

# **NATIONAL CARE SERVICE (SCOTLAND) BILL**

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## **POLICY MEMORANDUM**

### **INTRODUCTION**

1. As required under Rule 9.3.3 of the Parliament’s Standing Orders, this Policy Memorandum is published to accompany the National Care Service (Scotland) Bill introduced in the Scottish Parliament on 20 June 2022.
2. The following other accompanying documents are published separately:
  - Explanatory Notes (SP Bill 17-EN);
  - a Financial Memorandum (SP Bill 17-FM);
  - a Delegated Powers Memorandum (SP Bill 17-DPM);
  - statements on legislative competence by the Presiding Officer and the Scottish Government (SP 17-LC).
3. This Policy Memorandum has been prepared by the Scottish Government to set out the Government’s policy behind the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

### **POLICY OBJECTIVES OF THE BILL**

4. The purpose of the National Care Service (Scotland) Bill is to improve the quality and consistency of social services in Scotland. Part 1 gives the Scottish Ministers a duty to promote a comprehensive and integrated care service, and gives them the powers they need to achieve that, including making provision for the establishment of care boards to carry out Ministers’ functions in relation to social care, social work and community health. Part 1, Chapter 6 gives the Scottish Ministers powers to transfer relevant functions from local authorities or from health boards (relevant local authority functions are those covering social work and social care for adults and children, including local authorities’ role in mental health care and adult and child protection, and justice social work). “The National Care Service” means the Scottish Ministers and care boards working together to deliver those functions.
5. Part 2 of the Bill allows for information sharing and information standards and is intended to underpin the creation of the nationally-consistent, integrated and accessible electronic social care and health record. This will help professionals to support individuals in a more co-ordinated way, and support national and local planning and commissioning.

6. Part 3 makes additional reforms to the delivery and regulation of care. It introduces a right to breaks from unpaid caring, and Anne's Law, to give people living in care homes a right to maintain contact with family and friends. It makes changes to the powers of the Care Inspectorate and Health Improvement Scotland. These are all changes that can be implemented to improve the lives of people who access social care support and their carers before the NCS is established. Some of them take the framework approach to allow for further engagement and flexibility; others are more detailed where they address specific points in existing legislation.

7. It is essential that reforms to social care support, social work and community health services must be developed with the people who access that support, including unpaid carers, and with those who provide it. The Scottish Government 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. For that reason the Bill creates a framework for the National Care Service, 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. Some of those future decisions will be implemented through secondary legislation, others will be for policy and practice. Where those decisions are implemented through secondary legislation (under this Bill or through pre-existing powers), financial and regulatory impact assessments will be provided. The Parliament will, therefore, have further opportunities to examine the implications of the Scottish Government's proposed reforms to the social care system.

### **Vision for the NCS**

8. The Scottish Government is determined that social care and social work services should deliver consistent, high quality support to every person who needs it, across Scotland. Those services must have human rights at the heart of the system, enabling people to take their full part in society and live their lives as they want to, while keeping individuals and communities safe. This Bill is one element that will support the delivery of this vision.

9. The Scottish Government's vision for the National Care Service is that it will:

- enable people of all ages to access timely, consistent, equitable and fair, high-quality health and social care support across Scotland
- provide services that are co-designed with people who access and deliver care and support, respecting, protecting and fulfilling their human rights
- provide support for unpaid carers, recognising the value of what they do and supporting them to look after their health and wellbeing so they can continue to care, if they so wish, and have a life beyond caring
- support and value the workforce
- ensure that health, social work and social care support are integrated with other services, prioritising dignity and respect, and taking account of individual circumstances to improve outcomes for individuals and communities
- ensure there is an emphasis on continuous improvement at the centre of everything
- provide opportunities for training and development, including the creation of a National Social Work Agency providing national leadership, oversight and support

- recognise the value of the investment in social care support, contribute to the wellbeing economy, make the best use of public funds, and remove unnecessary duplication.

10. It is intended that the NCS will work in tandem with other work already in progress to implement The Promise<sup>1</sup>, in relation to children’s services, and to consider the future model for justice social work.

11. Additionally, a fully integrated NCS would work closely with other services, such as housing, homelessness, education, the justice system, and the Scottish Prison Service to ensure everyone has seamless access to the support they need. The NCS and its care boards will take part in existing joint planning arrangements such as Community Planning Partnerships, Community Justice Partnerships, Children’s Services Planning, and Alcohol and Drugs Partnerships.

12. The NCS will aim to improve people’s experiences of accessing social care support, increase prevention and early intervention, and to ensure that social care support (both for people with support needs and unpaid carers) is human rights-based and outcomes-focused. The NCS will aim to ensure everybody in Scotland can access a consistent social care support service, while noting the importance of local decision making and flexibility, and also that they can access early intervention and preventative support.

13. The priority throughout the implementation of the NCS programme will be the continuity of support for individuals. Phasing of the transfer of functions from 2025-26 will need to be based on delivery readiness assessments. Clear, transparent local transition plans will be developed with partners so that everyone affected is comfortable with what is happening, where and when.

14. In order to support the development work required to design and establish an NCS and related reforms, the Scottish Government has set up a steering group which includes people with lived and living experience of social care. As the operational processes are being established to allow a growth in both the depth and breadth of co-design activity, this group is intended to provide a feedback and challenge function to ensure the Scottish Government engages with the right people in the right way on plans as they are developed, and to ensure that the new service is designed around the needs of people who access social care and supports the needs of unpaid carers and care workers.

15. The significant commitment to co-design is to ensure that the Scottish Government can reduce the gap between legislative intent and delivery that has been experienced historically in this area. It will therefore be vital to ensure a strong evidence base for all options that are developed through co-design. As a minimum, each option will need to demonstrate value for money where benefit and quality will be key considerations, and meet affordability tests, before being recommended for decision via Parliamentary or Government processes.

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<sup>1</sup> “The Promise” [The-Promise\\_v7.pdf\(carereview.scot\)](#) is the key report of the Independent Care Review, initiated by the First Minister in February 2017, which aimed to identify and deliver lasting change in Scotland’s ‘care system’, and to transform the wellbeing of infants, children and young people.

## **BACKGROUND**

16. In this document, the term “social services” is used to cover the wide range of support that enables people to lead a full life and achieve the outcomes that are important to them, as well as related services. People may need support for many reasons, for example as a result of illness, physical disability or frailty, learning disabilities or mental health conditions, addiction or experience of homelessness. Social services also support unpaid carers in their caring role. They provide help for children and families who may need additional support, or where children are unable to live with their own families, and work with people to address offending and its causes, while effectively managing risk.

17. Social services encompass both social work and social care support. Social work is a statutory role which involves assessing need, managing risk and promoting the wellbeing of individuals and communities. Social care support is an umbrella term for services which directly support people to meet their personal outcomes.

### **Why social care reform is required**

18. The population receiving social care and support is diverse, with wide ranging needs and circumstances. An estimated 1 in 25 (232,000) people of all ages in Scotland were reported as receiving social services during 2020/21<sup>2</sup>. There are also an estimated 700,000 to 800,000 unpaid carers in Scotland<sup>3</sup>, and over 200,000 people employed in the social service sector. Overall this means that around one fifth of the population are affected by the quality of social services, including the conditions offered to the workforce.

19. 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. The Scottish Government commissioned Derek Feeley (a former Scottish Government Director General for Health and Social Care and Chief Executive of NHS Scotland) to chair the Independent Review of Adult Social Care (IRASC) in September 2020 to consider the problems in a systematic way.

20. In February 2021, the Independent Review of Adult Social Care (IRASC) report<sup>4</sup> was published. The IRASC report concluded that whilst there were strengths in Scotland’s social care system, it needed revision and redesign to enable a step change in the outcomes for the people accessing care and support.

21. The changes needed were summarised by IRASC into three main challenges:

- Shift the paradigm - from viewing social care support as a burden to seeing it as an investment in society; moving from services that manage needs in a crisis to preventative support that enables people to flourish, and ensuring consistent and fair provision

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<sup>2</sup> [Insights in social care: statistics for Scotland - Support provided or funded by health and social care partnerships in Scotland 2019/20 - 2020/21 - Insights in social care: statistics for Scotland - Publications - Public Health Scotland](#)

<sup>3</sup> The 2020 Scottish Health Survey telephone survey results suggest that there are around 839,000 people aged 18 and over providing unpaid care and support to people across Scotland. Around 3% of these unpaid carers are estimated to be receiving carer support.

<sup>4</sup> [Foreword - Adult social care: independent review - gov.scot \(www.gov.scot\)](#)

- Strengthen the foundations - to ensure consistent and effective implementation of the ambitious legislation already in place, strengthening and valuing the workforce, and giving unpaid carers the support they need to continue in their vital role
- Redesign the system - creating a National Care Service (NCS) “to drive national improvements, to ensure strategic integration with the National Health Service, to set national standards, terms and conditions, and to bring national oversight and accountability” to the sector; creating a commissioning and procurement system based more on collaboration rather than an emphasis on price and competition, and crucially, amplifying the voice of lived experience in the process of redesign.

## **Health and Social Care Integration**

22. Since 1948, local authorities have been responsible for social care support, in various forms, and local health boards have been responsible for health services. However, health and social services often need to work together to support people effectively. Integration of the planning, funding and delivery of services can help to ensure that people get the right care and support at any time, as their needs change, in a way that is seamless from the point of view of the person accessing support. Integration places a greater focus on prevention and anticipatory care and support, which in turn can help people to stay in their own homes and communities and continue taking part in activities that they enjoy for longer.

23. Integration of health and social care in Scotland can be traced back over 20 years to the “Sutherland Report”<sup>5</sup> and the Joint Future Group<sup>6</sup>, with the aim of improving partnership working between organisations and to secure better outcomes for service users and their carers.

24. This was followed in 2005 by the Community Health Partnerships (Scotland) Regulations 2004, and then the Public Bodies (Joint Working) (Scotland) Act 2014 (“the 2014 Act”). The 2014 Act set out a framework for integrating adult health and social care services, and created new partnerships, known as Integration Authorities (IAs), with statutory responsibilities to coordinate local health and social care services.

25. At present, local authorities have statutory responsibility for providing social care support, and Scottish Ministers, through local health boards, have responsibility for health care. Under the 2014 Act, and secondary legislation made using powers granted by that Act, local authorities and health boards work together as IAs, to manage a range of services collectively, including budgets. They are required to delegate certain functions (and budgets) to a local integration authority, and

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<sup>5</sup> With Respect to Old Age: Long Term Care - Rights and Responsibilities, Report of the Royal Commission on Long Term Care, The Stationery Office; 1999. Sir Stewart Sutherland chaired the Royal Commission and was credited as the author of this UK-wide report. Available online: [With respect to old age: long term care--rights and responsibilities: a report Great Britain. Royal Commission on Long Term Care: Free Download, Borrow, and Streaming: Internet Archive](#)

<sup>6</sup> The Joint Future Group was a Scottish Executive (former name of the Scottish Government) programme which started in 1999. It published a report on its findings in November 2000: [swjoint.pdf \(scie-socialcareonline.org.uk\)](#) and the Scottish Executive responded to that report in January 2001: [Scottish Executive’s Response to the Report of the Joint Future Group: contents page](#)

may delegate others. In most areas the integration authority is an Integration Joint Board (IJB) which includes members from both the local authority and local health board.

26. The Highlands area has a different arrangement, known as a Lead Agency arrangement, in which Highland Council takes responsibility for all health and social care services for children, and NHS Highland provides all health and social care services for adults. Highland Council and NHS Highland are IAs in this arrangement.

27. The integration authority plans what care is needed in its area and directs (and provides funding to) the health board and the local authority to deliver it. The local authority is responsible for commissioning and directing procurement of social care support services.

28. Each of the above developments has moved health and social care into a more integrated space and delivered improvements. However, IRASC identified a number of challenges which have prevented the current structures from delivering the scale of improvement required. These include:

- inconsistency of user experience (“postcode lottery”)
- complex and inconsistent governance arrangements
- lack of national oversight and collaboration
- lack of collaborative and strategic leadership
- non-integrated budgetary and financial planning.

29. Lack of consistency arises from the fact that Integration Authorities are required to manage certain services together (in particular adult social care support, primary care and most community health services), but have a choice for other services, such as children’s social work and social care, justice social work, and homelessness and housing support. This leads to differences between the experiences of people in different areas, and particular difficulties when a person wants to move between areas with different approaches.

30. The IRASC also identified problems with the structure of IJBs. As a joint organisation between the local authority and health board, they do not hold their own budgets or employ their own staff, and the Chief Officer is accountable to both bodies. These complex arrangements have not always resulted in the high quality and well-integrated service that was intended.

31. Whilst IRASC focused on adult social care, most Integration Authorities have delegated responsibility for a wider remit that includes health, services for children and families and justice delivery. The limitations of the current IJB structures therefore have much wider relevance. The social work profession also expressed concerns about fragmenting the system by separating adult social care from other aspects.

32. The IRASC recognised that there are significant strengths in the existing legislation which sets out the current functions relating to the delivery of social care support: this includes for example the Carers (Scotland) Act 2016, and the Social Care (Self-directed Support) (Scotland) Act 2013. However, there is a gap between the ambition of this legislation and its implementation,



38. The NCS will be an investment in Scotland’s people and communities and provides an opportunity to:

- Embed human rights in care support
- Increase equality and enable people and communities to thrive
- Ensure that the NCS is an exemplar of Fair Work practices
- Effectively co-design services with people with lived and living experience
- Ensure that the care workforce is recognised and valued
- Improve outcomes through prevention and early intervention
- Provide financially sustainable care giving security and stability to people and their carers
- Ensure that the NCS communicates with people in an inclusive way.

39. The NCS principles reflect these opportunities and make clear from the outset the Scottish Government’s commitment to deliver on them. The Scottish Ministers and care boards will be required to reflect the principles through the Ministers’ general duty in section 2 of the Bill and through their ethical commissioning strategies.

40. The principles draw on the findings of the IRASC including:

“Human rights, equity and equality must be placed at the very heart of social care and be mainstreamed and embedded.”

“For us to achieve the improvements we seek, they [the social care workforce] need to feel engaged, valued and rewarded for the vitally important work that they do.”

“We need a shift away from crisis being the entry point to the system of social care support to a system that values prevention and early intervention.”

### **The Scottish Ministers’ responsibilities**

41. Section 2 of the Bill gives the Scottish Ministers a duty to provide a care service for Scotland. This implements the IRASC recommendation that the Scottish Ministers should be accountable for social care. Everything that Ministers do in discharging this duty is to reflect the principles.

42. Section 3 provides that the Scottish Ministers are also responsible for monitoring and improving the quality of NCS services.

### **Structures and Governance**

43. The NCS is intended to exercise the Scottish Ministers’ new responsibility for social care. As section 35 of the Bill makes clear, the NCS will, in practice, comprise a part of Government to



act at national level, and the care boards (see paragraphs 57 to 64) that will be set up to plan and deliver services locally.

### ***National structure***

44. At a national level, the Scottish Government intends to establish the NCS either as an Executive Agency or as a part of the core Scottish Government, and it would be staffed by civil servants. As it will share the legal identity of the Scottish Ministers it does not need to be established in the Bill itself. The care boards will be separate public bodies accountable to the Scottish Ministers and have their own legal identity.

45. This new part of Government will provide effective leadership, oversight, and accountability for social care. It is also expected that the NCS nationally will take over this role in relation to the Scottish Ministers' existing responsibility for community health, in order to deliver effective integration at national as well as local level.

46. The details of the way the NCS will be established nationally and locally will be developed in collaboration with people with lived and living experience of the community health and social care system to ensure that it operates in a way that supports those it is designed to help. The NCS principles set out in the Bill will drive the way that the NCS works.

47. At national level, the NCS will:

- Provide leadership, oversight, and accountability for community health and social care, including by providing strategic direction and planning at the national and regional levels, and performance management and monitoring of the care boards to ensure national standards and expectations are achieved, albeit in a way that suits local circumstances
- Uphold the principles and develop and adhere to the charter of rights for people who access care and support and ensure human rights is embedded throughout its work
- Create, manage and promote national social care policies, setting national standards and developing practice standards, models and guidance to improve access to care
- Create a Structure of Standards and Processes for ethical commissioning and procurement to support the principles and other important priorities, such as decarbonisation and the circular economy
- Support Fair Work in social care, and carry out workforce planning
- Include the National Social Work Agency to support and invest in the social work profession
- Plan, commission, and procure complex and specialist services at the national level
- Develop and maintain a national system for effective complaints and redress for NCS services.

48. Under the NCS, services will continue to be planned, designed and delivered locally because the care boards will plan and commission services for their local area. Health services will continue to be delivered by the NHS, as commissioned by the care board. For social care services

currently provided in-house by local authorities, that may continue under a commissioning arrangement with the care board, or the care board may take over direct delivery, with staff transferring to the care board. These will be decisions to be taken locally as the care boards are established. Once the structure and governance of care boards and their localities have been decided, decisions about the employment of staff will be made.

49. The Bill also enables Ministers and the care boards to:

- Conduct or assist others to conduct research relevant to the NCS services
- Provide training and development to the workforce including reimbursement of costs
- Provide financial and other assistance to voluntary organisations or others involved in social care
- Acquire and dispose of land in order to enable them to deliver NCS services.

50. All of these provisions reflect existing powers that Ministers have under the Social Work (Scotland) 1968 Act in relation to social care, but they have been modified to reflect the fact that Ministers will have the overall responsibility for delivery of social care.

### *Consultation*

51. The consultation proposals were based on the recommendations of the IRASC that the Scottish Ministers should be accountable for social care, that a National Care Service should be established, and that Integration Authorities should be reformed to take sole responsibility for social care and community health services, instead of this being shared by local authorities and health boards. The analysis of the consultation found broad support for the Scottish Government's proposals. 72% of respondents agreed that the Scottish Ministers should be accountable for social care through a National Care Service.

52. The rationale behind these changes is to address the challenges identified by the IRASC, as outlined previously, which have meant the current structures have not delivered the scale of improvement required to meet people's needs consistently and effectively. Inconsistency of people's experiences with social care arises out of complex and inconsistent governance arrangements, and the lack of national oversight and coordination, lack of integrated budgetary and financial planning, and lack of collaborative and strategic leadership has made it more difficult to address these problems.

53. Transferring statutory responsibility for social care to the Scottish Ministers and establishing the NCS will directly address some of these challenges and enable everyone to work together to deliver more consistent improvements in people's experiences of care across Scotland.

54. In particular, it will provide national oversight and coordination for community health and social care, ensuring that there are clear lines of accountability and responsibility at the national level for actively managing the social care system and planning for services. In fulfilling this role, the NCS at the national level will work in conjunction with the care boards, with intelligence and data from their local provision of services feeding into national planning and the NCS supporting collaborative and strategic leadership among the care boards.

### *Alternative approaches*

55. Alternatives to establishing an NCS as set out in the Bill were considered, as follows:

- Do nothing - do not transfer responsibility for social care to the Scottish Ministers or establish an NCS at national level or reform Integration Authorities. This option would see the existing improvement work continue such as making progress with improving pay in social care, strengthening implementation of Self-Directed Support, and improving prevention and early intervention. The Scottish Government would remain committed to working with partners and particularly with local authorities and health boards to ensure the social care system delivered the best possible outcomes for people.
- Lead Agency - do not transfer responsibility for social care to the Scottish Ministers or establish an NCS at national level but encourage the adoption of the Lead Agency model as an alternative to IJBs. This would see either the health board or the local authority in an area agreeing to take full responsibility for provision of care including planning, commissioning, quality and other operational activity across all the community health and social care services that are currently in scope for the IJBs. This would mean that there were clearer lines of accountability for the provision of care locally as one body would be responsible for delivery, but it would not address the issues about the lack of overall accountability for the quality and consistency of care nationally.
- Do not transfer responsibility for social care to the Scottish Ministers but create an NCS to act as an advisory body at national level with statutory responsibility for social care provision remaining with local authorities. This option would see the Scottish Government establish an NCS focused on coordinating and leading improvement at national level, working with IJBs, local authorities and health boards. Similar to the above two options of not establishing an NCS, this option would permit some improvements to be made along the lines of existing action being taken. This option would not address the issues about the lack of overall accountability for the quality and consistency of care.

56. None of these alternative options would require changes to legislation. However, under all three options the outcomes for people accessing care and support and care workers would be similar. In all cases, the lack of national leadership, oversight and accountability would continue, and therefore the scale and impact of the changes that the IRASC proposed could not be achieved. These approaches therefore entail a risk that the current issues facing the social care system will continue. Existing measures to address the current problems in social care have fallen short, as highlighted in the IRASC. 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.

### *Care boards*

57. Sections 4 and 5 of the Bill make provisions about care boards, including their establishment and abolition. Sections 7 – 9 describe the strategic plan that a care board is required to have. Sections 14 – 17 describe Ministers' powers to intervene in relation to care boards. Chapter 5 of Part 1 relates to other functions connected to the provision of care that the Scottish Ministers and care boards can carry out, such as research. Chapter 6 confers powers on the Scottish Ministers to determine which functions should be exercised by which NCS institution, and to

transfer people and property in regard to those transfers. Schedule 1 of the Bill makes further provision about care boards, including their general powers, committees and sub-committees, accounts and annual reporting, membership and staff.

58. Reforming local community health and social care structures is critical to the overall success of the NCS reform programme.

### *Consultation*

59. The consultation proposed the replacement of Integration Authorities with ‘Community Health and Social Care Boards’, which would be directly accountable to the Scottish Ministers and have responsibility and authority for planning, commissioning, and procurement of community health and social care and other relevant support. These boards would:

- Have board members who will represent the local population, including people with lived and living experience, and carers, in addition to local elected members to preserve local democratic accountability
- Employ their own chief executives and staff who plan, commission and procure care and support
- Oversee the delivery of all community health and social care services and support within their local area, monitoring and improving impact
- Be able to commission services from local authorities, the NHS and the third and independent sectors.

60. Around three quarters of the respondents that answered the question agreed that these Community Health and Social Care Boards should be the sole model for local delivery of community health and social care in Scotland.

### *Bill provisions*

61. The Bill therefore makes provision for the Scottish Ministers to establish and fund these boards, called “care boards” in the Bill, to plan and deliver NCS services locally, replacing current Integration Authorities. There is also provision for “special care boards” to deliver national functions if needed.

62. The relationship between the Scottish Ministers and the care boards is expected to work in a similar way to the current approach to health boards. It will see a regular cycle of reporting and monitoring of performance and oversight of expenditure. Section 16 requires a care board to comply with Directions which may be issued by Ministers, which will give the Ministers the powers they need to ensure care boards are delivering for people who access care and support and for the workforce.

63. The Bill sets out a framework for how the new bodies will be constituted, and how they will operate and deliver services. Further detail will be set out in secondary legislation and Ministerial directions following further consultation and co-design with key stakeholders, including those with lived experience, to determine more detailed policy in relation to:

- The number of care boards and the geographic areas they will cover

- The membership of the boards and their relationship with the national NCS structures
- The duties, functions and services they will provide, both directly and commissioned from other bodies
- Workforce, employment and contractual arrangements (including transfer of staff from local authorities)
- maximising opportunities for collaboration and co-operation between care boards and other bodies, including local authorities, NHS boards and independent and third sector bodies

64. Chapter 4 of Part 1 of the Bill also makes provision for the Scottish Ministers to be able to take appropriate action in the event that things go wrong. This includes the power to hold an inquiry into a care board and remove its members. Ministers will also be able to direct that any social care function within the remit of the NCS is delivered by another care board or by the Scottish Ministers themselves in the event of an emergency or service failure (in practice, this would be through the new part of Government that will form the NCS at national level).

### **Additional national functions**

#### ***Improvement***

65. Section 3 of the Bill gives the Scottish Ministers responsibility for ensuring that there is continuous improvement in the way that the National Care Service delivers services.

66. This provision relates to a fundamental ambition of the NCS to improve outcomes for those accessing social care support. This stems from an IRASC recommendation that, “the National Care Service should lead on the aspects of social care improvement and support that are best managed once for Scotland, such as workforce development and improvement programmes to raise standards of care and support.”

67. There is evidence of many improvement programmes across government and within the wider social care support landscape, but there is less evidence of how areas for improvement are identified, how data requirements are recognised or data is collated, how good practice is shared and how impact is evidenced on a national basis.

68. The Scottish Ministers having the responsibility for monitoring and improving of quality supports the prioritisation of improvement work with a focus on evidence, informed action, and clear monitoring to ensure demonstrable impact at a national level. It supports the development of a national framework that has:

- an agreed vision and common understanding of improvement
- coordinates evidence informed action around the key themes
- agreed improvement principles and an improvement model
- a consistent way of measuring improvement, acknowledging that the starting point will not be the same for everyone.

69. A collaborative approach will be taken to developing a national framework via a multi-agency steering group co-chaired with COSLA and SOLACE and the establishment of a lived experience panel.

### *Consultation*

70. The consultation material for the NCS included questions relating to improvement stating that, “improvement must be a key focus of the NCS. The establishment of a single national body, with clear lines of accountability to Ministers at a national level, gives us the opportunity to ensure that consistent, high standards of performance are developed and maintained across Scotland. That national view will also ensure that learning can be shared and implemented across the country. Intelligence gained from inspection and scrutiny of services will be used to identify where improvement is needed, and themes will be fed back into commissioning and procurement.”

71. The consultation analysis found that the perceived benefits of this approach included:

- the NCS taking responsibility for improvement across community health and care services
- more consistent outcomes for people accessing care and support across Scotland
- better coordination of work across different improvement organisations
- the opportunity to create greater consistency across Scotland, while offering more guidance for people accessing care and support and staff.

72. Risks identified included:

- the potential loss of the voice of people accessing care and support and of care workers
- impact on local services, understanding of local needs and local accountability
- the variation of needs especially where more rural and remote areas such as the Islands are concerned, and staffing concerns with regards to retention and morale
- the potential for increased bureaucracy and disruption to those areas that currently work well.

### *National Social Work Agency*

73. A National Social Work Agency (NSWA) will be established as part of the NCS at national level, given the important links and function that social work will have within the wider NCS structure. Since the policy intention is for the NSWA to be established within Government as part of the NCS structure, no separate provision within the Bill is necessary, but it is described here to explain the overall policy objectives of the Scottish Government as regards the NCS and the Bill. The NSWA will contribute to meeting the Scottish Ministers’ duties to provide a national care service, reflecting its principles and human rights based approach, and to monitor and improve the quality of the services that the NCS provides, since those services are expected to include social work as well as social care.

74. Under current arrangements, the Scottish Government sets the overall strategic framework for social work delivery. There is no single national body which has oversight and leads social

workers' professional development, education, improvement, data and workforce planning. Terms and conditions are set by individual employers. The majority of social workers are employed by councils, resulting in local variations in pay and grading. Therefore, it is difficult to have an overview of the sector, and to report on and strategically plan the social work workforce.

75. The NSWA's objectives will be to support and invest in the social work profession by providing national leadership, and overseeing and supporting social work in the following areas:

- education (pre and post-qualifying)
- improvement (by establishing a Centre of Excellence) and scaling up good practice
- workforce planning
- training and development
- social work terms and conditions (including pay).

76. These objectives will enable social workers to work more effectively with people to transform their lives and implement rights-based practice.

#### *Consultation*

77. The IRASC recommended, "Establishing a national organisation for training, development, recruitment and retention for adult social care support, including a specific Social Work Agency for oversight of professional development."

78. The Scottish Government's consultation asked questions about the benefits and risks of establishing a NSWA, whether the NSWA should be part of the NCS, and what areas and issues the NSWA should lead on. Consultation engagement events were organised in collaboration with frontline social workers to ensure their views were included. There will be ongoing collaboration and engagement with the sector, including frontline social workers, on the development of the NSWA.

79. The analysis of NCS consultation responses showed high levels of agreement for the establishment of a NSWA and the proposed benefits including:

- improving training and Continuous Professional Development
- supporting workforce planning
- raising the status of social work
- greater consistency in social work standards across Scotland
- greater empowerment of the profession
- improving understanding and therefore the profile of social work
- potential consistency in pay grades and scales
- potential to deliver clear leadership for the sector.

80. Several key stakeholder responses to the NCS consultation gave their support to the establishment of a NSW, including the Scottish Association of Social Work and Social Work Scotland.

#### *Alternative approaches*

81. Consideration was given to alternative approaches. These included establishing a NSW independent of the Scottish Government, and whether there were other bodies who could deliver the objectives of the NSW. Options included adding the NSW's remit to existing bodies such as the Scottish Social Services Council or the Care Inspectorate. However, these bodies/organisations already have distinct and extensive remits, both of which go beyond just social work. Another alternative considered was to establish a separate organisation independent of the Scottish Government; however it is important that the functions of the NSW for social work are well integrated with other parts of the NCS, for example in workforce planning and in raising the status of social services as a whole.

82. Consequently, in order to retain the national dimension, reduce the financial costs and in response to high levels of support from stakeholders as detailed above, it is proposed to locate the NSW within the NCS.

#### ***Workforce Planning***

83. Workforce planning does not have related provisions in the Bill, but this section is included to help explain overall policy proposals for the NCS and the NSW. One of the proposals for the NCS is that it should have national oversight of workforce planning and workforce data for the social work and social care workforce (social services workforce).

84. The Scottish Social Services Council (SSSC) is the current national lead for social services workforce planning. Under section 58 of the Regulation of Care (Scotland) Act 2001, it is under a legal duty to "ascertain" the required numbers of different types of workers in the social services sector.

85. This means the SSSC must publish official statistics on the profile and make-up of the social work (including Mental Health Officers), social care, early learning and childcare workforce. The complexity of the workforce given the different employers hampers national workforce planning and this is one of the issues that the NCS will address.

86. Social services workforce planning currently sits with employers and organisations that commission social services, namely councils and Integration Authorities (IAs). Social services are commissioned from a wide range of providers. It is estimated that over 1,200 providers employ the social services workforce in the public, independent and third sectors, many of whom employ less than 50 people. These numbers illustrate how fragmented the sector is.

87. Providers in the third and independent sectors, as well as local authorities, have a limited ability to undertake evidence-based workforce planning. The lack of integrated planning between the health and social services workforces has also been identified as an ongoing issue. There is currently no national workforce planning for social workers, the majority of whom are employed



by the 32 local authorities. There is also no national commissioning of education places for student social workers.

88. Access to reliable data across the social services sector has also been identified as another important factor, which has to be addressed. The data that the SSSC publishes is a year old at the date of publication. No organisation currently has responsibility for modelling or forecasting future workforce trends and in the short term this is being addressed through the joint production of the Scottish Government/COSLA Health and Social Care Workforce Strategy.

89. As a result, workforce planning has proven difficult, with inconsistent standards being applied across social care commissioners and providers. For the Scottish Government, it has proven difficult to take an active role in influencing and directing workforce planning and workforce data, due to the sheer number of social care providers and a current lack of directive powers.

90. On the strength on existing evidence, it has become clear that the current approach is not working, and that an alternative has to be implemented as a priority. Consequently, it is proposed that the NCS will have national oversight of workforce planning for the social work and social care workforce (social services workforce). Within the NCS, the NSWA will lead on workforce planning for social workers and social work students.

#### *Consultation*

91. The consultation sought views on how to make it easier to plan for workforce across the social care sector. Individuals and organisations were in agreement that having ‘a national approach to workforce planning’ (74% of individuals and 77% of organisations) as well as ‘providing skills development’ opportunities for relevant staff in social care (65% of individuals and 77% of organisations) would be the easiest way in which to plan for workforce across the social care sector. The need to take into account the requirements of rural and remote areas, including the islands, was also highlighted.

#### **Strategic planning and ethical commissioning strategies**

92. Chapter 2 of Part 1 of the Bill sets out that each care board must have a Strategic Plan, which sets out their vision, objectives and budgets for their care board area. Scottish Ministers will review and approve care boards’ Strategic Plans against statutory guidance, which will be co-designed with stakeholders.

93. The Bill also sets out that each care board must have an ethical commissioning strategy included within their Strategic Plan, which sets out their arrangements for providing services and how those arrangements have been designed to ensure they best reflect the NCS principles. The Scottish Ministers must also have an ethical commissioning strategy for any services provided at the national level. Both the Scottish Ministers and care boards must consult publicly on their draft strategies, and make the latest version of the strategy public. Local care boards must also consult their community planning partners and neighbouring care boards.

94. Commissioning is the process of assessing and identifying the need for services, developing a vision, strategy, policy, and forward plan to meet these needs; and designing a service or system for delivery which includes monitoring and continually improving the effectiveness of how these needs are met in practice. Commissioning includes deciding whether a service should be delivered directly by the organisation or obtained from another provider, taking account of the market available and other relevant factors.

95. Ethical commissioning strategies will enable the NCS to implement Fair Work and the other NCS principles. Ethical commissioning, in relation to social services, has a person-centred care first/human rights approach at its core, ensuring that strategies focus on high quality care. This includes Fair Work practices which encourage the development of a quality, sustainable, and appropriately valued work force; climate and circular economy considerations to support a just transition to net zero; financial transparency and commercial viability of any outsourced services; full involvement of people with living experiences throughout, putting the person at the centre of making the choice; and a shared accountability between all partners and stakeholders involved in delivery.

96. Ministers will have the following additional statutory mechanisms to ensure that care boards act consistently when it comes to implementing the principles through their ethical commissioning strategies:

- Ministers must approve care boards' Strategic Plans including their ethical commissioning strategies, and so will need to be satisfied that the ethical commissioning strategy is consistent with the principles. Once an ethical commissioning strategy is confirmed, the care boards will have a legal duty to deliver services in accordance with it.
- Ministers will also have a power to direct care boards in the exercise of any of their functions. This could be used to give more direction in respect of their ethical commissioning strategies. Again, the care boards will be under a legal duty to comply with such ministerial directions.

97. The Scottish Government proposes that the NCS will (separately to the Bill process) develop and manage guidance in the form of a National Structure of Standards and Processes for ethical commissioning and procuring of social care services and supports. This Structure of Standards and Processes will apply the NCS principles to commissioning and procurement decision making. This will ensure a consistent approach to the way commissioning and procurement delivers a person centred, human rights based approach that supports the outcomes and needs of the individual, meets minimum quality standards established for social care services, ensures Fair Work, promotes sustainability and ensures consistent implementation and equitable quality of service throughout Scotland. The Scottish Government is committed to developing this Structure of Standards and Processes together with people who access social care support, care workers and unpaid carers and other stakeholders and delivery partners.

### ***Ethical Procurement***

98. If the commissioning process determines that a service should be procured from an external provider (rather than being secured by in-house provision, or through partnerships, alliances or grants to external providers), procurement is the process of engaging collaboratively with the

market, strategic partners, and representatives of those who access and provide the services, to deliver the commissioning strategy, policy, and service in practice. Ethical and Sustainable Procurement ensures that these are not only delivered to the right quality, in a timely, efficient, legal, and commercially sustainable way, but that the Scottish Government uses the power of procurement to meet those broader social, economic and environmental objectives agreed in the vision.

99. The Scottish Ministers supported all the IRASC recommendations in respect of procurement reform. These can be implemented through Ministers' new overall accountability for the way in which social care is delivered across Scotland, such as the principles and requirement for ethical commissioning strategies, and through directions to care boards.

100. Under the NCS, care boards will have responsibility for the majority of social care procurement. It is proposed that the NCS should arrange specialist and complex services which could require input from a range of public sector organisations, nationally and on a 'once for Scotland' basis.

101. Current procurement legislation provides a well-established framework to support an ethical approach to procurement in the NCS. The Public Contracts (Scotland) Regulations 2015 apply a Light Touch Regime (LTR) to social and other specific service contracts at certain threshold value, currently £663,540. This regime specifically allows quality, continuity, accessibility, specific user needs and the involvement/ empowerment of users to be taken into account when awarding contracts. Below the LTR threshold value, no procurement procedural rules apply. Other types of service contract, which do not benefit from the LTR, require full procurement procedures when the value is £213,477 and over.

102. An ethical approach to procurement is further established through the Procurement Reform (Scotland) Act 2014, which applies sustainable procurement considerations, including Fair Work and environmental matters, and additional transparency measures to all procurement above £50K for services or goods and above £2m for works<sup>9</sup>.

### *Consultation*

103. The consultation sought views on the NCS being responsible for a Structure of Standards and Processes for ethical (commissioning and) procurement.

104. There was widespread agreement that the NCS should be responsible for the development of a Structure of Standards and Processes with 83% of respondents in agreement, and the majority stated that it would help to provide services that support people to meet their individual outcomes, and contribute to better outcomes for social care staff.

### ***Fair Work***

105. The Scottish Government is seeking to improve Fair Work practices consistently across the social care sector. The Bill proposes to enable the NCS to support Fair Work in the sector, by including Fair Work within the guiding principles of the NCS (section 1 of the Bill), establishing

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<sup>9</sup> 'Works' is the term used in procurement regulations for construction-related contracts.

the NCS as an exemplar of Fair Work. The NCS ethical commissioning strategies also need to reflect the NCS principles, and will therefore be a key tool for ensuring Fair Work is embedded in the way services are planned and provided. This will also support the Scottish Ministers to improve the way in which Fair Work is identified and considered as part of commissioning and procurement practices.

106. Legislation on employment rights and duties is reserved to the UK Parliament. However, since 2016, the Scottish Government has provided funding via local authorities to ensure workers were paid a minimum hourly rate, through annual funding. Whilst this national policy has resulted in the highest minimum hourly rates across the UK, it is not an efficient way to raise pay, and does not address the issues of poor or inconsistent terms and conditions. The Scottish Ministers will continue to consider how they can improve these issues within devolved powers.

107. There are over 209,000 workers in the social care sector - 83% are women, 11% are on zero hour contracts. Progressing Fair Work across social care, including increasing pay, would not only help social care staff but will also positively impact on wider Scottish Government priorities on child poverty, Fair Work and post-Covid pandemic recovery.

108. Evidence through regular feedback from the workforce, those they support, employers and trade unions (and from research such as the Fair Work Convention Inquiry and subsequent report into social care)<sup>10</sup>, indicates the workforce is undervalued for the work they do. The workforce is subject to inconsistent and often low rates of pay, and lack of consistency in terms and conditions across the 1,200+ social care employers. Poor pay and conditions contributes to the workforce, and careers within the sector, being seen as 'low skilled,' and therefore undervalued.

109. Current rates of pay and conditions do not support effective recruitment and retention of a highly skilled workforce. Many skilled and valued workers choose to leave a career in social care, as they can often earn more or have better conditions working in other professions (such as retail and hospitality), whilst managing less pressure and challenge than they do within roles in the social care sector. This limits the capacity of the workforce, which places additional demand on services, which can result in delays and levels of need not being consistently met within communities. As demand for social care grows, with more people ageing and having more complex needs, a stable and resilient workforce is required to meet the demands.

### *Consultation*

110. Collective arrangements and funding conditionality (which are the specific terms attached to funding from the Scottish Government, which must be met) are potential mechanisms to increase pay and conditions across a sector. The NCS consultation found significant support for its proposals to increase pay and conditions by collective agreement, and giving commissioners of services and current and prospective employees more transparency over how Fair Work is applied within employer organisations through a Fair Work Accreditation scheme. The IRASC recommendations on workforce and Fair Work were also highlighted by the Fair Work

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<sup>10</sup> [Fair Work in Scotland's Social Care Sector 2019 - The Fair Work Convention](#)

Convention's report into Social Care (2019)<sup>11</sup>, which the Scottish Government responded to by creating the Fair Work in Social Care Group to support taking the recommendations forward. These include working towards ethical commissioning practices, as part of the development of the NCS; the development of recommendations for a minimum fair work procurement standard for social care; developing options, that recognise and take into account a new sector-level body responsible for ensuring that social care workers have effective voice; proposals for the development of a collective bargaining structure where these arrangements do not currently exist; and the development of a Fair Work Framework in social care.

111. The NCS consultation found strong support for the concept of the Fair Work Accreditation Scheme amongst individuals and organisations alike (83% of individuals and 81% of organisations were in favour). The feedback suggests that such a scheme would help highlight the value and importance of people who work in social care. The Scottish Government will consider options for such a Scheme, and any further activity would be subject to stakeholder consultation.

112. Specifically, the NCS consultation analysis demonstrated that improved pay and conditions for people working in the care sector were supported, with 83% ranking improved pay and 79% ranking improved terms and conditions (this includes improvements to sick pay, annual leave, maternity/paternity pay, pensions, and development/ learning time) as factors that would make social care workers feel more valued in their role.

113. In addition, the majority of respondents (87%) were in agreement that a national forum should be established to advise the NCS on workforce priorities, terms and conditions and collective bargaining which would include workforce representation, employers and care boards. It was suggested that a national forum would be an opportunity to give employees "a voice". The Scottish Government will consider the most appropriate arrangements to advise NCS on these issues.

### ***Inclusive Communications and Independent Advocacy***

114. The NCS principles (section 1 of the Bill) include provision that the NCS and those providing services on its behalf are to communicate with people in an inclusive way. Through ethical commissioning strategies and the general duty on the Scottish Ministers, this will be embedded in the delivery of NCS services and in the Scottish Ministers' functions in relation to the NCS. The Scottish Ministers will also be able to direct care boards, if necessary, on the detailed implementation of inclusive communication.

115. The IRASC also highlighted the importance of access to independent advocacy in empowering people accessing support and unpaid carers and made the recommendation that,

“More independent advocacy and brokerage services, including peer services, must be made available to people to ensure that their voices are heard, and to help prepare for participation in planning and organising their support.”

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<sup>11</sup> The [report](#) made 5 recommendations including for the Scottish Government to support the creation of a new sector body that establishes minimum standards for fair work terms and conditions and to reform social care commissioning.

116. While there are a number of existing provisions relating to independent advocacy for services that will form part of the NCS remit, it will be important to develop and implement a coherent, consolidated and consistent approach to independent advocacy services across the range of NCS services. Consistent with the human rights based approach to the development of the NCS, determining how independent advocacy services should be provided will be done through co-design with people with lived or living experience of accessing services.

117. Section 13 therefore provides for regulations to be made in respect of independent advocacy, which will allow for the results of the co-design process to be implemented and for the policy to be adapted in future to meet new and emerging advocacy needs.

## **Charter and complaints**

### ***Charter of Rights and Responsibilities***

118. A fundamental tenet of the human rights-based approach to the NCS is providing accountability to those accessing support and empowering them to claim their care-specific rights. Central to facilitating this is the development of an NCS Charter of Rights and Responsibilities co-designed with those with lived or living experience. Respondents to the NCS consultation said that of the seven suggested options, a Charter of Rights and Responsibilities was the most important for a new system for NCS complaints and redress. The NCS Charter will set out what people can expect from the NCS and provide a clear pathway to recourse should their rights in the Charter not be met.

119. Chapter 3 of Part 1 of the Bill requires the Scottish Ministers to prepare and publish the Charter following appropriate consultation and engagement, including those with lived experience. As a minimum the Charter will set out:

- The rights and responsibilities of those who access community health and social care services
- The processes available for ensuring these rights are upheld.

120. The Bill also states that the NCS Charter may set out such other information as the Scottish Ministers consider appropriate in relation to services within the scope of the NCS, including information that the Scottish Ministers believe should be included following consultation and co-design with stakeholders.

### ***Complaints***

121. The IRASC recommended that, “When things do not work well for people and their rights have not been upheld, they must have rapid recourse to an effective complaints system and to redress”.

122. Sections 14 and 15 of the Bill aim to strengthen complaints and redress systems for the NCS and wider social care services. The provisions do this through a range of measures, including:

- Placing an obligation on the Scottish Ministers to ensure that there is a single point of access for complaints in relation to NCS services and that complaints made through this portal are passed on to those best placed to deal with them. This will make it easier for service users, who may be unsure to which body their complaint should be directed, to register complaints and should result in complaints being addressed more promptly by the appropriate body.
- A power for the Scottish Ministers to make regulations in relation to the handling of complaints about NCS services and/or wider social care services.

123. As with the development of the Charter, the Scottish Government will co-design to develop and strengthen the complaints system with those with lived experience. The Bill therefore contains an overarching power to make provision by secondary legislation to implement any further reforms agreed as part of the co-design process. These regulations will also be able to create penalties in relation to complaints processes.

124. The direction-making power for Scottish Ministers (section 16 of the Bill, as set out in paragraphs 62 and 99), will also be used to ensure care boards and their service providers also have suitable complaints systems, with the directions incorporating guidance on best practice complaints systems.

### **Powers to intervene with contractors**

125. Under sections 20-22, the Scottish Ministers will also have emergency powers to intervene in an agreement with a third party for social care, in line with their overall accountability for the quality of social care provision. Where community health and social care services are delivered by a third party under a public contract or other arrangement, external factors, such as market issues, financial fluctuations, or changes in demand, can create circumstances which would have a significant impact, putting people's care provision needs at risk.

126. Even if the Scottish Ministers are a party to the arrangement, which would apply where national provision is arranged, there are limits to the ability to react to a third party failure or external event. It is therefore necessary that the Scottish Ministers are able to use emergency powers to intervene in an arrangement with a third party, in specific situations and where contractual remedies have been exhausted, or urgent action is required to protect and ensure those who access social care support continue to receive the care and support that they require.

127. Scottish Ministers would be able to issue guidance, which third party providers must have regard to when delivering the service, and to have power to provide assistance, give direction or to intervene.

### **TRANSFER OF FUNCTIONS**

128. A core element of creating the NCS is that the Scottish Ministers will be ultimately accountable for social care support, as they are already accountable for health services. This is essential to achieve the aim of providing consistent, high quality support for everyone who needs it across Scotland, enabling integration, improvement and best practice to be shared on a national basis.

129. Chapter 6 of Part 1 gives the Scottish Ministers power to transfer statutory functions to themselves or to a care board. This will provide the basis for the NCS to deliver services. Section 27 limits the functions that can be transferred from a local authority to functions under enactments listed in schedule 3. This list is based on the local authority functions which are able to be delegated to Integration Authorities under the 2014 Act. The enactments cover functions relating to social work and social care for adults and children, including local authorities' role in mental health care and adult and child protection, and justice social work.

130. Section 28 gives the Scottish Ministers power to designate or transfer health functions to the NCS, in order to continue and build on the integration of health and social care services, and section 29 allows Ministers to reorganise functions within the NCS in future. Staff and property can be transferred alongside the functions they relate to.

131. The detailed transfer of functions will be set out in regulations when care bodies are established. This provides the opportunity to make careful arrangements before any transfer to ensure joined up working continues, for example by adjusting arrangements for multi-agency partnerships or committees. Planning for the transfer of functions will also need to take into account ongoing reviews or programmes of improvement, some of which are mentioned in the sections on specific functions below.

132. The Bill enables children's services and justice social work to be brought into the NCS alongside adult social work and social care. The creation of the NCS will be a significant change in the way that these services are organised in some areas, since children's services and justice social work are not delegated to IAs in all areas, and it is important that the risks and opportunities, costs and benefits are fully assessed before a decision is made to implement the transfer. Recognising that further evidence and consideration is needed before a transfer of children's services and justice social work, the Bill requires Scottish Ministers to carry out further consultation on a proposed transfer of a children's or justice service from local authorities. A summary of the consultation process and responses must be laid before the Parliament with the implementing regulations for parliamentary scrutiny before any transfer takes place.

### **Alternative approaches**

133. The statutory transfer of functions to the NCS is essential to achieve the aim of the Scottish Ministers being solely accountable for the delivery of social care support, as local authorities are independent bodies. The IRASC highlighted that this structural change is necessary to achieve the necessary improvements in the delivery of services. Taking a power to transfer those functions, wholly or in part, from local authorities and from health boards, allows for further consideration to be given to the detailed arrangements; for example, whether some functions should be transferred for certain purposes but not for others, or whether transfers should take place in some areas before others. An alternative would have been to transfer all the functions on the face of the Bill and control the timing and phasing through commencement regulations. However, this would not allow for the same level of scrutiny of those detailed arrangements.

### **Specific functions**

134. The following sections provide more detail on the transfer of functions relating to justice social work, children's social work and social care, adult support and protection, mental health



support, alcohol and drugs support, and explains the exclusion of homelessness functions from transfer.

### **Justice social work**

135. Justice social work (JSW) services, with support from partners including third sector organisations, are responsible for the delivery of community interventions and related assessment and support, including:

- assessments and reports to assist decisions on sentencing
- court services to assist those attending court
- group work interventions which are used to address offending behaviours using intervention programmes (such as the Caledonian Programme)
- bail information and supervision services as an alternative to custodial remand
- supervising people on social work orders to tackle offending behaviour and its causes
- supervising people who are required to perform unpaid, useful work for the benefit of the community
- prison-based justice social work services to those serving custodial sentences that involve statutory supervision upon release
- preparing reports for the Parole Board to assist decisions about release from prison
- throughcare services including parole, supervised release and other prison aftercare orders to ensure public safety
- working collaboratively with justice partner agencies through the MAPPA process for those in the community deemed to be a risk to public protection.

136. While the IRASC did not include JSW in its scope, given the potential benefits of inclusion, and implications for social work arising from the proposals, the consultation on the NCS invited views on whether JSW should become part of the NCS (along with social work more broadly).

137. Ensuring consistency of access to justice-related services across Scotland is a challenge, and has been a long standing concern. Issues exist regarding minimum standards, resourcing, and arrangements to support delivery of effective, person-centred community justice services, which improve outcomes for individuals, families, and communities. While there are a number of ways to respond to the above challenges, 62% of responses to the consultation were supportive of justice social work being included in the NCS.

138. Additionally, Audit Scotland published a paper, ‘Community Justice: Sustainable alternatives to custody’ in July 2021, which raised concerns about progress being made in shifting from use of custody to community based interventions and highlighted a number of issues the Scottish Government should consider, including:

- The reasons for geographical variation in use, cost, and success, of community sentences, as well as an understanding of variation in costs between different community justice interventions

- Whether all stakeholders involved in the planning and delivery of community justice have a shared understanding of lines of accountability and areas of responsibility
- Whether the intended outcomes of community sentences, beyond reducing reoffending, have been clearly defined.

139. As previously noted, section 27 and schedule 3 of the Bill include powers which enable a transfer of responsibilities in relation to justice social work. If justice social work were to be included within the NCS, the Scottish Government considers that this could contribute to addressing the issues highlighted above. In particular, it is anticipated that the benefits of inclusion would include:

- **More consistent delivery of justice social work services:** with responsibility lying with Ministers rather than local authorities, there is potential to address longstanding concerns around inconsistent availability and quality of services, leading to better outcomes for service users. The delivery model could be centred on a national agency under the NCS umbrella, or through care boards, or be a hybrid model, all of which would have the potential to increase consistency while focusing on outcomes for service users.
- **Stronger leadership and greater accountability:** the NCS model could help to provide greater clarity around leadership and accountability arrangements.
- **Keeping social work together:** if the NCS includes all other aspects of social work, JSW inclusion would assist an integrated approach. It is common for individuals and families who need support from social work to be involved with multiple services, including children and families, justice and adult social care. As well as retaining professional identity by aligning all social work services under one body, this could facilitate more integrated and holistic service delivery.<sup>12</sup>
- **Better links to public health services:** this would align drug, alcohol, and mental health services and prison health with social care.
- **Building on existing integration:** JSW services are already delegated to the Integration Joint Board (IJB) in 17 areas, so transferring it to the NCS will avoid unpicking integration in those areas, and they will provide a model for those which are not yet integrated.

140. The proposals from the IRASC in relation to adult social care have implications for the whole of social work, including justice and children's services. Justice social work is delegated to Integration Authorities in many areas so reform of IAs requires justice social work to be considered. Furthermore, the NCS has potential to deliver benefits in relation to longstanding concerns about the consistency and availability of community justice services; creating greater links to related public health services and improving outcomes across social care, social work and community health.

141. The Bill will give the Scottish Ministers the power to transfer relevant responsibilities in relation to justice social work services from local authorities to themselves or to a care board.

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<sup>12</sup> Under current arrangements, 19 IJBs have Children's Health Services delegated, 10 have Children's Social Care and Social Work Services delegated and 15 have Justice Social Work delegated.

Given that justice social work was not considered as part of IRASC, however, it is important that the risks and opportunities, costs and benefits are fully assessed before a decision is made to implement the transfer. The policy intention is that a preferred model of delivery will be co-designed with stakeholders, backed by relevant assessment of evidence, and will be subject to consultation, parliamentary scrutiny and approval before any transfer takes place.

142. Section 30 of the Bill requires the Scottish Ministers to consult publicly about any proposed transfer relating to justice services using the enabling power before regulations are brought forward. When laying draft regulations to transfer JSW functions, the Scottish Ministers must also lay before Parliament a summary of the process by which they consulted in relation to the function transfer and the responses they received to that consultation.

143. The potential inclusion of JSW in the NCS also has implications for the wider model of community justice. The current model came into operation on 1 April 2017, underpinned by the Community Justice (Scotland) Act 2016, which places duties on a group of statutory partners to engage in community justice planning and to report against a set of nationally-determined outcomes. This relies on effective partnership working at both local and national levels.

144. Community justice partnerships in local authority areas are made up of a number of statutory partners (Chief Constable of Police Scotland, Health Boards, Integration Joint Boards for Health and Social Care, local authorities, Scottish Courts and Tribunals Service, Scottish Fire and Rescue Service, the Scottish Ministers (in practice, the Scottish Prison Service and Crown Office and Procurator Fiscal Service) and Skills Development Scotland) and are supported by Community Justice Scotland, which was established by the 2016 Act. To ensure the potential integration of JSW in NCS is as effective as possible, a process of assessment and co-design around proposed delivery arrangements for JSW services and the model of community justice will be undertaken. Timing and methodology will be subject to further engagement with relevant stakeholders.

### ***Alternative approaches***

145. While alternative approaches have been considered, the main options can be delivered within the overall framework of the NCS, as there is sufficient flexibility to co-design the delivery model for justice social work services and redesign of the model of community justice. It is anticipated that to implement a revised model, a combination of secondary legislation powers as proposed in the NCS Bill and further legislation to amend the Community Justice (Scotland) Act 2016 may be required.

146. One option considered was that responsibility for justice social work services should remain with local authorities under unchanged arrangements and that no provision should be made in the Bill enabling a possible future transfer into the NCS. This is effectively the “do-nothing” option. However, in practice even if justice social work service were not in the scope of the NCS, there would be implications for justice social work and community justice more broadly. Social work services for vulnerable adults and children’s services are closely connected to JSW, and JSW is already delegated in 17 IJB areas. These arrangements would need to be unpicked and new arrangements would need to be made in all local authority areas to align JSW with the services provided by the NCS if it was not included. Furthermore, a separation of JSW from other aspects of social work could leave service users at a disadvantage in being able to access universal services. Having considered consultation responses, the potential benefits of the NCS and long standing

issues around the consistency of availability of services as well as the risk of not having the option of an enabling power to transfer responsibilities, should that appear in due course to be the preferable approach, the “do nothing” option was not considered to be suitable.

147. Another option considered was to develop a new agency outwith the scope of the NCS. This would involve a transfer of JSW responsibilities from local authorities to the Scottish Ministers and the establishment of a national body. Working with the NCS would be essential and this option would not keep social work together, which was a preferred aspect raised by a number of consultation respondents. In addition, there is insufficient evidence or support from partners for any particular option such as this currently. It is considered more appropriate to retain maximum flexibility but in the context of the overall approach to the NCS to co-design, seek approval and plan to implement a coherent proposal which supports integrated, holistic approaches which improve outcomes for individuals and communities.

### **Children’s social work and social care**

148. The Public Bodies (Joint Working) (Scotland) Act 2014 allows local authorities choice in the integration of children’s social work and social care services (“children’s services”) with other services, by delegating those services to Integration Authorities. As a result, some local authorities have chosen to do so and others have not. Health boards have also taken different approaches to the integration and delegation of children’s health services. Some health boards have delegated all of their community health services for children and Child and Adolescent Mental Health Services, others have delegated some services for children, while other health boards have not delegated any. This has resulted in a complex landscape across Scotland for delivering children’s services and health services; some Integration Authorities are operating with full delegated powers for children’s health, social work and social care services, whilst some include none of these services.

149. As well as variation in the governance structure and integration of services, decision-making responsibility sitting at local level means that services, resourcing and thresholds vary across local authority areas. This means that the services received by children and families differ depending on where the family lives. It also means that the roles, responsibilities, workloads and experiences of the workforce can differ depending on where they work.

150. The NCS will include the range of adult social services set out in this policy memorandum, and will replace Integration Authorities with care boards. Nineteen IAs have at least some health services from children delegated to them by health boards and ten have children’s social work and social care services delegated to them by local authorities. The establishment of the NCS will therefore affect children’s services. A number of reports and inquiries in recent years have identified the need for improvement in children’s services.<sup>13</sup> These factors and the changed landscape of social work and social care services which the NCS will create alongside the

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<sup>13</sup> Care Inspectorate: Triennial review of initial case reviews and significant case reviews (2018-2021): [triennial-review-of-initial-case-reviews-and-significant-case-reviews-2018-2021.pdf](https://www.careinspectorate.com/31112/triennial-review-of-initial-case-reviews-and-significant-case-reviews-2018-2021.pdf) (careinspectorate.com); The Independent Care Review published seven reports: The Promise and a Pinky Promise for younger readers; The Plan; The Money and Follow the Money; The Rules; Thank You: [Care Review Reports – Independent Care Review](https://www.scotland.gov.uk/Information/Consultation/Independent-Care-Review/Independent-Care-Review-Reports); [Scottish Government Review of Children’s Services Plans \(2017-2020\)](https://www.scotland.gov.uk/Information/Consultation/Independent-Care-Review/Independent-Care-Review-Reports)

interdependency between adult care and children and their families, have led the Scottish Government to consider whether the NCS should also include children's services.

151. The interface with services for adults is a critical consideration in relation to the provision of children's services. It can be particularly difficult to separate out social work support for adults from the social care needs of the children who live with them – of children who are in the child protection system, the majority are there as a result of parental factors, including drug and/or alcohol use, mental health and involvement in the justice system. If the NCS includes adult social services only, this could have adverse consequences for the provision of holistic family services. In many areas there are existing concerns around access to and communication between adult and children's services where the adult's behaviours may be posing a risk to the child.

152. Conclusions from the Christie Commission<sup>14</sup> and the Independent Care Review ("The Promise") are that services should be experienced as joined-up support which wraps around the child and family when this is needed. This was the clear foundation for introduction of statutory Children's Services Plans in 2017<sup>15</sup> based on GIRFEC<sup>16</sup> principles. The IRASC's recommendations identified that change is needed to ensure greater collaboration and reduce the complexity of the current landscape of adult social care. The children's services landscape is even more complex.

153. The Promise set out the Independent Care Review's findings on the children's care system and the need for change. It concluded that, "for Scotland to truly be the best place in the world for children to grow up, a fundamental shift is required in how decisions are made about children and families".

154. For this fundamental shift to happen, services have to be designed in a truly collaborative way. The Scottish Government is committed to delivering The Promise in partnership with local government, health boards, the third sector and, importantly, the care community. In March 2022, the Scottish Government published its Promise Implementation Plan. Social work has a central role in delivering across the many policy areas impacted by The Promise - including residential care, youth justice and family support as well as fostering and adoption services.

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<sup>14</sup> [Christie Commission on the future delivery of public services - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/christie-commission-on-the-future-delivery-of-public-services/pages/1-1-introduction-and-terms-of-reference.aspx), June 2011

<sup>15</sup> Part 3 of the Children and Young People (Scotland) Act 2014 introduced a joint duty on the local authority and health board to work collaboratively with specified 'other services providers, relevant local public and third sector organisations, children, young people and families, to develop and deliver a joint strategic Children's Services Plan. The purpose of Children's Services Plans is to improve outcomes for all children, young people and families in Scotland by ensuring that local planning and delivery of services is integrated, focused on securing quality and value through preventative and early intervention approaches, and dedicated to safeguarding, supporting and promoting wellbeing.

<sup>16</sup> The Getting it right for every child (GIRFEC) national practice model is Scotland's rights-based approach to improving wellbeing outcomes at an individual/family level. This is an evidence-based approach supported by findings from Joint Inspection of Children's Services, using globally accepted drivers of wellbeing cited in recent OECD publications. Implementation of GIRFEC, which was first introduced in 2006, has not led to its objective for consistent delivery across, and within, all services which impact on the wellbeing of children, young people, and families. Whilst implementation has not been consistent across the country GIRFEC does improve outcomes where it is implemented effectively. The complexity of the landscape surrounding planning and delivering support for children, young people and families has been a factor in the variation of implementation of GIRFEC.

155. The Scottish Government’s key objective for children’s services is keeping The Promise and delivering a care system for children and young people which gives them what they need to thrive. The statutory requirements for joint working that were put in place prior to the Independent Care Review, aimed at achieving greater collaboration between agencies, have not achieved the degree of collaboration necessary. The integration of children’s services with adult and community health services in the NCS could provide a structure and system in which The Promise can be delivered and maintained more effectively than outwith the NCS. The NCS model could improve these services for disabled children and children with health issues as well. A better understanding of the current landscape is needed first to help the Scottish Ministers assess the best way to deliver the ambition of The Promise and improve outcomes for children and their families more broadly.

156. Strategic aims for delivering The Promise and making improvements in children’s services have been identified, which locating these services in the NCS should achieve. Transferring children’s services to the NCS is an opportunity to:

- address variation in access to and quality of services
- move to a more consistent national approach
- set standards of care and strategic planning
- reduce variation in thresholds for services
- improve accountability to Ministers and shift focus to early intervention
- improve alignment with community health services
- improve transitions between children’s and adult services.

157. Whilst recognising that needs vary across the country, the Scottish Government considers equity of access for services and ensuring a minimum standard of service are important. This links with the NCS’s ambitions for a GIRFE<sup>17</sup> (“Getting it right for everyone”) approach, with a consistent language and shared framework across both adults’ and children’s services – better joining up of services and improving consistency across all services impacting on the wellbeing of children and young people.

158. Whilst the Scottish Government considers there is a strong rationale for including children’s services, it accepts that, as the IRASC did not consider children’s services, the same evidence base as exists for adult services is not currently in place for the proposal to include children’s services in the NCS.

159. To fully consider the potential benefits and challenges of locating children’s services in the NCS, a programme of work will be taken forward to gather evidence on the impact of the integration of services and the changes that creation of the NCS will bring, given the connections

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<sup>17</sup> Building on the learning and impact from GIRFEC, GIRFE is an Adult Practice model aiming to embed Multidisciplinary Team working around the adult. GIRFE will be developed through learning in pathfinder sites and builds on good practice already taking place across Scotland. GIRFE will be a human rights based approach which focusses on what matters to the adult and their carer and puts them at the centre of all planning for their care and support. GIRFE will provide adults and their carers with a Pathway through services. A common language model will be developed for GIRFE, similar to SHANARRI for GIRFEC.).

between services for children with adult social work and social care. A crucial aspect of this will be to assess implementation of The Promise in both integrated and non-integrated areas. The Bill provides the power to transfer functions relating to children's services in order to ensure that consideration, design and decision making regarding children's services can align with the NCS as a whole. As set out in paragraph 132, the arrangements for establishment of the NCS have not been determined yet and are subject to further consideration and design. Including functions for children's services within the power to transfer under section 27 of the Bill ensures these services can be transferred at the optimal stage for children's services.

160. The requirement in section 30 for the Scottish Ministers to consult publicly about any proposed transfer relating to children's services before regulations are brought forward reflects the policy intention that a programme of work will be completed to gather evidence on, and assess, current models of children's services. The outcomes of this work will then be considered and stakeholders and children and young people will be consulted as part of the decision-making process before any regulations to implement a transfer are introduced to Parliament. Consideration will include how best to ensure that Scotland keeps The Promise and how to give further and fuller effect to the rights of children and ensuring the decision is compatible with those.

161. The Scottish Government is committed to the implementation of the United Nation's Convention on the Rights of the Child (UNCRC) to the maximum extent possible, and to delivering a proactive culture of everyday accountability for children's rights across public services in Scotland. In developing/considering the proposals for including children's services within the NCS, and the development of the NCS as a whole, the Scottish Government will seek to give further effect to the rights of children, ensuring compatibility with the UNCRC requirements.

162. Transferring children's services to the NCS would include services such as:

- Social work services for children and families and related social care services such as residential child care provision;
- Provision of services which support families in the community to prevent children being brought into care;
- Provision of services and supports to care experienced<sup>18</sup> children and young people and their children;
- Any service which provides support to children and young people and where there may be a change to support service during the transition period from child to adult services and the young person requires ongoing support in respect of wellbeing needs (e.g. disability, mental health, alcohol/substance use)
- Youth Justice services.

163. The public consultation for the NCS asked four questions about including children's services. These questions were introduced by setting out the rationale for considering inclusion of children's services in the NCS, with explanation that the IRASC did not consider children's

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<sup>18</sup> The term "care experienced" refers to anyone who has been, or is currently in care. This includes looked after at home through a Compulsory Supervision Order (CSO); looked after away from home in a residential children's house, in a foster placement or in a kinship placement (Looked After or Non Looked After).

services but should be seen in the context of developing truly collaborative services across social work, social care and health. These questions focussed on the cohesion of adult and child services, alignment with health services, reducing complexity and risks of inclusion. In responses, commonly cited reasons given in support of inclusion of children's services were that it would create greater standardisation across Scotland; it would align with a "cradle to grave" approach; it would create joined up services and help ease transitions to adult services. A number of risks were identified by respondents, including the potential loss of a local dimension to responding to need and the potential loss of the link to education. The Promise Scotland, the Care Inspectorate and Children in Scotland, amongst other organisations, highlighted the need for more evidence in relation to the proposal.

164. The Promise Scotland<sup>19</sup> also commissioned analysis of the consultation responses focussed on the implications for Keeping the Promise. This has provided an in-depth analysis of responses from eighty-one organisations and thirty-one individuals. Around half of the responses analysed indicated it was not possible to say at this stage whether children's services should be included, and that further consideration of the issue was needed with more information to understand the potential outcomes for children and young people.<sup>20</sup>

### ***Alternative approaches***

#### *'Do nothing' approach*

165. This would mean not transferring local authority duties and responsibilities for children's social services to the Scottish Ministers within the Bill. These duties and responsibilities would remain with local authorities in accordance with current legislation. The creation of the NCS will impact on IJBs and this would lead to change at local level for the areas which have delegated children's services to the IJB. Each local authority will continue to determine where children's services are located within their local structures. If the NCS Bill is passed by Parliament, IJBs will no longer exist once the NCS becomes operational. For the IJBs which have children's services within their remit, and for Highland which has a lead agency model, change would be required and disruption would take place. For local authorities where children's services have not been delegated, less service and relationship interruption is likely - so this option would have the advantage of less structural change and less interruption to services in those areas in respect of children's services, albeit that adult social work and social care services would be within the NCS, with services for children within local authorities.

166. Given the change which creation of the NCS will bring to the landscape in which children's services operate, doing nothing is not considered a responsible option. It is possible that following the steps set out above a decision could be taken that children's services should not be included within the NCS, nor alternative arrangements made. Such a decision would require to be based on evidence that taking such an approach would give better effect to the policy intent of the Bill, enhance delivery of The Promise and represent the best option for the structure of children's services in Scotland.

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<sup>19</sup> The Promise Scotland was set up as an independent body, with an Oversight Board, to work with organisations to make the shifts in policy, practice and culture to achieve The Promise through the implementation of the review's conclusions.

<sup>20</sup> [NCS Consultation Analysis Report Final Page view.pdf \(thepromise.scot\)](#)



*Children's services stay within local authorities with stronger directives from the Scottish Ministers*

167. In this approach, children's services would remain within local authorities' responsibility but with enhanced Ministerial powers. Introducing further requirements on Children's Services Planning Partnerships to place greater emphasis on existing duties in relation to the three year planning cycle, and considering additional duties being added to those set out in Part 3 of the Children and Young People (Scotland) Act 2014 could ensure greater responsibility for planning partners to act collaboratively to achieve the aims of Children's Services Plans. Enhanced accountability requirements for each stage of the 3-year cycle could also be introduced. Consultation with local government and stakeholders would take place before any changes were implemented under this approach.

168. This option is not considered to be able to achieve all of the strategic aims in paragraph 156, particularly given the fundamental change to the landscape in which social work and social care will be provided in Scotland through the establishment of the NCS. The consequences of that for services for children and their families and the opportunity to consider how best to position children's services in relation to new national structures and responsibilities mean that this option is not the preferred approach.

### **Adult support and protection**

169. The Adult Support and Protection (Scotland) Act 2007 ("the ASP Act") sets out a defined system and measures for the support and protection of adults at risk of harm. Schedule 3 includes provision for all Adult Support and Protection (ASP) functions and duties in the Act which Councils and Council Officers hold to transfer to the NCS and its officers. The National ASP Improvement Plan will continue to deliver improvements at national level, including strengthening the guidance in the short to medium term, where relevant, and those improvements will transfer into the NCS in due course.

170. The Scottish Government continues to engage with the Scottish Mental Health Law Review<sup>21</sup> which is considering the need for the convergence of incapacity, mental health and adult support and protection legislation. This includes mental health definitions to ensure consistency across relevant legislation. The Review will be submitting their recommendations to the Scottish Government in September 2022. Proposals for the transfer of ASP functions and duties to the NCS are being brought forward through regulations to ensure adults at risk of harm continue to be supported and protected and will include consideration of the Review recommendations.

### **Mental health**

171. The creation of the NCS means that current integration arrangements between health and social care will change. For mental health, this is an opportunity to address existing concerns around parity between the NHS, local authorities and the IJB, and between mental and physical health.

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<sup>21</sup> [About us | Scottish Mental Health Law Review](#)

172. Integration of services has brought many benefits and the Scottish Government want to continue this, and address the current wide variation in mental health services to improve consistency of quality and standards of care. This will be easier to do with a consistent governance and integration system across Scotland.

173. The intention is that the duties of social work and social care service for those with mental health requirements will transfer from local authorities to the NCS - to reflect the wider transfer of duties around social care and social work.

174. The provisions in the Bill offer the Scottish Ministers the power to move functions between public bodies as they see fit to best deliver the services. Transferring relevant mental health services to the NCS will promote a more integrated and matched care approach to a range of mental health needs and has the potential to reduce inter-organisational boundaries between care providers. At the moment, mental health services operate under a range of governance arrangements, some are delegated to IJBs, others are partly delegated, and some are not delegated.

175. In order to fully consider the potential benefits and challenges of locating children's mental health services in the NCS, these services will be included in a programme of work to gather evidence on the impact of integration across wider children's services, including children's health services, social work and social care. Before exercising any of the relevant enabling powers in the Bill in relation to the inclusion of children's health services, Ministers will carry out a review of this evidence and a further consultation with stakeholders, children and young people, parents and carers and then make a final decision on inclusion.

176. More generally, the care boards would ensure mental health services can work in partnership to deliver person-centred services with minimum transitions, where boundaries between services do not affect the user, and where information is shared easily and confidentially. Delivery of support should be more consistent across Scotland, being held accountable to national standards whilst also being responsive to the needs of the individuals and localities.

177. The creation of the NCS to carry out social care and community health will further allow the Scottish Government to embed a more holistic approach. Mental health services are making better connections between services by including physical, psychological and social approaches when assessing needs and developing care plans in partnership with the individuals we support. It is clear that people benefit from and often ask for this more holistic approach. This is reflected in some of the consultation responses. The consultation findings showed that more than 70% supported the inclusion of mental health services in the NCS. It was also felt that the NCS provided the opportunity to improve:

- the use of multi-disciplinary teams
- communication across all services, including better information sharing i.e. through single electronic records
- alignment and joint working between NHS Scotland and the proposed NCS
- accountability at all levels.

178. The Scottish Government will work with stakeholders, professional bodies and those with lived experience to ensure they are fully engaged in the co-design around the integration of mental health and social care to support people and their families using these services, and deliver better outcomes. It will also ensure that the integration of mental health reflects the priorities which will be set out in the Mental Health and Wellbeing Strategy planned for the end of 2022 and any recommendations from the Scottish Mental Health Law Review.

179. Secondary legislation will provide detail on exactly how services will be delivered in due course following further engagement with stakeholders.

### **Alcohol and drugs support**

180. Integration Authorities currently have responsibility for directing and commissioning alcohol and drugs support for people and their families, as part of their responsibility for adult health and social care. Alcohol and Drugs Partnerships are currently co-ordinated by IJBs, and including alcohol and drugs provisions in the NCS was widely supported in the consultation. Any specific reforms as to how these services would be delivered would follow on from further engagement with stakeholders.

181. The harms caused by problem use of alcohol and drugs, and the significant increase recently in drug-related deaths require significant improvements in the support being made available to people. The First Minister launched a National Mission for drugs in 2021 – to save and improve lives. The mission is driving improvement and expansion of services to help more people receive the protective support, treatment and recovery they require and when they ask for it, and to ensure they have support as long as they need it.

182. The creation of the NCS provides an opportunity to reform how services are provided and commissioned – to help deliver on the National Mission and to save and improve lives.

183. People impacted by alcohol and drugs often have wider needs including mental health needs and are more likely to be in contact with justice services. Meeting these multiple, complex needs will be easier through an integrated care service rather than through multiple separate services. Reducing restrictions around information sharing and removing transitions between services will have clear benefits for people and for those who provide support.

184. The Scottish Government is already taking action to make people's experiences, service standards and pathways into care more consistent across the country – on initiatives such as residential rehabilitation to support recovery, and medication assisted treatment standards for those in harm reduction care. The creation of NCS will further improve consistency in the care to which people impacted by alcohol and drugs already have a right.

185. The National Mission for drugs now includes a human-rights based national collaborative to listen to and use the voices of those people with lived and living experience to help drive service improvement. Those voices will help reshape the way services are delivered through the NCS.

## **Homelessness**

186. Schedule 3 does not include the Housing (Scotland) Acts of 1987, 2001 or 2006, which are included in the functions which can be delegated to IAs on a voluntary basis under the 2014 Act. Functions in relation to homelessness have been delegated in very few areas, and are considered to fit more appropriately with housing functions. It is recognised, however, that the NCS will need to work closely with housing and homelessness services to ensure people's needs are met. It is expected that the NCS will be involved in joined up planning to tackle homelessness, and will be subject to the shared prevention duty that the Scottish Government is committed to develop under the Ending Homelessness Together Action Plan.

## **PART 2: HEALTH AND SOCIAL CARE INFORMATION**

187. Part 2 of the Bill relates to health and social care information. Section 36 gives the Scottish Ministers power to establish a scheme for sharing information to improve the efficiency and effectiveness of NCS and NHS services. Section 35 makes provision about information standards which will support information sharing.

188. The IRASC recommended that the NCS should address gaps in national provision for social care and social work in relation to workforce planning, data and research, IT and (as appropriate) service planning, and had a specific recommendation on how, "Improved data and digital infrastructure are critical to helping people live fulfilling, independent lives; enabling professionals to support those people; facilitate ethical and collaborative commissioning; underpin regulation and improvement programmes; support workforce planning; and facilitate research and intelligence."

189. Many of the other recommendations set out in IRASC are premised on the need for good quality data and digital infrastructure.

190. The Scottish Government's NCS consultation noted that although a great deal of social care data currently exists, it is not always easily accessible or used to best effect. The consultation posited the creation of a nationally-consistent, integrated and accessible electronic social care and health record ('the record') that could be used and seen by all those who provide health and care support, with appropriate permissions put in place to control who can see what information. This would provide a national framework that allows for person-centred data and information to be shared safely and securely. Primary legislation is not required to create the record, but secondary legislation is required to enable information sharing and ensure consistent information standards. More broadly data and digital will be a key enabler of the NCS by enabling ethical commissioning, underpinning regulation and improvement, supporting workforce planning, facilitating research, and ultimately supporting people to live fulfilling, independent lives. Through work on secondary legislation the Scottish Government will develop further assessments of the data protection impact and specifics of data controller responsibilities.

191. Under section 36, the Scottish Ministers will have a power to set up a statutory scheme through regulations to permit data sharing for the efficient and effective provision of services by, or on behalf of, the NCS and NHS. This is needed to facilitate the creation of the record which provides a significant opportunity to address the current issues around information sharing, and ensure professionals get timely and accurate information to enable them to safeguard people at

risk of harm and provide the highest levels of care. It will also empower people around their own care and data and address the concerns in the IRASC around service users having to tell their story to multiple providers, which is not only frustrating, but can be traumatic.

192. Section 37 will give the Scottish Ministers the power to set information standards, (covering data and digital) which will set out how certain information is to be processed and will be made publicly available. Setting out standards in this way will allow technical detail to be included and to be updated more flexibly as required compared to setting the standards themselves in legislation. Setting information standards is important to improve equality for service users, and also to improve the quality of data used for secondary purposes such as national and regional oversight, planning, commissioning and procurement, regulation, research and national reporting. There will be links to standards that already exist, such as the Scottish Approach to Service Design. Where standards do not exist at present they will be developed through close working with organisations that hold data, people who access care and support, their carers and families, and health and social care professionals.

### **Alternative approaches**

193. An alternative option to a new regulation making power to create a scheme that allows information to be shared would be to rely on existing powers to share data between organisations. Some data sharing already exists, including for example the sharing of personal data between primary medical services and emergency responders. However much of that is done between health bodies. Some sharing of information takes place within social care (between GPs and social care teams, and local authorities, service providers and the Care Inspectorate), although this is inconsistent and fragmented in practice. The nationally-consistent integrated and accessible electronic social care and health record will only deliver its full potential if there is no doubt that organisations across social care and health have the power to share data.

194. An alternative approach to the proposed information standards would be to set out details via legislation. This approach was not progressed as this would be too inflexible as practices, policies and technologies evolve in ways that will need regular changes and updates to the standards.

### **Consultation**

195. The NCS consultation built on the comments in the IRASC around the importance of data. It proposed creating an integrated social care and health record which would not replace existing medical or well-functioning systems, but would instead deliver a platform to bring this fragmented information together to improve outcomes for individuals.

196. The consultation also set out the need for health and social care professionals to have access to good quality, relevant and accessible data in an agreed format with nationally-agreed definitions. To achieve this, the consultation proposed introducing legislation to require all primary and community health care and social care providers to provide data to the NCS.

197. On a national level, the consultation proposed introducing legislation that would allow the NCS to fill the data gaps identified in the IRASC in relation to local and national decision making

and to introduce a requirement to meet common data standards with those standards set out in guidance.

198. There was strong support for the proposals in the consultation; the large majority of respondents (80-90% in all cases) agreed. The proposals were:

- There should be a nationally-consistent, integrated and accessible electronic social care and health record
- Information about your health and care needs should be shared across the services that support you.

199. There was also strong support (again 80-90% agreement) to the question of whether legislation should be used to require all care services and other relevant parties to provide data as specified by NCS, and to include the requirement to meet common data standards and definitions for that data collection.

200. While there was support for the data and digital proposals in the legislation, there were concerns raised around achieving the right balance between sharing data and protecting people's data; the security of information; and the feasibility of a national IT system. All the Scottish Government's work will be fully compliant with UK GDPR (General Data Protection Regulations) legislation. The Scottish Government will build in cyber security requirements to the new system and is focussed on the delivery of a new digital service.

### **PART 3: REFORMS CONNECTED TO DELIVERY AND REGULATION OF CARE**

201. Part 3 of the Bill contains various reforms connected to delivery and regulation of care, including:

- Rights to breaks for carers
- Visits to or by care home residents ("Anne's Law")
- Regulation of social services.

#### **Rights to breaks for carers**

202. Section 38 of the Bill makes changes to the Carers (Scotland) Act 2016 to deliver a right to personalised short breaks support for carers who need it. Existing powers can be used for Ministers to maintain a national short breaks fund to enable easy-access support for people in less intensive caring roles.

203. Scotland's health and social care systems rely heavily on the input of unpaid carers. There were 700,000 – 800,000 unpaid carers before the pandemic, including 30,000 young carers. Latest estimates suggest that there were 839,000 adult carers in September 2020<sup>22</sup>.

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<sup>22</sup> Scotland's carers update release, Scottish Government, 2022: [www.gov.scot/publications/scotlands-carers-update-release-2](http://www.gov.scot/publications/scotlands-carers-update-release-2)

204. Breaks from caring are a vital element of the support many unpaid carers need to cope with their caring role and look after their own health and wellbeing. Breaks can take many forms and should benefit both the carer and cared-for person.

205. Unpaid carers already have rights under the Carers (Scotland) Act 2016 to a personalised plan to identify what is important to them and their needs for support. Carers also have the right to support to meet their eligible needs and authorities must consider whether that support should include a break from caring.

206. Despite the above rights, relatively few unpaid carers (around 3%<sup>23</sup>) receive statutory support for breaks from caring.

207. The IRASC reported that, “Access to respite came up repeatedly as a priority. Carers need to be able to take a break and respite should be viewed as integral to carer support.” It recommended that, “Carers need better, more consistent support to carry out their caring role well and to take a break from caring with regular access to quality respite provision. Carers should be given a right to respite with an amendment to the Carers (Scotland) Act 2016 as required, and a range of options for respite and short breaks should be developed.” The Scottish Government agrees with that assessment.

208. The NCS consultation asked consultees which elements they considered most important in shaping a right to breaks. The elements considered included flexibility, certainty, meeting acute need, providing preventative support, personalising support, guaranteeing standard entitlements, ensuring universal rights or creating rights based on the intensity of caring roles.

209. The consultation then asked about several options (alternative approaches) for establishing a right to breaks, each of which would deliver a different balance between these elements. The options included:

- standardised entitlements to a flat rate breaks package or graded packages linked to intensity of caring
- rights to personalised support, built into the existing Carers (Scotland) Act 2016 system for carers not otherwise able to access sufficient rest and breaks from caring, or
- a hybrid approach combining the above, enabling easy-access support for carers with low levels of need and the option of personalised breaks support under the Carers (Scotland) Act 2016 for those in more intensive caring roles.

210. Consultation responses showed clear support both for establishing a right to breaks from caring and for the hybrid approach outlined above. Respondents valued personalised support and the option of easy-access support for those with less significant needs.

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<sup>23</sup> Scottish Health Survey, 2016-2019 (combined), Scottish Government: [www.gov.scot/collections/scottish-health-survey](http://www.gov.scot/collections/scottish-health-survey)

### **Visiting care home residents (“Anne’s Law”)**

211. Section 40 of the Bill sets out that the Scottish Ministers will have a power to require providers of care home services to comply with any direction Ministers make about either or both of visits to residents of care home accommodation or by such residents. A direction of this nature is referred to as a “visiting direction” in the Bill. Ministers must consult with Public Health Scotland and any other person Ministers consider appropriate before issuing a visiting direction. Ministers will also have power to vary or revoke a visiting direction.

212. The development of “Anne’s Law” on visiting care home residents followed a petition to the Scottish Parliament on behalf of Care Home Relatives Scotland (Petition PE1841: Allow a designated visitor into care homes). This petition was lodged by Natasha Hamilton, who was unable to see her mother, Anne Duke, for prolonged periods during the height of the pandemic.

213. The Coronavirus pandemic led to periods where care home residents and residents in adult social care settings were unable to receive visitors during lockdowns and outbreaks, and where blanket visiting bans were operated by care home providers. Meaningful social contact was severely curtailed, and this caused anguish for many residents, families and friends.

214. Social connections and meaningful activity are vital for the wellbeing and quality of life of people living in a care home. Families and friends play an essential role in the health and wellbeing of people who live there, in terms of both practical and emotional support. For many residents, family members or friends also play a vital role in their care, complementing the support provided by care home staff. Restrictions on visits during the lockdown periods are acknowledged to have negatively impacted the health and wellbeing of people living in care homes and their friends and family.

215. The Scottish Government’s policy objective for Anne’s Law (as part of the Bill) is to ensure that providers and public health teams give effect to visiting rights and to remove variation in practice in the sector including the use of blanket visiting bans by care home providers. In practice this will mean visiting will always be supported in line with directions issued by the Scottish Ministers.

### ***Alternative approaches***

216. Since February 2021, guidance has promoted and encouraged care homes to increase opportunities for meaningful contact both in and away from the care homes with the adoption of protective measures. This built on earlier guidance in the pandemic supporting care homes to gradually reopen to visitors in line with the protective levels and associated conditions for easing restrictions. While care homes have for the most part adopted such guidance, it is not enforceable and there is a variance of approach. Current Scottish Government guidance developed in consultation with Public Health Scotland, the Adult Social Care Clinical and Professional Advisory Group, Care Home Relatives Scotland and the care home sector currently allows for residents to nominate ‘named visitors’ to see them - even in a COVID-19 outbreak situation.

217. This guidance is not enforceable however, and there is widespread support for providing clarity through legislation to promote a consistent approach to supporting and enforcing



requirements to enable people to remain connected with those important to them even in outbreak situations.

218. As a measure which can be implemented before the NCS legislation can take effect, and in recognition of the urgency required to act, the Scottish Government has used section 50 of the Public Services Reform (Scotland) Act 2010 to strengthen the Health and Social Care Standards by introducing two new Standards<sup>24</sup> that enable people who live in adult care homes to have rights to maintain family and friendship connections and to identify people to support them in their care.

219. The Health and Social Care Standards set out what people should expect when experiencing health, social care or social work services in Scotland. The Care Inspectorate will be under a duty to consider how care service providers are upholding these two new Standards in relation to registering, inspecting and supporting care services.

220. Although welcomed by stakeholders as a step towards the delivery of Anne’s Law, this mechanism is not considered sufficient in itself. There is an expectation that legislation is required to give the clarity and certainty to the sector with regards to the rights of people living in care homes to see and spend time with others.

221. A key expectation of stakeholders is that Anne’s Law legislation should give effect to existing rights, namely rights conferred under Article 8 ‘*Right to respect for private and family life*’ of the European Convention on Human Rights (ECHR). Many stakeholders have indicated that these rights should now be reinforced in statute, particularly since it was felt that people may have had rights restricted in a way which does not appear to comply with ECHR, and that people in residential care are not well placed to challenge breaches of ECHR rights.

222. In practice therefore, the expectation among a range of stakeholders is that the legislation should ensure that people who live in adult care homes will be able to have direct contact with people who are important to them in order to support their health and wellbeing, regardless of circumstances, whether there is a national or local lockdown due to a pandemic or other reasons, such as an outbreak of infectious disease. By inclusion in the Bill, the Scottish Government will outline provisions which will set out that all care home service providers should ensure that visiting is always supported in line with Directions issued by the Scottish Ministers and underpinned by statute.

223. In terms of the Directions, the Bill will allow the Scottish Ministers to exercise a new power under the Public Services Reform (Scotland) Act 2010 to require care home service providers to comply with any direction issued by the Ministers about visits to residents and visits by residents of accommodation provided by a care home service (“a visiting direction”). The use of Directions will allow the Scottish Ministers to respond quickly to what may be a rapidly developing situation and impose requirements on care homes about visits. The ability to vary or revoke directions will enable directions to be tweaked and updated over time to take account of presenting circumstances.

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<sup>24</sup> [New Health and Social Care Standards for care homes - gov.scot \(www.gov.scot\)](http://www.gov.scot)

### **Consultation**

224. A topic specific consultation was launched on 24 September 2021 to seek views on the Scottish Government’s proposals for delivering Anne’s Law in primary legislation. A separate and concurrent consultation was also launched on ways to strengthen the Health and Social Care Standards. The consultation on Anne’s Law closed on 5 November and the results were analysed by an independent contractor. A total of 282 responses were received, of which 88% were from individuals and 12% were from organisations. In addition, a number of workshops were held, two of which were dedicated to engaging with residents. Both the consultation responses<sup>25</sup> and the analysis report<sup>26</sup> have been published. Analysis of the consultation showed that there is considerable support for the approach of introducing Anne’s Law.

225. As noted above, a recurring theme was that the proposals should not be seen to create something new but to give effect to existing rights, namely rights conferred under Article 8 ‘*Right to respect for private and family life*’ of the European Convention on Human Rights (ECHR). Many respondents commented on their own experiences of family members being isolated in care homes over the course of the pandemic, and reiterated the importance of early implementation of Anne’s Law to prevent a similar situation arising again.

### **Reserving contracts for voluntary organisations**

226. 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.

227. Section 41 of the Bill amends the 2015 Regulations to insert a new regulation. This will allow, in certain circumstances, the list of bidders for a contract to be limited to those who meet a particular description.

228. Article 77 of the founding EU procurement directive (2014/24/EU) enables contracting authorities to reserve contracts for mutual organisations. At the time of transposing the procurement directives into Scottish law in 2015, this article was not included as public consultation responses did not identify any particular advantage or reason for doing so in Scotland.

229. Voluntary and third sector organisations are a significant part of the social care market, and have a history and expertise in providing community health and social care services and support. The Scottish Government recognises the role this part of the social care market can offer alongside other sectors in supporting the NCS ambitions, and therefore see merits in providing the option to contracting authorities to reserve procurement processes to mutual organisations when contracting for social care provision.

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<sup>25</sup> [Anne’s Law: proposals for adults living in care homes to maintain family and friendship connections - Scottish Government - Citizen Space \(consult.gov.scot\)](#)

<sup>26</sup> [Introduction - Anne’s Law and Health and Social Care Standards consultations: analysis of the responses - gov.scot \(www.gov.scot\)](#)

230. It is only possible through transposing these legislative provisions, to limit invitations to bid; to do so otherwise would be discriminatory.

### ***Consultation***

231. The Scottish Government sought stakeholders' views on reserving contracts for mutual organisations when consulting on the transposition of the 2014 European procurement Directives in 2015. The largest number of responses to the consultation were undecided, and 28 [of 140] respondents saw advantages in implementing this proposal.

232. At the time of transposing the procurement Directives in 2015, the Scottish Government were not aware of any particular advantage or reason for doing it in Scotland. Social enterprise organisations are part of the social care market, and with expertise in providing community health and social care services and support, the Scottish Government are keen to grow this and other sectors of the social care market.

### **Regulation of social services - Care Inspectorate enforcement and related powers**

233. Sections 42 and 43 make the following provision related to the Care Inspectorate (CI), as the independent regulator and scrutiny body for social care services:

- To set out further criteria to determine when the CI might propose to cancel a service's registration, including on the basis of previous enforcement action
- Additional powers to enable the Healthcare Improvement Scotland (HIS) to provide assistance to CI in carrying out an inspection.

234. Regulation plays an important role in ensuring consistent and high standards of social care. The CI will continue to provide independent scrutiny of social care services as the NCS is developed. A number of proposals have been made in recent years to enhance and strengthen the CI's powers currently available under the Public Services Reform (Scotland) Act 2010 ("the 2010 Act") to enable the regulator to speedily take action with poor performing services, better protect social care users, and drive up the consistency and quality of care expected across all social care services in Scotland.

235. A key issue with the current regime relates to resolving the issue of providers who operate, often for lengthy periods, with inconsistent quality and levels of service. At present providers who fail to meet the required standards could be issued with an improvement notice. This allows the provider a set amount of time to meet the requirements as detailed in the improvement notice. A failure to do so could result in escalation and a move by the CI to make an application to cancel the care service's registration.

236. In actual practice, where an improvement notice has been issued requiring significant improvement within a specified timescale, certain providers act to implement only the bare minimum and maintain this for only a very short time, i.e. during inspection. That is not the intention of the improvement notice process, which aims to bring the relevant care service back up to the expected standard it is required to maintain throughout the lifetime of the registration. As it stands, there is a continual duty under legislation for care service providers to provide a

quality service. However, the CI's current powers and the improvement notice process appears to have little effect for repeat offender providers.

237. Although the CI, in certain circumstances, may propose to cancel a registered service once the required timescale for improvement has passed, that proves difficult in the face of providers who claim to be attempting improvement, offer mitigation as to why quality has not been maintained, or challenge the assessment. The result of this scenario is providers maintaining a registration based on fluctuating levels of service quality, which is unsatisfactory.

238. Section 42 is intended to achieve that in cases where it is the professional judgement of the CI that the service/provider is not in a position to meet and sustain the requirements of an improvement notice, the CI will have the power to forgo the issue of an improvement notice. It would instead make an application to the Sheriff Court to cancel the registration, saving time and resource and achieving the desired and best outcome for users of the service more quickly. The basis on which it reaches this view regarding the provider may include criteria such as the fitness of the provider or past performance.

239. The new powers provided by section 42 would mean that the CI can act more effectively and more quickly than at present to tackle consistently poorly performing and inadequate care services. This is particularly important where it is thought that there may be a risk to life, health or wellbeing of residents if inadequate care services continue to be provided and will help the CI ensure that these individuals receive good quality of care.

240. Section 43 introduces a new power (under the Public Services Reform (Scotland) Act 2010) for HIS to provide assistance to CI in carrying out an inspection.

241. During the pandemic, a "joint arrangement" way of working was established between the CI and HIS connected to the functions that the CI carries out under Part 5 of the 2010 Act. Staff from HIS were seconded to CI with the objective of assisting the CI with the clinical aspects of inspections of care homes (e.g. infection prevention and control) under Part 5 of the 2010 Act. This provided increased additional capacity to the CI during the pandemic. The Scottish Government understands that HIS staff participated in around 30% of CI inspections of care homes in this time.

242. However, an issue arose during the pandemic in relation to "joint working" on inspections which created uncertainty around the legal basis for continuing with these arrangements. One interpretation was that the CI was only able to authorise its Chief Executive Officer, employees or committees to carry out its inspection functions. This new power is being introduced to address any perceived risk around the legal basis on which HIS could assist CI with inspections.

243. Whilst pandemic related issues in care homes have become less acute in contrast to circumstances presented during the pandemic, it is nevertheless important that CI and HIS have no impediments to collaborative working should the need arise in future.

### ***Consultation***

244. The consultation included proposals to strengthen the regulation and scrutiny of care services, including enhancing the regulator's enforcement powers. Responses from stakeholders to the consultation were strongly supportive of the enhanced enforcement powers to the CI.

245. The vast majority (88%), were supportive of the proposals for enhanced enforcement powers for the regulator. Additional enforcement powers that were suggested in the consultation responses included the ability for the regulator to effectively bar providers with previous poor performance as evidenced in their regulatory history, including those that voluntarily cancel their registration and reopen under a different entity.

### ***Alternative approaches***

246. An alternative legislative approach that was considered to strengthen regulation and scrutiny of care services was to use secondary legislation powers currently available to the Care Inspectorate under the 2010 Act.

247. However, with regards to enforcement, this approach would have been limited in scope, and to make the fundamental changes required to strengthen the CI's enforcement regime, primary legislation is required.

## **EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.**

248. A suite of Impact Assessments has been drafted for the Bill and will be published on the Scottish Government website. Due to the framework and co-design approach to establishing the NCS, the process of impact assessment will continue throughout the programme, seeking to identify and avoid or mitigate any negative impacts that may arise as more detailed proposals are developed. Where secondary legislation is brought forward under the Bill it will be accompanied by that more detailed impact assessment.

### **Equal opportunities**

249. An Equality Impact Assessment (EQIA) has been carried out in respect of the proposals contained in the Bill. It identified that the Bill could have a positive impact on the protected characteristics (age, disability, etc.), given that stakeholders will be co-designing the service that affects them (via user research and other means) on how the provision of advice, support planning and models of care will be delivered in practical terms. For example, as regards the age protected characteristic, the duty to provide advice and the right to a conversation about a person's social care support needs will help to ensure that people of all ages have the ability to access support that is suited to their individual needs and circumstances.

250. The EQIA also identified the barriers that currently exist for stakeholders in accessing social services. For example, people from several characteristics (disabilities, sex, sexual orientation) report discrimination when accessing social care or obtaining information in accessible formats. In respect of race, some people from minority ethnic groups have reported that they are not always fully informed of their options and are often unable to access information in

their first language. This also applies to ethnic minority carers, who may not be able to access support or information in their first language.

251. User research will be undertaken with people to ensure policies address discrimination and other issues, to gain a greater understanding of their needs and barriers to social services, and to design advice and support planning processes that best meet their needs (for example, exploring issues that predominantly impact on women (e.g. domestic abuse)).

252. There is not currently sufficient evidence available to assess whether or not policies would have any impacts on the protected characteristics of pregnancy and maternity, and religion or belief. Further work will be undertaken to determine if there are any impacts on these groups as part of the programme of engagement and user research.

### ***Fairer Scotland assessment***

253. While there are gaps in the evidence around the socio-economic factors relating to social care, over a quarter of the people in receipt of social care support live in the most deprived areas of the country; furthermore, people living in the most deprived areas are more likely not to be receiving support even when they believe they need it. People living in the most deprived areas are more likely to experience adverse childhood experiences, and unpaid carers living in the most deprived areas are more likely to care for longer periods of time.

254. These factors suggest that improvements to the way social care is delivered, and the introduction of a right to more personalised short breaks support for carers, are likely to benefit groups experiencing poverty and deprivation. Establishment of the NCS will result in the Scottish Ministers being accountable for the delivery of social care across Scotland. The Scottish Government will set standards and frameworks at a national level. This will address the perception of a ‘postcode lottery’ that currently exists by ensuring that they are put into practice through performance monitoring and improvement.

255. The NCS Bill will have a positive impact on low income staff in the sector by enabling Scottish Ministers to ensure that Fair Work is embedded into the NCS as a founding principle. Throughout the creation of the NCS, the Scottish Government will actively engage with stakeholders to ensure that people with lived experience of poverty and disadvantage are included in the process. It is vital that their voices are heard as the Scottish Government develops policy.

### ***Child Rights and Wellbeing***

256. There are indications that the creation of the NCS will have positive impacts on children’s rights. Policies supporting the NCS will be developed through co-design with diverse voices with lived or living experience of all ages. The Scottish Government will also engage with stakeholders, representing children, to ensure that the needs of children are met and that they are not impacted adversely.

257. Early work indicates that the inclusion of children’s services in the NCS would have a positive impact on children’s rights. In particular, it will ensure services are (or remain) integrated and are able to benefit from improvement work on quality and consistency led at the national level.

258. In addition to this, the proposed approach to the design of, and the principles of, the NCS can already be assessed as ensuring that the NCS will take a rights-based approach, which would have a positive impact on children's rights should the decision be taken, following the further research and engagement work that is planned, to include children's services.

259. In Scotland there are an estimated 700,000 to 800,000 carers, including approximately 29,000 young carers. The provision of a right to breaks for carers will allow for young carers to have time away from their caring role to focus on other activities and education. As many caring relationships are intergenerational, positive impacts of the NCS on adults is likely to have a positive impact on the children who care for them.

### **Human rights**

260. The Bill's provisions are compatible with rights under the European Convention on Human Rights (ECHR). As described in more detail through the Policy Memorandum, it is intended that the NCS will support a more rights based and person-centred approach to social care, which is embedded in the NCS Charter and principles.

### **Island communities**

261. The NCS consultation included 3 public engagement sessions aimed specifically at island communities, and 2 meetings with local authorities with island communities. Further engagement included meetings with the Island Assessment Impact Group, which was formed to specifically consider the impact on islands, and engagement with the National Islands Delivery Plan Group and the Islands Strategic Group.

262. In relation to island communities, the consultation responses highlighted a number of concerns, such as the need for flexibility to account for specific island and rural communities when developing a national approach to social care, and barriers to accessing social care for island communities such as transport limitations and small and dispersed populations. The engagement of island communities will continue throughout the co-design process of the NCS to ensure island communities are part of the co-design process, and responses will be made to the NCS design accordingly.

263. An Island Communities Impact Assessment (ICIA)<sup>27</sup> has been conducted on the NCS (Scotland) Bill, in accordance with the requirements on the Scottish Government in the Islands (Scotland) Act 2018. It has concluded that establishing the National Care Service will bring positive benefits to people in the social care and community health system by providing the means to address the inconsistency of people's experience of care, lead on improvement, establish consistent and clear governance arrangements, and provide for national oversight and strategic leadership of social care. The ICIA process has demonstrated that the Bill and the framework it puts in place to establish the NCS is designed to ensure the benefits of the reforms are realised for those in island communities and to account for and mitigate any potential adverse impacts, in

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<sup>27</sup> The ICIA and EQIA will be published on the same date as the Bill and accompanying documents, and available on the Scottish Government's website.

particular by providing the flexibility and scope for co-design and further engagement with people with lived experience and with input from delivery partners and key stakeholders.

### **Local government**

264. The Bill will affect local government in Scotland, as it makes provision for local authorities' responsibilities for social services to be transferred to the Scottish Ministers and to care boards. 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. It is not possible to fully quantify these impacts until decisions are taken on what services are to be included in the NCS, when the transfer is to take place and how the transition process will be staged. The Scottish Government will work with COSLA to identify the implications at the appropriate time, and further impact assessment information will be developed alongside the relevant secondary legislation.

### **Sustainable development**

265. The Bill has no negative effect on sustainable development. The establishment of the NCS will create opportunities to enhance the way in which services are designed and delivered to meet objectives beyond immediate care priorities, including on sustainable development, climate resilience, and Net Zero. As statutory responsibility for social care is transferred to the Scottish Ministers and put into practice through the NCS, there will be greater scope to ensure that the Scottish Government work on climate and environmental priorities (including biodiversity and greenspace) is incorporated to ensure a joined-up and consistent approach. New working practices and policy mechanisms in the NCS (for example, Ministerial oversight of local care boards and the framework for ethical commissioning and procurement) will provide means to build climate resilience and Net Zero actions into the social care system, providing a basis on which the Scottish Government can work with social care providers to identify and put into practice actions to combat the climate crisis and achieve wider environmental objectives. Examples could include areas such as heating, transportation, food and waste management.

266. Formal pre-screening to consider whether a Strategic Environmental Assessment is required will take place following introduction of the Bill. At present it is anticipated that the Bill will have minimal environmental effects.





*This document relates to the National Care Service (Scotland) Bill (SP Bill 17) as introduced in the Scottish Parliament on 20 June 2022*

# **NATIONAL CARE SERVICE (SCOTLAND) BILL**

## **POLICY MEMORANDUM**

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