation unless it is based on a full and proper business case to allow stakeholders and the Parliament to scrutinise and take a view on the full cost estimates, ranges of costs, and margins of uncertainty.

32. We seek clarification of whether there is slippage in the delivery of the programme given the delay in publishing the Programme Business Case and the rephasing of funds allocated for the programme in this financial year announced by the Scottish Government in its recent Emergency Budget Review.

Setting out detail in secondary legislation

33. The Scottish Government has indicated that, where secondary legislation is used, financial and regulatory impact assessments will be provided and that "the Parliament will, therefore, have further opportunities to examine the implications" [6] of these reforms.

34. However, significant concerns were expressed regarding the limited opportunities for scrutiny afforded through secondary legislation as compared to primary legislation. ALLIANCE Scotland told the Committee that "we do have reservations about leaving quite so much detail to secondary legislation, because the parliamentary process means that there are fewer opportunities for editing proposals, subsequent transparency about why decisions are made and cross-examination" [3] . It added "we would like to see careful movement through the first stage of the Bill to work out what needs to be shifted".

35. CIPFA also recognised that "subsequent secondary legislation can significantly alter the financial implications of primary legislation, and there is a risk that secondary legislation provides fewer opportunities for robust scrutiny, even when subject to the affirmative procedure" [12] . Audit Scotland felt that there was a need for further updates as details are agreed and greater certainty emerges over the delivery model. It argued that "it will be critical to regularly update estimates of overall costs and other financial implications and report on these regularly to Parliament and local authorities" [11] . When asked by the Committee during oral evidence whether they felt that the FM should be revisited, CIPFA IJB CFOs, COSLA and South Lanarkshire Council all agreed that it should be.

36. In response to questions around the lack of scrutiny opportunities arising from use of framework legislation, the Minister stated: "I again pledge to the Committee and to Parliament that … we will be open and transparent about the expected financial costs of all of that work" [4] . He indicated that the proposals set out in the Bill are "definitely the biggest public service change since devolution, so it is incumbent on us all that we get it right", adding "I am, therefore, not afraid of scrutiny in that regard".

37. He went on to say that "we will consult stakeholders and the public on the secondary legislation and that we will allow the maximum time for scrutiny", adding "we need to ensure … that we provide Parliament with the ultimate amount of opportunities for scrutiny of not only the secondary legislation but every aspect of the financial and economic impact of the decisions that are made during the co-design process" [4] .

38. The Committee has concerns that the details of how the new social care arrangements will work in practice will be set out in secondary legislation, which limits scrutiny and does not provide the greatest opportunity to propose changes and shape its provisions. In a recent report on our post-legislative scrutiny of the FM for the Children and Young People (Scotland) Bill (Early Learning and Childcare Provisions), we recommended that, "to enhance transparency and enable effective scrutiny, the Scottish Government should avoid implementing

major policy expansions via secondary legislation". We are therefore disappointed that secondary legislation is intended to be the main vehicle for future parliamentary scrutiny of the NCS proposals.

39. We do however acknowledge the Scottish Government's intention, where secondary legislation is used, to provide financial impact assessments to support scrutiny, along with the Minister's commitment to "allow the maximum time for scrutiny" of secondary legislation laid under the future Act if passed. The Committee asks that these financial impact assessments provide a sufficient level of detail to support effective scrutiny of proposals. The Committee further seeks clarification on the timeframe that the Scottish Government is seeking to provide for parliamentary scrutiny of this secondary legislation and notes that the Delegated Powers and Law Reform Committee is considering in more detail the delegated powers in relation to this Bill.

Sequencing

40. When asked why the Scottish Government had not undertaken the co-design process before the Bill was introduced, which would have allowed more detail to have been provided on the face of the Bill, the Minister explained that "what we need to do is progress with the primary legislation and then move on to the co-design process for the secondary legislation and service delivery", arguing "if we had done it the other way round, folk could equally have asked "Why did you not deal with primary legislation—the framework—first before moving on to co-designing of secondary legislation and services?" [4] He went on to say that the "co-design process is not lip service" and that the Scottish Government is keen to demonstrate this to stakeholders in its approach. He stressed that the "key to all of this is improving services and moving away from that crisis spend, which costs the public purse a lot and also has a human cost", adding "we need to change that situation dramatically, no matter what".

41. Pressed on this issue further, the Minister noted that the Government set out a number of commitments for the NCS, one of which was that "we would publish the Bill within the first year of the current session of Parliament, which we have done". However, he rejected the suggestion that the Bill had been rushed because of this commitment. He went on reiterate that "I am sure there would be arguments galore no matter which way round we had chosen to do it, … however, we just need to get on with it [and] have faith and trust in the co-design process".

42. The Minister also rejected the suggestion that the Bill be 'paused' while the co-design process takes place. He recognised that there was opposition to, and concerns around, the changes proposed and committed "to talk to and listen to folk about their concerns and […] work our way through those with them".

43. The Committee notes the Minister's explanation that co-design before introducing

primary legislation would have led to criticism from stakeholders, however, that is the usual practice in legislation design and development. The Scottish Government's approach would still require the co-design process to be complete before the provisions in the Bill can be commenced, but this will come after parliamentary scrutiny has ended. The Committee seeks a timescale for the delivery of the co-design process.

Costs set out in the Financial Memorandum

Overview

44. An FM must set out “best estimates of the costs, savings, and changes to revenues to which the provisions of the Bill would give rise, and an indication of the margins of uncertainty in such estimates” [19] . It is also required to include “best estimates of the timescales over which such costs, savings, and changes to revenues would be expected to arise”, and should distinguish separately such costs, savings and changes to revenues that would fall upon—(a) the Scottish Administration; (b) local authorities; and (c) other bodies, individuals and businesses.

45. The FM notes that “there are increased uncertainties surrounding the cost estimates, and the timing of those costs” [16] , as a result of the framework and co-design approach being taken by the Scottish Government. It goes on to state that “future decisions about the implementation and phasing of the NCS will take into account rigorous evidence-based options appraisals, value for money, where benefits and quality are paramount, and the resources available to ensure affordability”.

46. The FM estimates the total costs of the Bill over the five-year period 2022-23 to 2026-27 to be between £644 million and £1,261 million. Given the significance of the costs involved, the Presiding Officer confirmed on 1 July 2022 that a Financial Resolution (FR) would be required in respect of the Bill. FRs require parliamentary approval before the Bill can proceed beyond Stage 1 consideration of the general principles of the Bill.

47. Table 1 below shows the breakdown of the costs of key provisions in the Bill at both the upper and lower end, including for the establishment and running of the NCS and care boards, and for additional service provisions relating to rights to breaks for unpaid carers and ‘Anne’s Law’. This table reflects the correction of errors in the FM as set out in a letter to the FPA Committee from the Minister for Mental Wellbeing and Social Care of 30 June 2022 [18] .

Table 1: Estimated costs of National Care Service Bill provisions

£ million	2022-23	2023-24	2024-25	2025-26	2026-27
Total costs					
Total estimated costs - lower end	24	63	84	232	241
Total estimated costs - upper end	36	95	126	477	527
Establishment and running of NCS national organisation (Scottish Administration)					
Total estimated costs - lower end	24	60	72	92	83
Total estimated costs - upper end	36	90	108	138	124
Establishment and running of care boards (Scottish Administration)					
Total estimated costs - lower end	-	4	12	-	-
Total estimated costs - upper end	-	6	18	-	-
Establishment and running of care boards (Care boards)					
Total estimated costs - lower end	-	-	-	132	142
Total estimated costs - upper end	-	-	-	326	376
Rights to breaks from caring (Care boards)					
Total estimated costs - lower end	-	-	-	8	16
Total estimated costs - upper end	-	-	-	13	27
Anne's Law (Care Inspectorate)					
Total estimated costs	0.186	0.090	-	-	-

Source: FM, as corrected by the Minister's letter to the FPA Committee of 30 June 2022.

48. The FM is unclear whether these costs are presented in real or cash terms and, if the former, what assumptions have been made in relation to inflation over the period. Based on discussions with Scottish Government officials, COSLA noted that “varying uplifts, generally of 2-3%, have been applied to different elements of the costs shown in the FM, based on a degree of intuition about each of these costs” [13] . It concluded that, “given the nature and scale of the financial implications of what is being proposed, the lack of transparency around this process is disappointing” [2] .

49. The Scottish Government’s Bill Team confirmed that the FM reflects “inflation … at 6.2% for this year and the next, and then [it] drops back down to 2% in line with Bank of England forecasts” [4] . However, this relates to the projections of social care expenditure in Table 2 of the FM and not to the wider costs of implementing the Bill provisions identified in Table 1.

50. The Minister for Mental Wellbeing and Social Care noted that “inflation is very volatile at present and has moved markedly since the estimates in the FM” [4] . He explained that “an average was based on the forecasts that were available when the FM was written”, but that recently available Scottish Fiscal Commission forecasts would be used to update the estimates.

Lack of detail in the FM

51. There was significant and widespread concern expressed to the Committee about the lack of detail set out in the FM. In its written submission, CIPFA IJB CFOs suggested that the FM lacks the robust information needed “to allow for any reasonable professional opinion to be given about the adequacy of the resource to ensure services are effective” [17] . It expanded on this view in oral evidence, arguing that “the question of what it will really cost to set up the NCS in a way that is able to deliver on all its ambitions, as well as how it will be sustainability funded is

unanswered at this point” [2] . Audit Scotland suggested that “the potential costs summarised in Table 1 of the FM are likely to significantly understate the margin of uncertainty and range of potential costs of the Bill measures due to changes and increasing volatility of inflation expectations … and costs not yet assessed, … [which] have the potential to add significantly to the overall costs reported and are not currently reflected in the assessed margin of uncertainty” [11] . Audit Scotland went on to say that “there is limited detail about where the numbers come from”, adding that “there is narrative and then there are numbers and how the narrative related to the numbers is not as clear as it might be.” [3]

52. It was argued by COSLA that the FM presents “an unacceptable lack of clarity” [13] , while SOLACE suggested that “one cannot assess the measures laid out in the FM and their associated costs against alternative models due to a complete lack of clarity on total costs” [2] .

53. Concerns were also expressed regarding the lack of information on the methodologies used and assumptions made to calculate the cost estimates in the FM. CIPFA suggested that this “makes forming an opinion on the reasonableness and accuracy of the FM extremely difficult” [12] and that “without such information, conducting a comprehensive analysis of the estimates provided is problematic”. It went on to argue that a “lot of the resistance [to the proposals in the Bill] results from the lack of detail in the FM”.

54. Both ALLIANCE Scotland and the Fraser of Allander Institute told the Committee that they had separately sought clarification from Scottish Government officials in relation to some of the cost estimates, as well as on methodologies used and assumptions made in arriving at these estimates.

55. When asked to respond to concerns around the lack of transparency and the inability to scrutinise the supplementary information that was being provided to stakeholders on an individual basis, the Minister said “I want all channels to be open, but I also want to be open and transparent about all of that as we move forward”. He added that “I am happy for folk to write to us about particular matters and we respond to them” and that “this will be in the public domain” [4] .

56. The Committee shares the views of some stakeholders that the level of detail provided in the Financial Memorandum is inadequate and neither supports effective scrutiny nor provides assurance that the new arrangements will be placed on a sustainable financial footing.

57. We believe that further detailed cost estimates underpinning the Financial Memorandum should be published. The approach currently being taken of the Scottish Government responding to individual stakeholders’ requests for clarification does not support transparency and proper scrutiny, which we have already found to be extremely challenging in the case of this FM.

National Care Service and care boards

58. The FM indicates that the NCS will be established by 2025-26 and that preparatory work is underway, including "policy development and co-design, programme and project management, recruitment costs, financial forecasting, data and digital discovery work, and workforce planning" [16] . In that year, the FM estimates that establishment and running costs would at the lower end total £92 million and at the upper end total £138 million.

59. The Bill also creates care boards, which would replace the current Integration Joint Boards (IJBs) and would carry out the delivery functions of the NCS, be directly accountable to Scottish Ministers, and receive funding directly from them. Estimates are also provided for both the establishment and running costs of care boards, which are expected to become operational in 2025-26, with costs expected to range from £132-326 million in that year, rising to between £142-376 million in 2026-27. The FM assumes that 32 care boards would be established, one in each local authority area. The lower end estimates assume a more gradual set up of care boards, potentially in a smaller number of areas. Savings are expected to be made from the abolition of IJBs of between £25 million and £40 million, but no further detail is provided in the FM on how these figures have been arrived at.

60. The Fraser of Allander Institute noted that basing assumptions on a maximum of 32 care boards seems reasonable at this stage, adding "replacing what was there before with 32 care boards might not seem the most efficient use of money, but you would expect the Government to be considering the matter from an appraisal point of view and looking at the range of factors that it believes are important in meeting the national care service's aim of providing consistent and higher-quality care" [3] . However, this lack of detail, with significant decisions on care boards to be determined via secondary legislation was a source of criticism from respondents to the Parliament's call for views [20] and from witnesses.

61. The Bill provides powers to allow for the transfer of social services functions from local authorities to the Scottish Ministers or to care boards, including adult social care and social work, children's social work and social care, and justice social work. The FM states that work is to be undertaken in relation to services for children and justice "to consider the risks and opportunities, and to rigorously assess the costs and benefits, before decisions are made about implementing the transfer and how it might be phased" [16] . There is therefore significant uncertainty about the costs that will be incurred through this process including, as explained in the FM, the potential for double running costs (which are not costed in the FM) if a phased approach is taken. Approximate current and projected costs of the services that could be transferred to care boards and to the Scottish Ministers are included in the FM. However, questions have been asked about the accuracy of the 3% standard increase that has been applied on all years to show growth in activity and any pressures above inflation.

62. CIPFA IJB CFOs for example suggested that this figure of 3% growth "is possibly on the light side" [2] and suggested that levels are currently sitting at between 4% and 6%. The Fraser of Allander Institute noted that "there has not been a detailed analysis of the demographic changes that are expected and how those will impact on the cost of care delivery" [3] . It suggests that a figure of 3-3.5% is generally used

in England, using modelling from the London School of Economics and Political Science, however, this level of analysis has not yet been done for Scotland. It concludes that the 3% estimate in the FM "seems reasonable, but it is not founded on specific evidence of the drivers of social care in Scotland", while Audit Scotland took the view that it is helpful to have the estimate in the FM, though "there are some questions around the 3% figure and where the numbers have come from" [3] .

Right to breaks for unpaid carers

63. The Bill includes proposals to establish a statutory right for unpaid carers to take short breaks. The FM estimates costs based on a number of assumptions, for example, the number of carers who would exercise their rights to breaks and how demand and provision will evolve over time. The SPICe Themes Paper on the FM states that "the assumptions are set out clearly in the FM, but the range of assumptions on which the calculations are based means that the estimates will be sensitive to alternative assumptions" [20] . The FM reflects this uncertainty in upper and lower estimates, and further provides estimated costs over a longer period of time than other aspects of the Bill in recognition that the demand and scale of provision is expected to build over time.

64. In the early years of implementation, costs are expected to be between £8-13 million in 2025-26 and £16-27 million in 2026-27. By 2034-35, these costs are anticipated to have increased ten-fold to between £82 million and £133 million. The FM makes assumptions that this policy can reduce costs in the long-term. It states that "if the right to breaks helps prevent 1% of these intensive caring relationships breaking down, that will save £68 million per year in health and social care costs" [16] and that saving would be £318 million annually if the right protects 5% of these intensive relationships.

65. The Fraser of Allander Institute noted particular uncertainties in relation to the costings provided for rights to breaks from caring, due to a lack of data at local authority level and no specific allocation for carer respite in the local government settlement. While it notes that estimated figures have been included in the FM, it is unclear as to how these figures were obtained or how accurate they are [10] . In contrast, CIPFA commented that some helpful detail had been provided in the FM in respect of this aspect of the Bill [12] .

Visits to/by care home residents (Anne's Law)

66. The FM notes that the financial cost of the arrangements to support the right to visits to or by care home residents "should be viewed in the context of the progress made since 2021 in maximising meaningful social connections and visiting in adult care homes, effectively readying the care home sector for the implementation of the statutory requirements provided for in the Bill" [16] . It goes on to state that "the Scottish Government will continue to consult widely on the anticipated practical application of Anne's Law within the expected provisions of the legislation and make note of any divergence from current guidance and potential costs", adding "while

this process is ongoing, it has not highlighted additional costs to the sector".

67. The FM does however identify modest costs to the Care Inspectorate of implementing the arrangements, estimated at £0.186 million in 2022-23 and £0.090 million in 2023-24. No further costs are foreseen past 2023-24.

68. While the Committee accepts that costings for all aspects of the Bill and associated elements highlighted above are difficult to predict due to the co-design approach being used for decision making, we firmly believe that even in the context of uncertainties, the Financial Memorandum should have included an indication of the potential scale of all costs associated with the Bill. Without these, it is difficult for the Committee to fully assess whether the proposed National Care Service is either affordable or sustainable.

Associated costs not included in the Financial Memorandum

Information sharing

69. The FM does not include any estimated costs associated with information sharing and information standards, which is the subject of Part 2 of the Bill and would “enable the creation of the nationally-consistent, integrated and accessible electronic social care and health record”. The FM recognises that there will be costs associated with these measures, but states that “at this early stage it is not possible to provide an exact position on the total cost of investment or how the costs will be phased” [16] . These costs will be included in business cases in due course.

70. CIPFA was one of those organisations who expressed concern about the lack of financial detail on this aspect of the Bill, which it argued “could represent a very significant outlay” [12] . It highlighted National Audit Office reports “that the track record for digital transformation in the NHS has been poor, with previous major national programmes being ‘expensive and largely unsuccessful’”. CIPFA goes on to state that “this precedent suggests that the Scottish Government needs to meticulously evaluate and analyse the costs of the proposed digital project, which will be very complex—and potentially costly—undertaking”, adding “for such a major component of the Bill, it is surprising and disappointing that no estimates are provided”.

71. The Fraser of Allander Institute noted that “the creation of an electronic integrated health and social care record is in the legislation, but no costing has been produced” and suggested that “the reason given is that the work is at a too early stage to estimate costs, but it will be provided in the Programme Business Case” [10] .

72. The Minister’s letter of 10 November argued that “the information sharing regulations will support the integrated record, but not create it” [18] , therefore costs for the creation of the record have been omitted from the FM and will instead be included in a formal, dedicated business case. The Scottish Government’s position was challenged during oral evidence by Audit Scotland, who argued that “none of the figures is exact, so … that is not a justification for not providing an indication of the range of costs that are likely to be associated with those areas.” [3] It suggested that, in relation to IT costs “it would be helpful to ask the Government whether the IT projects will be big, middle sized or small [and] it is important to provide those comparators in order to give a sense of scale.”

73. To illustrate the potential financial implications of such a project, NHS Borders highlighted that an integrated digital project in the Borders could incur costs of £20 million and, as “NHS Borders accounts for 2 per cent of the Scottish health budget, … that might give the Committee a bit of context in relation to what the costs might be” [3] .

74. The Minister however told the Committee that he was “unable at the moment to

quantify how much it costs to collect data, which is often quite disparate and can be very difficult in some regards” [4] . He said that “we need to get better at that, and one of our ambitions is to streamline data collection and make it better.” The Minister went on to comment that “we must have a general stock take of what we have at the moment and whether we are able to use current systems and enable them to talk to one another”. He gave assurances that “because I am well aware of IT cost overruns from a past life, I will keep a close eye on every aspect of the delivery of an IT system if it is required.”

75. In his follow-up letter to the Committee of 10 November, the Minister advised that “as part of our work on data and digital infrastructure we are working to create the nationally consistent integrated and accessible electronic social care and health record” [18] .

76. Given the potential for significant financial impact from, and the risk of, cost overruns of IT projects, the Committee expected that an indicative figure would have been included in the Financial Memorandum, even in the context of considerable uncertainties. This is particularly so given indicative costings for IT systems have been included in previous FMs, such as the one for the Social Security (Scotland) Bill.

77. By not including any estimated costs within the Bill it could be assumed that the costs will be £0. This is unrealistic, particularly given the Scottish Government’s previous experience in developing and implementing a range of IT projects over the years. We therefore ask the Scottish Government to provide a range of cost estimates based on its previous experience of implementing small, medium and large IT projects to enable an assessment of the level of costs that could arise.

Proposed transfer of local government staff and assets and liabilities

78. The FM states that up to 75,000 social work and social care staff could transfer from local authorities to the new bodies under the new system. As rates of pay and terms and conditions for social work staff vary across local authorities, depending on the extent to which staff transfer to the new care boards, the costs associated with ‘Terms and Conditions’ for care board staff could reach £120 million in 2026-27, while additional pay costs could add a further £43 million.

79. The FM explains “it is anticipated that the Scottish Ministers may transfer some functions, at least in part, to themselves, and the NCS at national level may plan, commission and procure social care services for people with complex and specialist needs across Scotland” [16] . It states that “further decisions will need to be taken, in discussion with those accessing and providing such services, about which services may be treated in this way, before any estimate can be made of what proportion of costs they will represent.”

80. While the FM provides the current costs of these services and explains how these costs were arrived at, it explains that “in terms of the total costs to the public purse, it is assumed the transfer of services itself has no effect: the costs of providing these services will simply transfer from local authorities and health boards to the NCS.”

81. Many organisations raised concerns around the treatment of local government assets and liabilities and the Transfer of Undertakings (Protection of Employment) (or TUPE) implications relating to the transfer of staff. COSLA explained that the potential for large numbers of staff to be transferred from local government to the NCS has considerable implications for pension funds both for those who may no longer be able to remain members of the scheme and any impacts on the scheme for remaining members, which also do not appear to have been quantified. It indicated that this issue will be very complex and “detailed assessment is required on whether and how this will impact on existing pension schemes, including viability given the Local Government Pension Scheme is a fully funded scheme, and whether or not the National Care Service would be able to be an admitted member of that Scheme.” [13]

82. It was also highlighted that there is a presumption that the people “who do the support and administrative tasks for health and social care partnerships are discrete and do that work only for the partnerships [but] that is not the case…” [2] . Given this, they argued that there will be an impact on the critical mass of what is left. There was some dubiety about the Scottish Government principle that those staff who transfer would have no detriment to their terms and conditions where roles are split. As CIPFA IJB CFOs highlighted, TUPE has a threshold “whereby, say, 80% of the role has to be transferrable for that to apply”, adding that “the question is whether it would apply to all those posts.” [2]

83. Audit Scotland considered that “there is likely to be significant uncertainty about the cost of harmonisation that goes beyond the extent of services and staff groups involved.” [11]

84. The same level of uncertainty applies to the transfer of assets from local authorities, also highlighted in the COSLA submission [13] :

> “There is no clarity or detail about the financial treatment of assets, particularly whether they would simply be transferred to new ownership or whether they would be purchased. This causes great uncertainty and a risk of disincentives for local authorities to invest in assets they believe they are unlikely to have possession of in the coming years and where there is no assurance that they will be recompensed at market value; there is also no acknowledgement of the associated maintenance costs or clarity on how the National Care Service would continue to finance any assets it does take on.”

85. No capital costs in relation to asset transfer or maintenance costs have been included in the FM costings. Written evidence from Aberdeen City Council and South Ayrshire Council and Integration Joint Board raised concerns around the impact of uncertainty on financing options and capital investment plans during the transition phase. SOLACE also questioned whether the Scottish Government approach that decisions could be taken on an asset-by-asset basis “amid all the other variables, does not guarantee consistency.” [2]

86. When queried on the transfer of staff, the Scottish Government's Bill Team stated that, while the Bill provides the ability for staff to move, it does not guarantee it and decisions will be considered and taken on a local authority by local authority basis. The Bill Team confirmed that, "in that regard we would like to fully engage with the 11 local government pension schemes to understand the impact of any members moving out of the schemes." [2]

87. The Bill Team also confirmed to the Committee that decisions on buildings and associated debt will be made not only on a local authority by local authority basis, but on an asset-by-asset basis. It said that much more work with local authorities would be needed to understand the current cost base such as backlog maintenance and the numerous complexities with regard to the valuation method that would apply to each building. [2]

88. This was re-emphasised by the Minister in his evidence who added that staff transfers were identified in the Bill given that local care boards could be the provider of last resort. He said that "discussions are on-going with regard to the potential transfer of staff or assets from local authorities" [4] . He then confirmed "that is a key area for co-design and one that, given its importance, will not be rushed", adding "work is on-going, and all financial considerations are under constant review as new information becomes available."

89. The Committee notes the FM assumptions that the transfer of staff will have little or no impact on the public purse. We consider this to be unrealistic given the evidence we heard that there may be an impact on pension funds of staff, transfers, and on harmonising conditions as well as challenges for those organisations from where the staff transfer, especially where they work across a number of areas.

90. The Committee also notes that the FM contains no capital costs in relation to asset transfer or maintenance costs, with decisions to be made on an asset-by-asset basis. We doubt whether such an approach is achievable in reality, given there are over 1,000 care homes in Scotland. We therefore seek more detail on how this will be achieved and by when, as well as an indication of potential transfer costs.

91. For the reasons set out above we believe that the costs of the Bill regarding both the transfer of staff and assets will be significant.

Phasing of transfer of functions

92. The FM acknowledges that "a phased approach may result in a period of double running costs or transfer costs in addition to the costs set out [in the FM]" [16] , however, it provides no indication of the potential scale of any double running costs.

93. Audit Scotland raised concerns that these un-costed double running costs “may be significant and it will not be [possible] to unpick existing services from the other services these bodies provide.” [11] The potential impact of double running costs was also raised as a concern by the Fraser of Allander Institute during oral evidence on 1 November [3] and by NHS Scotland in its written submission, which said “it is assumed that the transfer of costs as described in the Bill would be cost neutral in totality but we have seen from other service transfers that this is not normally the case”. [21] NHS Scotland went on to say that “costs cannot be released, duplication of costs occur and time and resources are spent in analysing and protecting budgets and resources [and] in addition, phasing of transfers will result in double running costs.”

94. In evidence to the Committee, the Fraser of Allander Institute added that previous examples of change - such as the transition away from long-stay hospitals into communities for people with learning disabilities - had two systems running in parallel for a period, was not rushed and there was sufficient funding to ensure that the transition could take place effectively [3] .

95. The Financial Memorandum assumes that some double running costs will arise in 2025-26 when the care boards become operational. However, the Committee is concerned that this assumption could understate the position, given the scale of the change, the acknowledgement in the FM that it could take place over a number of years, and uncertainties such as on the transfer of assets.

VAT liability

96. The FM states that, as IJBs are established in a similar way to a local authority, they can therefore reclaim VAT on services. It notes that “if care boards are not able to reclaim VAT in a similar way, there could be a significant financial impact [which] could reduce the overall funds available to spend directly on social care support” [16] , adding that “work is underway to understand this potential cost and how it might be mitigated to ensure maximum support for front line services”.

97. As the Scottish Government’s Bill Team explained, whether or not care boards will be liable for VAT is one of the “range of things we want to consider” but that will be considered alongside the other outcomes that the NCS is being set up to deliver [2] .

98. While VAT is identified as a potential cost, no estimates are provided within the FM. As the Committee noted, this contrasts with the approach taken in relation to the Public Bodies (Joint Working) (Scotland) Bill and the Police and Fire Reform (Scotland) Bill, both of which provided indicative VAT costings. Such costings were provided despite similar uncertainties regarding the legal status of the bodies to be established or, in the case of police and fire bodies, restructured.

99. In its written submission to the Committee, COSLA highlighted that “the proposed structure and governance of the NCS is such that it is likely to be liable for VAT, at least unless and until arrangements can be made to exempt it” [13] . It suggests that

"clearly—as the FM itself acknowledges—this would significantly increase its costs of operating and consequently reduce the funds available to spend directly on social care support". COSLA explained that "under HM Treasury rules, local authorities and certain other bodies are able to recover the VAT incurred on certain purchases—in order that VAT costs are not funded through local taxation—whereas other public sector organisations including the NHS cannot reclaim VAT incurred on many goods and services, which is therefore a cost that must be covered by departmental budgets".

100. The above risks were further emphasised by CIPFA, who also warned of "significant complications that may arise in the transfer of staff if there is any differential VAT regime between care boards and local authorities" [12] and stressed that "it is imperative that a favourable VAT settlement is reached before the NCS enters operation".

101. The omission of potential VAT costs from the FM was raised with the Minister during evidence on 8 November. Following the evidence session, the Minister wrote to the Committee, advising that the Scottish Government has received independent advice on the potential VAT liability of care boards and that it continues to engage with HM Treasury in order to achieve "a fiscally neutral VAT position". According to external advisors Anderson Anderson and Brown (AAB), NCS care boards could potentially fall under Section 33 or Section 41 of the VAT Act 1994. The Minister's letter explains that "Section 33 is a Full Recovery Model which allows all VAT costs associated with both taxable business and non-business activities to be recovered, [while] Section 41 permits a body to claim a refund of VAT incurred on some services but not all." [18]

102. The Scottish Government's Bill Team had previously explained that, when IJBs were established in 2013-14, detailed assessments were undertaken which estimated the VAT impact to be in the region of £32 million [2] . While this figure has been cited during the Committee's scrutiny of the FM on the NCS Bill, the Minister highlighted in his letter that the "the worst-case VAT cost impact associated with the creation of the NCS would likely be in excess of this estimate." During oral evidence, the Committee heard that more detailed calculations would be undertaken over the coming months and updated figures would be presented either quarterly or via business case updates.

103. While the Committee acknowledges the Scottish Government's intent to ensure "a fiscally neutral VAT position" for care boards, it is concerned at the lack of current information on potential costs, should this not be achievable.

104. The exclusion of VAT considerations from the FM, in practice, translates into an assumption of zero liability, which is potentially misleading.

105. We consider that the Scottish Government could and should have provided a range of estimates in the FM, as required by the Standing Orders of the Scottish Parliament, given it has adopted this approach for other Bills where potential VAT

liability has been identified. We note that the Scottish Government subsequently provided some information with regards to VAT, but this does not clarify that costs will be reimbursed.

Procurement

106. Among other costs omitted from the FM, the Fraser of Allander Institute highlights the procurement of services, noting that "no costs are assumed for changes in procurement strategy that could lead to higher costs although such improvements are envisaged (i.e., via so-called 'ethical procurement')" [10] . The FM assumes that existing contracts for delivery of social care services with external partners will be transferred, with no immediate cost implications, although it accepts that changes to policies such as ethical procurement and Fair Work may have costing implications and will therefore be subject to financial and regulatory impact assessments.

107. The British Healthcare Trades Association questioned the potential impact of the Bill on procurement practices and the costs for businesses. Despite the assumption in the FM that the establishment of the NCS will not have any financial implications for businesses, the Association suggests that "it would represent a change to business relationships and while contracts with external organisations will transfer, it's clear there will be wider changes in terms of procurement and Fair Work which may alter requirements and contracts in future." [22] It went on to say that "this level of detail is not set out in the Bill and we note [it] "will be subject to separate financial and regulatory impact assessment"."

108. Given the concerns raised with the Committee, we seek clarification from the Scottish Government of the basis on which it assessed that "no costs are assumed for changes in procurement strategy".

Special care boards

109. The Bill also allows for the creation of "special care boards" to provide central functions, in a similar way to the existing special health boards. However, potential costs associated with special care boards do not appear to be included in the FM estimates. The FM notes that the Special Health Boards (of which there are eight) have budgets ranging from £18-425 million, so the creation of special care boards could add significantly to costs.

Potential costs to the third sector

110. The Financial Memorandum lists no costs to third sector organisations, as "it is not anticipated that the establishment of the NCS and care boards, and the transfer of

functions to those bodies, will have any financial implications for … third sector organisations." [16]

111. This assertion was disputed by a range of stakeholders, including Scottish Care, who stated that "we believe this to be entirely untrue in reality and the failure to recognise these sectors as being part of the significant changes planned points to a wider lack of understanding or recognition about their contribution to social care, to Scotland's economy and to the wellbeing of citizens". It went on to argue that "this section does not even name the independent sector at all, which again reinforces Scottish Care members' lack of confidence in the Bill's objectives" [23] .

Wider health and social care reform

112. More broadly, the FM recognises that "the creation of the NCS and other changes made by the Bill are only part of a wider programme of social care reform" [16] . It explains that "other elements of those reforms, that do not require primary legislation and could go forward irrespective of the Bill, are likely to have an impact on the overall cost and expenditure on community health and social care support during the time period covered by this FM". The FM goes on to state that "to focus only on the impact of the Bill", estimates provided in the FM do not include the effect on the NCS of these other planned reforms, including:

- to increase pay and improve terms and conditions for adult social care staff in commissioned services.
- to bring Free Personal Nursing Care rates in line with National Care Home Contract rates.
- to remove charging for non-residential care.
- to increase investment in social work services.
- to increase provision of services focusing on early intervention and prevention.
- to invest in data and digital solutions to improve social care support.

113. The creation of the NCS will however support many of these reforms, "for example, it is intended that it will support greater consistency in the provision of services focusing on early intervention and prevention, and in ethical commissioning which will promote Fair Work standards for staff."

114. Several organisations questioned whether these costs could be seen as separate from the Bill given that its purpose is to deliver consistent, fair and high-quality care for everyone in Scotland. For example, COSLA argued that "those reforms are necessary for the future sustainability of an NCS, however delivered, so it is not credible to present the costs of the services to be delivered by the NCS without factoring those reforms in, and the expected costs of delivering them merit Parliamentary scrutiny as well as wider public discussion." [13]

115. The Scottish Commission for People with Learning Disabilities, while acknowledging the rationale for the limited scope of the FM, commented that, while

"this may be a legitimate approach, it is very unhelpful for many of us [as] It invites scepticism about the commitment and even the ability to invest appropriately in this flagship legislation." [24] SOLACE echoed those comments, stating that "the potential investment is not only a game changer, but a necessity" [25] . Ultimately, as noted by the Fraser of Allander Institute in their submission, and referred to earlier in this report, "an underfunded National Care Service is unlikely to be any better than the system it seeks to replace" [10] .

116. Audit Scotland explained it was important that costs are as accurate as possible in the Bill "because part of the job of the Government—and of Parliament and Audit Scotland—is to help with the assessment of affordability and sustainability." [3] It argues that Government needs to have an overall sense of what the cost is likely to be and "at the moment we feel that the cost is likely to be under stated." It goes on to suggest that "greater visibility is therefore needed as soon as possible to enable an understanding of what we are taking on from a cost perspective and how that sits alongside the wider financial environment."

117. The Minister's position is that "the Standing Orders are very clear about providing an FM covering the aspects of the Bill [and] that is what we have done" [4] . As referred to earlier in this report, Standing Orders provide that an FM must set out "best estimates of the costs, savings and changes to revenues to which the provisions of the Bill would give rise" [19] . When pressed on this issue, the Minister reiterated his position that "the FM covers the Bill", and that the Scottish Government did not want to undermine the co-design process by detailing assumptions for costs that were still the subject of discussion.

118. The Committee finds itself unable to assess the affordability of the Bill. This is why we are asking the Scottish Government to provide the detail that the Committee requires to be able to take a more informed view on the cost estimates relating to the Bill ahead of the Stage 1 debate expected in March 2023.

119. We set out our expectations in relation to future FMs in our post-legislative scrutiny report on early learning and childcare provisions in the Children and Young People (Scotland) Bill published in October 2022. While this included an acceptance that estimates in FM costings bring with them an inevitable level of uncertainty, the FPA Committee believes "that FMs should clearly set out the nature of any uncertainties and risks, and that costings in such situations should reflect a range, rather than a specific cost".

Economies of scale

120. The FM notes that "there may also be potential savings on central services such as finance, digital systems and premises, if a significant number of staff move to the NCS" [16] . This will however depend on what services are to be included in the NCS amongst other current unknowns. There are also assumptions in the FM around the potential for savings to arise from shared services and from the move from IJBs to care boards.

121. Audit Scotland told the Committee "it is being assumed that the model will allow any activity to be generated more efficiently either in terms of efficiencies within the cost numbers or in terms of restricting rises in costs, which is probably more likely in the future? Again, whether that is the case is not clear" [3] . South Lanarkshire Council suggested that "one of the shortcomings of the FM is in identifying whether there would be savings in moving from a series of health and social care partnerships to a system with a national organisation and local boards, regardless of how many there are" [2] , adding "that is quite an issue that [we] have with the FM". CIPFA IJB CFOs added that "the obvious way to create economies of scale, which has not been pulled out, is by reducing 32 partnerships to a smaller number, but there is no commitment to what that number would be" [2] .

122. NHS Borders told the Committee that "it would be difficult to find efficiency savings" and went on to say "we need to be careful about how we describe the potential for efficiency savings associated with specific proposals in the Bill and the ability to actually then drive efficiency savings" [3] .

123. COSLA, along with others, expressed concerns about whether a consequence of transferring funding away from organisations could lead to greater inefficiency as a result of loss of economies of scale. COSLA considered that, in highlighting potential efficiencies from staff transfers, the FM "fails to acknowledge the corresponding loss of economies of scale in Local Government arising from the loss of such a sizeable portion of its workforce […]. The mass transfer of functions, staff, assets and liabilities out of Local Government poses a risk to the effective delivery of services – or in some cases the sustainability of core statutory activities – that have a vital role to play in reducing demand for health and social care by addressing social determinants of health and wellbeing such as education, housing and employment." [13]

124. The Minister noted that "there are without a doubt, opportunities to have shared services" and that "data collection will lead to savings", however he was reluctant to expand on this, suggesting "it would be foolish of me to make assumptions now about what those savings are likely to be" [4] .

125. We believe that the Scottish Government should set out, within margins of uncertainty, a range of assumptions for different scenarios given that it accepts efficiencies will be achieved through the arrangements in this Bill and we ask that this information is provided to the Committee as part of an updated FM ahead of the Stage 1 debate on the Bill.

Potential impact of reform on local authorities

126. There was widespread concern, particularly from health boards and local authorities, about the consequences for those from whom the funding for social care could be transferred. While COSLA acknowledged that the costs set out in the FM are described as "illustrative", it had concerns that these figures could form the basis for calculating "the portion of local government funding that may be removed as a consequence" [13] .

127. COSLA told the Committee that "it is essential that the Scottish Government undertakes further work jointly with COSLA and other stakeholders on the quantum of funding that would be transferred from Local Government to the NCS" [13] and that "the financial transfers cannot be based on the total actual expenditure of local authorities on social care, as this is funded from several income sources and not just Scottish Government grants". Finally, it added that this "would also disadvantage councils which have sought to protect social work and care budgets, compared to others."

128. The potential impact on NHS boards may also be significant although this has yet to be quantified. NHS Borders stated that it anticipated approximately half the budget of NHS Borders could go to the care board, threatening the viability of the Borders health board, which would still deliver primary care services, community services and mental health services, but without the ability to strategically plan and commission them.

129. The Scottish Government's Bill Team explained that they had been as transparent as possible in setting out the potential costs of the current care services that could be transferred to the new NCS [2] . The Minister later explained that the annual budget setting process will identify where the resources will come from to fund it. He added that "I am more than happy to come before the Committee again to talk about how we are moving forward with the Financial Memorandum and with updating our modelling and to talk about the business cases." [4]

130. The Bill Team recognised that every council would have different funding arrangements for care services with funding from a mix of sources. As such "we will have to work through all that as part of the business case process that we will need to go through for each of the care boards." [2] Part of analysis would include understanding the most cost-effective model in terms of cost and delivery of services including whether Arm's Length External Organisations (ALEOs) would transfer or remain [2] .

131. In evidence, the Minister explained that "the intention is for there to be no detriment to local government finances [and] any funding that is transferred would be directly associated with a similar transfer of costs to ensure an overall neutral impact" [4] . He said "we recognise that, in establishing a national care service, including any transfer of accountabilities and associated financial resources from local authorities, we must take into consideration the impact on those local authorities and on their ability to resource and deliver other public services".

132. The Minister did not necessarily agree that transferring services away from local authorities might impact on the economies of scale for some, highlighting “shared services, co-operation and collaboration as a means of doing our best in delivering for the public, which is, ultimately, what we are all about.” He went on to say that “we will do all that we can to ensure that there is no detriment.” [4]

133. Following the Committee’s request for further information regarding his comments on cost neutrality, the Minister stated in his letter of 10 November, that “the nature of the impact on local government from the establishment of the NCS will depend on the details of the transfer of functions to Scottish Ministers, and on local decisions about how services are to be provided” [18] .

134. The Committee notes that the costs of current delivery of care services which may in turn be transferred to the NCS do not represent ‘new’ costs arising as a result of this Bill and so are not included in the Financial Memorandum’s table setting out all headline costs. They do however provide an indication of the magnitude of the change that could arise from this Bill.

135. As COSLA and many others identified, these potential changes could have a significant impact on how local authorities, health boards and others continue to deliver their services and there remains considerable uncertainty over many aspects, including how any cost transfers will be agreed as being fair and accurate.

136. We note the Minister's argument that the costs transferred from local authorities and others to the NCS will be cost neutral, but given the complexities highlighted above, we emphasise the need for an equitable transfer which avoids a detrimental impact on the provision and quality of other public services.

Monitoring costs arising from the Bill

137. The Committee recommended in our report on post-legislative scrutiny of the Financial Memorandum on the Children and Young People (Scotland) Bill that future FMs should “include comprehensive information on the Scottish Government’s plans to monitor expenditure to ensure that new policy initiatives are being appropriately funded and ensure greater transparency around spending” [26] . While the Scottish Government has not at the time of writing formally responded to this report, we are however disappointed that the issues identified during our post-legislative scrutiny have been replicated with the current NCS Bill. In fact, the FM makes no mention of monitoring or assessing cost estimates against actual spend, though this could be due to the approach taken of ongoing development of costings.

138. When asked how the Committee would be able to compare the actions that are ultimately taken with the estimates in the FM, the Scottish Government’s Bill Team told the Committee that “we will continue to track changes to any assumptions” [4] , adding that “since completion of the FM, we have continued to ensure that there is an audit trail of any changes to assumptions”. It explained that “as policy and design decisions are made, we will continue to adjust the figures to ensure that there is a clear trail from our position in the FM to where we end up at the end of the gestation period”, adding “we will ensure that those changes are transparent”.

139. As highlighted by Audit Scotland, “it will be crucial to regularly update estimates of overall costs and other financial implications and report on these regularly to Parliament and local authorities” [11] .

140. The Committee recognises that tracking spend on social care is not straightforward under the current funding arrangements, so it is important to have a clear baseline position on services being transferred to the NCS to support future monitoring and spend in this area. We ask that costs are monitored and reported on twice a year, particularly given the high level of uncertainty in the current FM.

141. As noted in our recent post-legislative scrutiny report, the Committee believes that outcomes and monitoring information should be considered at an early stage in the development of policy. Evidence provided to the Committee shows that monitoring of expenditure continues to pose challenges to the Scottish Government and local authorities. Robust financial data is therefore needed to provide a clear assessment of outcomes, sustainability and value for money.

Conclusions

142. **The Committee has significant concerns in relation to the costings within this Financial Memorandum, which it considers does not provide best estimates of the costs the Bill gives rise to.**

143. **The Financial Memorandum in its present form does not provide an overall estimate of the costs of creating a National Care Service. A large number of decisions are yet to be made, and no estimates of costings have been provided for VAT liability, transfer of assets and staff and the creation of a health and social care record, all of which have the potential to result in significant costs.**

144. **The Committee appreciates the Scottish Government's intention to design the system in collaboration with those most closely affected, however, it has been argued that such work should have been completed prior to the introduction of primary legislation.**

145. **As previously recommended in the Committee's report on post-legislative scrutiny of the Children and Young People (Scotland) Bill, major policies should not be implemented via secondary legislation or business cases which cannot be subject to the same in-depth and formal financial scrutiny as Financial Memorandums to bills.**

146. **The current Financial Memorandum relies heavily on future secondary legislation and business cases and does not provide the Committee with enough detail on costs to allow it to fully assess or scrutinise the financial implications of the Bill. The significant gaps highlighted throughout our report in combination with the Scottish Government's approach to introducing the primary legislation prior to completion of the co-design process has frustrated the parliamentary scrutiny process.**

147. **The Committee therefore requests that the Scottish Government provides a revised Financial Memorandum, including full details of the underlying assumptions, updated estimates for the gaps identified in this report, as well as updates to the existing cost estimates set out in the FM. This updated FM should be provided at least two weeks prior to the completion of Stage 1 – scheduled for March 2023 - to inform Members' approach to the debate on the general principles of the Bill and consideration of the Financial Resolution.**

148. **Should the Bill be enacted, implementation costs, savings and forecast expenditure should be monitored and reported on to the Finance and Public Administration Committee twice a year. The Committee further recommends that updates are provided in a similar format to the Financial Memorandum, rather than simply as part of a Programme Business Case to allow proper comparative scrutiny.**

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