

# NATIONAL CARE SERVICE (SCOTLAND) BILL

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## ADJUSTED EXPLANATORY NOTES TO REFLECT DRAFT GOVERNMENT AMENDMENTS PUBLISHED IN JUNE 2024

### INTRODUCTION

1. These adjusted explanatory notes have been prepared by the Scottish Government to accompany draft amendments published by them in June 2024 to the National Care Service (Scotland) Bill. They are written in the style of revised explanatory notes, to explain what the effect of the Bill would be if the draft amendments were agreed and the Bill passed. Following the normal style of revised explanatory notes, text has been added or amended to reflect the draft amendments and these changes are indicated by sidelining in the right margin.
2. These adjusted notes have been prepared by the Scottish Government in order to assist the reader of the draft amendments they accompany and to help inform debate on them. They have not been endorsed by the Parliament.

### NOTE ON INTERPRETATION

#### Interpretation legislation

3. The Bill's freestanding text, that is its sections and schedules, fall to be interpreted in accordance with the [Interpretation and Legislative Reform \(Scotland\) Act 2010](#).
4. Text that the Bill inserts into other enactments falls to be interpreted in accordance with the interpretation legislation that applies to that enactment. For example, text inserted into the Regulation of Care (Scotland) Act 2001 falls to be interpreted in accordance with the [Scotland Act 1998 \(Transitory and Transitional Provisions\) \(Publication and Interpretation etc. of Acts of the Scottish Parliament\) Order 1999](#).

#### References to the National Care Service and the services it provides

5. Many of the provisions in Part 1 of the Bill refer to the services the National Care Service provides. How those references are to be understood as a matter of law is addressed by section 35.
6. As these Notes follow the Bill in frequently referring to the National Care Service, it may be helpful to clarify at the outset that the National Care Service is not a single legal entity.

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7. National Care Service local boards are to be responsible for arranging care services (meaning a combination of health care and social care). These boards will perform the role currently performed by what the Public Bodies (Joint Working) (Scotland) Act 2014 calls integration authorities (schedule 2A of the Bill modifies that Act to rename them National Care Service local boards). This means that health boards and local authorities will delegate some of the statutory functions under which they provide health and social care services to the National Care Service local boards. The local boards will then co-ordinate health and social care services within the geographical area for which they have responsibility by directing the health boards and local authorities in how they exercise those functions.

8. Thus, where the Bill refers to a service provided by the National Care Service, it is referring to a service provided under a function delegated to a National Care Service local board through an integration scheme. The person providing, or securing the provision of, the service will be a local authority or a health board acting in accordance with a direction from a National Care Service local board under [section 26 of the Joint Working Act](#) (subject to the possibility of an order being made in respect of specific functions under [section 27\(6\) of the Joint Working Act](#)).

9. Many of the enactments from which the National Care Service institutions will derive their functions distinguish between providing a service and securing the provision of a service. For example, [section 12\(1\) of the Social Work \(Scotland\) Act 1968](#) states that local authorities are “to provide or secure the provision of ... [certain] facilities”. Similarly, [section 13A\(1\) of that Act](#) distinguishes between providing accommodation and making arrangements for the appropriate and adequate provision of accommodation. The definition of what it means for a service to be provided by the National Care Service includes cases where the provision of a service is secured (rather than more directly provided) in exercise of a function delegated to a National Care Service local board.

## OVERVIEW OF THE BILL

10. The Bill is divided into the following Parts:

- Part 1 creates the framework of the National Care Service. It amends the Public Bodies (Joint Working) (Scotland) Act 2014 so that there is only a single integration model for health boards and local authorities to choose. That single model entails the delegation of some of their functions to National Care Service local boards (currently known as integration joint boards). Part 1 of the Bill further establishes the National Care Service Board to oversee the work of the local boards, and to exercise wider powers in accordance with its general purpose of securing continuous improvement in the wellbeing of the people of Scotland.
- Part 2 gives the Scottish Ministers powers to make records about people’s health and social care more consistent and better integrated.
- Part 3 contains modifications to existing laws relating to the provision and regulation of care.
- Part 4 contains provisions usually found at the end of a Bill, namely the power to make ancillary regulations, further elaboration in relation to regulation-making powers elsewhere in the Bill and the sections dealing with commencement and short title.

## **PART 1: THE NATIONAL CARE SERVICE**

### **Chapter 1: Principles and foundational documents of the National Care Service**

#### *Overview of Chapter 1*

11. Chapter 1 of Part 1 of the Bill sets out the National Care Service principles and requires the creation of two documents: the National Care Service strategy and the National Care Service charter.

#### *The principles*

12. Section 1 defines the National Care Service principles, which are then referred to in:
- section 1D, which requires the Scottish Ministers to have regard to them in devising the National Care Service strategy,
  - section 12E and paragraph 9 of schedule 2C which, respectively, require the National Care Service Board to fulfil its general purpose in the way that seems to it most consistent with the principles and then to account, each year in its annual report, for how the ways in which it has fulfilled its functions have been consistent with the principles,
  - the National Health Service (Scotland) Act 1978, the Public Services Reform (Scotland) Act 2010 and the Public Bodies (Joint Working) (Scotland) Act 2014 (all as modified by schedule 2B of the Bill), in each of which the National Care Service principles replace a reference to the integration planning principles or the integration delivery principles (the effect of these changes are further explained in paragraphs 94 to 98 of these Notes).
13. Section 1A requires the Scottish Ministers to review the principles at least every 5 years. A review of the principles also entails consultation in accordance with subsection (2). Whether in light of a review or not, section 1B allows the Scottish Ministers to change the principles by regulations. Regulations doing so will be subject to the affirmative procedure (see section 46).

#### *The strategy*

14. Section 1C requires the Scottish Ministers to create a National Care Service strategy. The strategy is to set out the challenges that the Scottish Ministers want the National Care Service Board and the National Care Service local boards to focus on addressing, and what Ministers consider should be done by those bodies (and themselves) to address those challenges. The strategy is then referred to in:
- section 12E and paragraph 9 of schedule 2C which, respectively, require the National Care Service Board to fulfil its general purpose in the way that seems to it most consistent with the strategy and then to account, each year in its annual report, for how the ways in which it has fulfilled its functions have been consistent with the strategy,
  - section 12J, which requires the National Care Service Board to update its corporate plan as soon as practicable after a new version of the strategy is produced; this is because the corporate plan is to set out how the Board intends to fulfil its general purpose, which is to secure continuous improvement in wellbeing consistently with the strategy and so, if the strategy changes, it follows that the Board should refresh its

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corporate plan to ensure that what it intends to do in the name of consistency with the strategy remains consistent with the new version of the strategy,

- section 12K, which requires the National Care Service Board to have particular regard to the strategy when it is deciding whether a service needs to be improved in accordance with the Board's support and improvement framework,
- sections 29, 30, 37 and 40 of the Public Bodies (Joint Working) (Scotland) Act 2014 (all as modified by schedule 2B of the Bill), in each of which a reference to the National Care Service strategy, as well as the principles, replaces a reference to the integration delivery principles (the effect of these changes are further explained in paragraph 95 of these Notes).

15. Section 1D sets out the process that the Scottish Ministers are to follow in creating a new strategy. They are to have regard to the National Care Service principles in doing so. They are also to consult the public in Scotland and the bodies listed in subsection (2). Subsection (3) allows the consultation on the first strategy to be carried out ahead of the National Care Service Board being established by the coming into force of section 12D and the integration system for local delivery being reformed by the coming into force of schedule 2A.

16. Section 1E requires the Scottish Ministers to review the strategy at least every 5 years. If, following a review, they decide not to change the strategy, they have to publish a statement explaining why.

### *The charter*

17. Sections 11 and 12 of the Bill provide for a National Care Service charter. Section 12A requires the National Care Service Board to raise public awareness of the charter.

18. The charter is a document summarising people's existing rights and responsibilities in relation to the National Care Service and describing the mechanisms available to uphold those rights. It can also include any other information that the Scottish Ministers consider it appropriate to include in it. The charter's principal function is to describe rights, responsibilities and mechanisms for upholding them that otherwise exist. Section 11(4) makes clear that nothing in the charter can be taken to give rise to a new right or responsibility nor to alter existing ones.

19. Section 11 requires the Scottish Ministers to produce the charter and make it publicly available. Subsection (1) of section 12 requires them to consult when producing the charter and subsection (2) requires them to lay a copy of the first version before the Scottish Parliament. Section 12 further requires the Scottish Ministers to review the charter at least every 5 years. A review of the charter also entails consultation in accordance with subsection (1). Only following a review may the Scottish Ministers revise the charter, and if they do they must lay a copy of the new version of the charter before the Parliament to comply with section 12(2). The Scottish Ministers may delegate some of the functions in relation to the charter to the National Care Service Board or any other person they consider appropriate.

20. Subsection (6) of section 12 ensures that consultation in relation to the charter that has been carried out before the consultation duty has been enacted and brought into force can be taken into account in the event of a dispute about whether the duty has been fulfilled.

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## **Chapter 1A: National Care Service local boards**

21. Chapter 1A contains two sections, the purpose of which is to formally incorporate schedules into the Bill. Further explanation of the effect of those schedules is given below (see paragraphs 86 to 89 of these Notes in relation to schedule 2A and paragraphs 90 to 107 in relation to schedule 2B). The following is only a brief summary of what the schedules do.

- Schedule 2A, which is introduced by section 12B, modifies the Public Bodies (Joint Working) (Scotland) Act 2014 so that local authorities and health boards will have to delegate some of their functions to National Care Service local boards through jointly agreed integration schemes. Prior to these modifications, the Joint Working Act allowed local authorities and health boards to choose one of 4 possible integration models. Delegating functions to integration joint boards was one of them. The modifications made by schedule 2A remove the other 3 possible integration models and rename integration joint boards as National Care Service local boards.
- Schedule 2B, which is introduced by section 12C, makes further changes to the Joint Working Act, and other enactments, relating to how functions are delegated to National Care Service local boards and how those boards will operate within the National Care Service framework.

## **Chapter 1B: The National Care Service Board**

### ***Overview of Chapter 1B***

22. Chapter 1B establishes a new public body, the National Care Service Board, and sets out core propositions about its operation.

### ***Establishment and general operating framework***

23. Section 12D creates the National Care Service Board as a legal entity. It also formally incorporates two schedules into the Bill. Schedule 2C contains general provisions about the Board's composition and internal governance. Schedule 2D modifies various enactments concerned with the operation of public authorities so that they operate in relation to the Board. These schedules are discussed further in paragraphs 108 to 126 and 127 to 142 of these Notes.

24. Section 12E sets out the Board's general purpose. Other provisions in the Bill give the Board various powers. The general purpose describes what the Board is to use those powers for where no more specific provision about their use is made.

25. Sections 12F and 12G enable the Scottish Ministers to exercise control over what the Board does. Section 12F empowers the Scottish Ministers to exercise control by issuing directions with which the Board must comply. Section 12G allows them to issue guidance to the Board; the Board must have regard to ministerial guidance but is not legally bound to comply with it as it is in relation to ministerial directions.

26. Section 12H provides a statutory basis for the Scottish Ministers to fund the National Care Service Board. The Board will also be able to obtain funding by charging for services it provides (see paragraph 3 of schedule 2C).

### ***Corporate plan***

27. Sections 12I and 12J make provision about the National Care Service Board’s corporate plan. The plan, which is to be a publicly available document, is to set out how the Board intends to operate so as to give effect to its general purpose as set out in section 12E. The plan is also to set out the Board’s strategy for ensuring that its decision-making processes involve people with lived experiences relevant to the Board’s work. That means, in particular, that the Board is to have a plan for involving in its decision making people who have personal experience of being provided with services by the National Care Service, people with personal experience of providing those services and carers. In preparing its corporate plan, the Board must consult persons it considers appropriate, having regard to the importance of the plan’s being informed by the views of the people with those relevant lived experiences.

28. For the purposes of section 12I, “carer” is defined to mean a person who provides care for another person and who may, as a result, be treated as a carer within the meaning of the [Carers \(Scotland\) Act 2016](#). The definition of “carer” in section 1 of that Act includes a person who intends to provide care as well as someone who is doing so. The definition in section 12I of the Bill only covers people who have provided care. (This definition of “carer” is also used by paragraph 17 of schedule 2C.)

29. The Board can produce a new corporate plan at any time (subject to consulting, as a minimum, the persons mentioned in section 12J(2)). Section 12J(1) provides that the Board must consider making a new plan in certain circumstances. The first of those is when the Scottish Ministers produce a new National Care Service strategy under section 1C. As the Board’s corporate plan is to explain how it intends to give effect to its general purpose, which entails acting consistently with the strategy, it follows that if the strategy changes it is likely that the Board will need to re-align its plans with the latest version of the strategy. The other circumstance in which the Board is obliged to consider producing a new corporate plan is where the Board’s functions are modified. As the Board’s plan is to describe how it intends to discharge its functions in accordance with its general purpose, it follows that if its functions are changed the plan should be changed to reflect the changes to its functions. There are various ways in which the statutory functions of the Board may be changed, including further primary legislation and regulations being made under section 26B. There is not a firm duty to change the corporate plan in light of any modification of the Board’s functions, however, because it would be disproportionate to require the Board to go through the full consultative process associated with making a new corporate plan where there has been some minor adjustment to a small aspect of one function, perhaps amounting to little more than a clarification, that has no material bearing on the Board’s latest plan.

### ***Improving care***

30. While the National Care Service Board’s general purpose ostensibly requires it to orientate all of its activities towards improving care in Scotland, section 12K imposes a specific duty on it to monitor the services provided by the National Care Service and take action, in accordance with its published support and improvement framework, where it finds services to be falling short. In deciding whether a service is falling short of the expected standard, the National Board is to have regard to the Scottish Ministers’ National Care Service strategy (see section 1C) and the expectations set by the strategic plan of the National Care Service local board in question (sections 29 to 30 of the Public Bodies (Joint Working) (Scotland) Act 2014 make provision about the strategic plans of the local boards, and there are relevant modifications to those sections in schedule 2B of the Bill).

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31. Section 12L elaborates on the support and improvement framework. It is to be a document, setting out how the Board intends to carry out its function under section 12K of monitoring and driving improvement. Some of the action that the Board may take under its support and improvement framework will be taken in exercise of functions that the Board can exercise at any time, for example arranging training under section 24 or giving guidance to National Care Service local boards under section 53(1A) of the Public Bodies (Joint Working) (Scotland) Act 2014 (which is a new provision to be inserted into that Act by schedule 2B of the Bill). Other actions will, however, only be capable of being taken by the Board in accordance with the terms of the support and improvement framework, for example transferring functions away from a particular local board due to service failure under section 19 or issuing directions under section 52 of the Joint Working Act (as modified by schedule 2B of the Bill).

### ***Commissioning***

32. Section 12M empowers the National Care Service Board to make arrangements to provide, or secure the provision of, goods, services or works for a number of other public bodies listed in subsection (2). The power can only be used in relation to goods, services or works that are to be used in connection with health care or social care, although they need not be goods or services that are to be used directly in providing health care or social care. For example, the Board might procure payroll software or other back-office services for National Care Service local boards.

33. The Board might procure things for the bodies listed in subsection (2) directly or it might, for example, enter into framework contracts under which those bodies can call-off the provision of goods and services as and when they require them without having to go through a full tendering process.

34. Subsection (3) of section 12M allows the Board to authorise other persons to exercise its function under the section. This means that the Board could, for example, authorise a National Care Service local board to secure the provision of a particular service for all of the other local boards. Subsection (4) makes clear that in such a case the local board would not be acting as the agent of the National Care Service Board, the local board would enter into any contracts in its own name. It further makes clear that in such a case the National Care Service Board would not lose the ability to commission the service it had authorised the local board to commission.

### ***Further powers to support care delivery***

35. Section 23 empowers the National Care Service Board to carry out research relevant to the services that the National Care Service provides and can assist others (including financially) in doing so.

36. Section 24 empowers the National Care Service Board to support training relevant to the provision of services by the National Care Service. That may mean providing training itself, financially supporting other training providers with grants or giving financial aid to those undertaking training.

37. Section 25 makes clear that the National Care Service Board can financially assist anyone engaged in an activity connected to services that the National Care Service provides.

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### ***Transfer of National Care Service local boards' functions***

38. Section 18 allows the National Care Service Board to direct another person to discharge a function of a National Care Service local board for the duration of an emergency if it thinks the other person would be more effective in performing the function during the emergency.

39. Section 19 allows the National Care Service Board, by direction, to give a National Care Service local board the role of performing a function of another local board if it is of the opinion that the local board from which the function is to be transferred has failed, is failing or is likely to fail in performing the function. This is a step the National Care Service Board can only take in accordance with its support and improvement framework (see paragraphs 30 to 31).

## **Chapter 1C: Functions of the Scottish Ministers in relation to care**

### ***National Chief Social Work Adviser and the National Social Work Agency***

40. Section 26A requires the Scottish Ministers to designate one of its civil servants as the National Chief Social Work Adviser and to arrange other members of its staff into an executive agency called the National Social Work Agency.

41. The civil servant appointed as the National Chief Social Work Adviser must be a registered social worker for the purposes of [section 52 of the Regulation of Care \(Scotland\) Act 2001](#). Section 52 protects the title of social worker, making it a criminal offence for anyone not relevantly registered for its purposes to purport to be a social worker.

### ***Complaints service***

42. Section 14 requires the Scottish Ministers to establish a service for receiving complaints about services provided by the National Care Service and passing them on to be dealt with by the person that the provider of the service thinks is best placed to deal with them. The Scottish Ministers need not provide the service directly, they may fulfil the duty by contracting another person to provide the service (see section 35(4)).

### ***Conferral of additional functions on the National Care Service Board***

43. Section 28B gives the Scottish Ministers a power by regulations to confer functions on the National Care Service Board.

44. A power to make regulations includes the power to modify or revoke any provision made under the power (see [section 6 of the Interpretation and Legislative Reform \(Scotland\) Act 2010](#)), and therefore further regulations under section 28B could be used to take away or change any function conferred on the Board by earlier regulations under that section. Section 28B cannot be used to remove or modify functions otherwise conferred on the Board (for example by the Bill).

45. Regulations under section 28B are subject to the affirmative procedure (see section 46).



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### *Independent advice, information and advocacy*

46. Section 13 allows the Scottish Ministers to make provision about independent advice, information and advocacy in connection with the National Care Service. Those regulations will be subject to the affirmative procedure and may modify other enactments (see section 46).

### *Dealing with complaints*

47. Section 15 gives the Scottish Ministers power to make provision in regulations about the handling of complaints about services provided by the National Care Service and other social services within the meaning of [section 46 of the Public Services Reform \(Scotland\) Act 2010](#).

48. Regulations under section 15 are subject to the affirmative procedure and may modify other enactments (see section 46). For example, if the intention were to confer a new complaints-handling function on a body established by statute, the regulation-making power may be used to amend that statute so that the new function appears alongside the body's other functions in the statute rather than being hidden away on its own in regulations.

49. If regulations under section 15 would give a person listed in [schedule 6 of the Public Services Reform \(Scotland\) Act 2010](#) a new function, or modify or take away one of those person's existing functions, the regulations will require the consent of the Scottish Parliamentary Corporate Body. This is consistent with the rule in [section 19 of the Public Services Reform Act](#). The persons listed in schedule 6 of that Act are commissions and commissioners which are funded by the Scottish Parliamentary Corporate Body.

## **Chapter 7: Final provisions for Part 1**

50. Section 35 is an interpretative provision for the rest of the Part, including the schedules introduced by the Part (however, only schedule 2C relies on definitions provided by section 35 as the other schedules textually modify other enactments, as to which see paragraph 4 of these Notes).

51. The definition of references to services provided by the National Care Service is explained in paragraphs 5 to 9 of these Notes.

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

### **Care records**

52. Section 36 gives the Scottish Ministers power by regulations to establish a scheme for sharing information to improve the efficiency and effectiveness of the public provision of health and social care. The regulations will provide a lawful basis for information relevant to the delivery of those services to be shared.

53. Regulations under section 36 will be subject to the affirmative procedure (see section 46).

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### **Information standard**

54. Section 37 makes provision about information standards. An information standard is a document setting out how certain information is to be processed, which includes how it is stored, formatted, indexed and so forth.

55. Section 37 creates a duty for the institutions listed in subsection (4) to abide by information standards and to require their contractors to do so too. Subsection (4A) enables the Scottish Ministers to modify the list of institutions by regulations, but does not allow them to add institutions for a purpose unconnected to improving the public provision of health or social care. Regulations under subsection (4A) are subject to the affirmative procedure (see section 46).

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

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

56. Section 38 amends the Carers (Scotland) Act 2016 to ensure that carers get the support that they need to take sufficient breaks from providing care to cared-for persons. Subsections (11) to (14) of section 38 make changes to other statutes in consequence of the changes made to the Carers Act.

57. Subsections (2) and (4) ensure that being able to take sufficient breaks from providing care to cared-for persons is an “identified personal outcome” of every carer. They also ensure that where a carer is unable to take such breaks, the need for support to do so is an “identified need” of the carer. (See sections 4 and 5, as read with sections 8 and 14, of the Carers Act.)

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

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

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

61. Subsections (3) and (5) ensure that every adult carer support plan and every young carer statement under the Carers Act (see sections 9 and 15) includes information about the support

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provided, or to be provided, to meet any identified need for support to enable the carer to take sufficient breaks from providing care.

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

### **Enactments relating to carers: minor modifications**

63. Section 39 makes minor changes to two enactments. Subsection (2) removes some unnecessary definitions from the Carers (Scotland) Act 2016. Subsection (4) removes two unnecessary words from the Social Care (Self-directed Support) (Scotland) Act 2013.

### **Visits to or by care home residents**

64. The Scottish Ministers have a power to make regulations under section 78(2) of the Public Services Reform (Scotland) Act 2010 imposing requirements in relation to care services (a term defined in [section 47 of that Act](#)). Section 40 of the Bill inserts a new subsection (2A) into section 78 of the 2010 Act, placing a duty on Ministers to exercise that power in order 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.

65. A further provision, subsection (2B), is inserted into section 78 of the 2010 Act by section 40, requiring Ministers to 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.

### **Reserving right to participate in procurement by type of organisation**

66. 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.

67. Section 41 amends the 2015 Regulations to insert a new regulation 76A. This will allow, in certain circumstances, the list of bidders for a contract to be limited to those who meet a particular description.

68. Inserted regulation 76A includes a power to modify its own terms by further regulations, so that the Scottish Ministers can alter the types of contract that can be restricted and the type of body that bidding can be limited to. Regulations under proposed section 76A will be subject to the negative procedure by virtue of [regulation 83A of the 2015 Regulations](#).

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### **Procurement strategies to be informed by local boards' strategic plans**

69. [Section 15 of the Procurement Reform \(Scotland\) Act 2014](#) describes the circumstances in which a contracting authority is required to prepare a procurement strategy and what, as a minimum, it must contain. Section 41A of the Bill amends section 15 of the Procurement Reform Act so that, if a contracting authority expects to carry out regulated procurements in connection with a function delegated to a National Care Service local board, its procurement strategy has to include a statement explaining how it will approach the procurement in a way that is consistent with the local board's strategic plan.

### **Notice of published procurement strategies etc.**

70. [Section 19 of the Procurement Reform \(Scotland\) Act 2014](#) requires a contracting authority to publish its procurement strategy (including any revised strategy) and its annual procurement report. Publication of these documents means that they are publicly available. But subsection (3) requires the publishing authority to draw its publications to the Scottish Ministers' attention.

71. Section 41B of the Bill amends section 19 of the Procurement Reform Act to give the Scottish Ministers a regulation-making power to extend the list of persons whose attention is to be drawn to any publications, but this power can only be used in relation to publications that are relevant to health or social care services. What constitutes a health or social care service for this purpose will be defined by regulations under section 12 of the Procurement Reform Act (as modified by section 41B of the Bill).

72. Regulations expanding the list of persons to whom notice is to be given under section 19(3) of the Procurement Reform Act will be subject to the negative procedure in accordance with section 44(3) of that Act. The negative procedure is defined by [section 28 of the Interpretation and Legislative Reform \(Scotland\) Act 2010](#).

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

73. Section 41C provides a minor clarification to [section 58\(4\) of the Regulation of Care \(Scotland\) Act 2001](#). Section 58 of that Act gives the Scottish Ministers certain functions in relation to oversight of the social service workforce. Subsection (4) allows them to delegate those functions to the Scottish Social Services Council or authorise others to perform them on the Ministers' behalf. Section 41C of the Bill modifies subsection (4) to make clear that Ministers can also delegate, or authorise others to carry out, any part of a function the section confers. For example, they might delegate to the Council the function under subsection (1)(a)(ii) of ascertaining what numbers of social service workers of a particular description are needed, while authorising another person to perform that function in relation to another category of social service workers.

### **Cancellation of care service's registration**

74. Section 42 modifies section 64 of the Public Services Reform (Scotland) Act 2010 to enable the Scottish Ministers to prescribe by order circumstances in which Social Care and Social Work Improvement Scotland (otherwise known as the Care Inspectorate) can move directly to proposing to cancel a care service's registration without first issuing an improvement notice and waiting for the period specified in that notice to expire.

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

### **Assistance in inspections from Healthcare Improvement Scotland**

76. Section 43 inserts a new section 57A into the Public Services Reform (Scotland) Act 2010 to authorise Healthcare Improvement Scotland to assist Social Care and Social Work Improvement Scotland (otherwise known as the Care Inspectorate) in carrying out an inspection of a care service and to charge for any assistance provided.

## **PART 4: FINAL PROVISIONS**

### **Interpretation**

77. Section 44 defines expressions which are used in both Parts 1 and 2 of the Bill.

### **Ancillary provision**

78. Section 45 confers a power to make ancillary provision by regulations on the Scottish Ministers. Section 46 provides that regulations made under section 45:

- may modify any enactment including the Act that the Bill itself will become (if it is passed by the Scottish Parliament and receives Royal Assent),
- are subject to the affirmative procedure if they textually amend an Act of the Scottish Parliament or the UK Parliament, but otherwise are subject to the negative procedure.

### **Regulation-making powers**

79. Section 46 makes further provision about the regulation-making powers that the Bill confers on the Scottish Ministers.

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

81. Subsection (2) provides that certain regulation-making powers conferred by the Bill can be used to modify enactments. The word enactment is defined for this purpose by [schedule 1 of the Interpretation and Legislative Reform \(Scotland\) Act 2010](#), it includes Acts of the Scottish Parliament and Acts of the UK Parliament. There is a general presumption that a regulation-making power cannot be used to modify an Act of Parliament. Subsection (2) overcomes that presumption in relation to the powers it specifies. However, it confines the power to modify the

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Act that the Bill itself will become (if it is passed by the Scottish Parliament and receives Royal Assent) to ancillary regulations under section 45.

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

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

### **Commencement**

83. Section 47 deals with the coming into force of the Bill's provisions. The formal provisions in Part 4 will come into force on the day after the Bill receives Royal Assent. All of the other provisions fall to be commenced by the Scottish Ministers by regulations.

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

### **Short title**

85. Section 48 assigns the short title of the Act that the Bill will become (if it is passed and receives Royal Assent).

## **SCHEDULE 2A: NATIONAL CARE SERVICE LOCAL BOARDS: CREATION AND REMOVAL OF OTHER INTEGRATION MODELS**

86. Schedule 2A is divided into two parts as follows:

- Part 1 modifies the Public Bodies (Joint Working) (Scotland) Act 2014 for the reason explained in paragraphs 87 to 89 below.
- Part 2 modifies other enactments in consequence of the modifications made by Part 1, in particular this means removing references to integration joint boards and replacing them with references to National Care Service local boards.

87. Part 1 of the Public Bodies (Joint Working) (Scotland) Act 2014 requires health boards and local authorities to enter into arrangements, known as integration schemes, through which they are to delegate functions and appropriate resources to ensure the effective delivery of those functions. As enacted, the Joint Working Act set out four integration models (see [section 1\(4\)](#)). The first entailed delegation to a corporate body known as an integration joint board specifically established for the purpose. The other three options did not entail the creation of a new body, but a distribution of functions amongst the health board and local authority partners in the scheme.

88. Part 1 of the Bill's schedule modifies the Joint Working Act so as to:

- remove the three integration models that do not entail delegation to a new corporate body, and

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- change the name of those corporate bodies from integration joint boards to National Care Service local boards.

89. Provisions of the Joint Working Act that refer to integration joint monitoring committees are also repealed. Those committees operated only in relation to one of the three integration models that the Bill abolishes.

## **SCHEDULE 2B: NATIONAL CARE SERVICE LOCAL BOARDS: REFORMS IN CONNECTION WITH FUNCTIONS**

### **Overview of schedule 2B and a note on reading this part of these Notes**

90. Schedule 2B makes modifications in connection with the operation of what are referred to in the Joint Working Act, as enacted, as integration authorities. That label refers to different bodies, with its meaning in relation to any given area depending on the integration model chosen for the area under section 1 of the Joint Working Act. The effect of schedule 2A of the Bill is that there will be only one integration model, which is delegation of functions to National Care Service local boards (which were originally called integration joint boards). Once schedule 2A (if enacted) has come into force, the label integration authority will no longer be used in the Joint Working Act with reference being made instead to National Care Service local boards. Anticipating that change, this part of these Notes refers to National Care Service local boards rather than integration authorities and integration joint boards.

### **Creation of power to add functions capable of being delegated under integration schemes**

91. Paragraph 1 of schedule 2B replaces [section 1\(12\) of the Public Bodies \(Joint Working\) \(Scotland\) Act 2014](#) with a new version. As explained in paragraph 87 of these Notes, the Joint Working Act provides for the delegation of functions through integration schemes. An integration scheme can only provide for the delegation of a function conferred by an enactment listed in [the schedule of the Joint Working Act](#). Section 1(12) of the Joint Working Act, as enacted, allowed the Scottish Ministers to make regulations removing enactments from the Joint Working Act's schedule, thereby reducing the range of functions capable of being delegated through an integration scheme. The new version of section 1(12) also allows enactments to be added to the schedule, thereby increasing the range of functions capable of being delegated through an integration scheme.

92. [Section 69\(2\) of the Joint Working Act](#) provides for regulations under its section 1(12) to be subject to the affirmative procedure. The affirmative procedure is defined by [section 29 of the Interpretation and Legislative Reform \(Scotland\) Act 2010](#).

### **Replacement of integration principles with NCS principles and strategy**

93. Paragraph 2 of schedule 2B replaces references to the integration planning principles and the integration delivery principles in the following statutes with references to the National Care Service principles (see section 1) and the National Care Service strategy (see section 1C):

- the Public Bodies (Joint Working) (Scotland) Act 2014
- the Public Services Reform (Scotland) Act 2010

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- the National Health Service (Scotland) Act 1978

94. The integration planning principles were created by [section 4 of the Joint Working Act](#) as principles to which health boards and local authorities are to have regard when preparing an integration scheme (see paragraph 87 of these Notes). In future, it is the National Care Service principles to which regard must be had when devising an integration scheme.

95. The integration delivery principles were created by [section 31 of the Joint Working Act](#). In that Act they are invoked in the following ways:

- the Scottish Ministers, when considering whether to make an order under [section 27\(6\) of the Joint Working Act](#), are to ask themselves whether making the order would improve compliance with the principles (the effect of such an order is that a National Care Service local board is enabled to deliver functions itself rather than securing their delivery by issuing directions to health boards and local authorities),
- National Care Service local boards are required to have regard to the principles when preparing and reviewing their strategic plans under [sections 29 and 37 of the Joint Working Act](#),
- the fact that a National Care Service local board's strategic plan is preventing a health board or a local authority that has delegated functions to it from carrying out the delegated functions in a way that complies with the principles is grounds, under [section 38 of the Joint Working Act](#), for the relevant health board and local authority (or authorities) to direct the National Care Service local board to produce a new strategic plan,
- [section 40 of the Joint Working Act](#) requires a person carrying out an integration function to have regard to the principles when doing so; an "integration function" is a function delegated to a National Care Service local board (see [section 60 of the Joint Working Act](#)), but the person carrying out the function and therefore bound by section 40 will typically be a health board or local authority carrying it out in accordance with a direction from a local board under [section 26 of the Joint Working Act](#).

96. In each of those contexts in the Joint Working Act, paragraph 2 of the Bill's schedule 2B replaces the reference to the integration delivery principles with references to both the National Care Service principles and the National Care Service strategy.

97. The integration delivery principles, prior to the Bill's modifications taking effect, are also invoked in:

- [section 53 of the Public Services Reform \(Scotland\) Act 2010](#), which provides that Social Care and Social Work Improvement Scotland (commonly referred to as the Care Inspectorate) may inspect any social service and the organisation and co-ordination of any social service, and in so doing can review and evaluate compliance with the principles and encourage improvement in compliance with them, and
- [sections 10I and 10J of the National Health Service \(Scotland\) Act 1978](#), which provide that Healthcare Improvement Scotland can inspect NHS services and independent health care services, and in so doing can review and evaluate compliance with the principles and encourage compliance with them.



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98. In those places, the references to the integration delivery principles are replaced with references to the National Care Service principles. Allusions to complying with the principles are replaced with references to reflecting the principles, given the somewhat different character of the National Care Service principles.

### **Further modifications in relation to strategic planning**

99. Paragraph 3 of schedule 2B makes modification to the processes for preparing and reviewing strategic plans under [sections 29 to 39 of the Public Bodies \(Joint Working\) \(Scotland\) Act 2014](#).

100. Section 29(2) of the Joint Working Act describes what a National Care Service local board's strategic plan is to contain. Paragraph 3 of the Bill's schedule 2B extends the required content of strategic plans to include an assessment of the needs of the population of the local authority area (or areas) for which the board has responsibility. It also modifies such section 37 of the Joint Working Act, so that carrying out such an assessment becomes something a National Care Service local board must do as part of reviewing the effectiveness of its strategic plan.

101. Paragraph 3 of schedule 2B also modifies section 33 of the Joint Working Act so that, before finalising a strategic plan, a National Care Service local board must consult the National Care Service Board (established by section 12D of the Bill).

### **Modifications in relation to performance reports**

102. After each year, [section 42 of the Joint Working Act](#), requires a National Care Service local board to publish a performance report. Paragraph 4 of the Bill's schedule 2B modifies section 42 so as to:

- require the local boards to send copies of their performance reports to the National Care Service Board (established by section 12D of the Bill),
- empower the Scottish Ministers to make regulations changing the period within which a performance report has to be produced.

### **Creation of power for the National Care Service Board to give directions and guidance**

103. Paragraph 5 of schedule 2B modifies the Public Bodies (Joint Working) (Scotland) Act 2014 so as to confer on the National Care Service Board (established by section 12D of the Bill) power to issue directions under [section 52](#) and guidance under [section 53 of the Joint Working Act](#). The same sections of the Joint Working Act provide for the Scottish Ministers to issue directions and guidance. Their powers to do so are unaffected by the schedule's modifications.

104. The principal difference between a direction and guidance is that there is a legal duty to comply with a direction. In the case of guidance, the legal duty is to have regard to it.

105. Section 52 of the Joint Working Act provides for directions to be given to local authorities and health boards in connection with their carrying out of the functions that Act confers on them. It also allows directions to be given to National Care Service local boards, in relation to both the functions that that Act confers on them and the functions that are delegated to them through

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integration schemes. The modifications made to section 52 will allow the National Care Service Board to issue such directions, but only in pursuance of its monitoring and improvement duty under section 12K. This means that the Board's issuing of directions must be in accordance with its support and improvement framework under section 12L.

106. As there is a legal duty to comply with a direction, a difficulty may arise if there is a tension between what a directed-body is required to do by a direction issued by the Scottish Ministers and one issued by the National Care Service Board. The modifications to section 52 include the insertion of a new subsection (4A), which makes clear that a direction from the Scottish Ministers is to prevail over a direction from the Board. It is immaterial whether the Ministerial direction was issued under section 52 or some other statutory provision that enables the Scottish Ministers to issue directions (for example, [section 5\(1A\) of the Social Work \(Scotland\) Act 1968](#)).

107. Section 53 of the Joint Working Act provides for guidance to be given to local authorities, health boards and National Care Service local boards. As enacted it also refers to issuing guidance to integration joint monitoring committees but they are to be abolished by the Bill's schedule 2A (see paragraph 89 of these Notes). The modification to section 53 will allow guidance to be issued by the National Care Service Board, as well as the Scottish Ministers, but where the Board is to issue guidance it must comply with a consultation duty set out in inserted subsections (1A) and (1B).

## **SCHEDULE 2C: NATIONAL CARE SERVICE BOARD: CONSTITUTION AND GENERAL OPERATION**

### **Status**

108. Paragraph 1 of schedule 2C states that the National Care Service Board is a body corporate. This means that it has legal personality separate from that of the people who comprise it so that, ordinarily, those people will not be personally liable for things done, or not done, by the Board.

109. Paragraph 2 the schedule confirms that the National Care Service Board is not an emanation of the Crown. The Crown, which for this purpose broadly means the executive branch of government, enjoys certain privileges and immunities in law. Those privileges and immunities will not attach to the Board.

### **General powers and procedure**

110. Paragraph 3 of schedule 2C enables the National Care Service Board to do what it considers appropriate in order to perform its functions.

111. Paragraphs 4 to 7 make provision about how the Board operates internally.

112. Paragraph 4 allows it to set up committees and sub-committees.

113. Paragraph 5 makes clear that it is for the Board to set its own procedural rules and those of its committees and sub-committees, although in relation to matters of procedure as with all else the Board will be bound by section 12F to comply with directions from the Scottish Ministers.

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114. Paragraph 6(1) allows the Board to delegate its functions or aspects of them, which means that not everything it does has to be done by all of its members. But sub-paragraph (2) underscores that delegating a function does not absolve the Board of responsibility, nor does it prevent the Board from carrying the function out rather than leaving it to its delegate.

115. Paragraph 7 makes clear that a problem with the membership of the Board does not affect the validity of anything it does. The Board is comprised by its members so if, for any length of time, there were a problem with its membership (for example if it were to have fewer than the specified minimum number of members) there may be doubts about the legal validity of anything done by the improperly constituted board. Paragraph 7 dispels those doubts.

## **Accountability**

### *Accounts and audit*

116. Paragraph 8 of schedule 2C requires the National Care Service Board to prepare accounting records for each financial year and submit them to the Auditor General for Scotland for audit. The phrase “financial year” is defined in [schedule 1 of the Interpretation and Legislative Reform \(Scotland\) Act 2010](#).

117. As a result of this statutory requirement for the Board to send its accounts to the Auditor General for Scotland, [sections 21 and 22 of the Public Finance and Accountability \(Scotland\) Act 2000](#) apply. Amongst other things, those sections provide for the accounts, and the auditor’s report on them, to be laid before the Scottish Parliament and published (see section 22(5) of that Act).

118. In addition, because sections 21 and 22 of the Public Finance and Accountability Act apply to the accounts of the Board:

- the principal accountable officer for the Scottish Administration can designate someone to be its accountable officer (see [section 15 of that Act](#)), and
- the Auditor General for Scotland can look into whether it has been using its resources appropriately (see [section 23 of that Act](#)).

### *Annual report*

119. Paragraph 9 of schedule 2C requires the National Care Service Board to report to the Scottish Ministers, local authorities and health boards after each financial year on what it has done in that year. The phrase “financial year” is defined in [schedule 1 of the Interpretation and Legislative Reform \(Scotland\) Act 2010](#).

120. The reporting obligation under paragraph 9 is in addition to the reporting obligation under [section 32 of the Public Services Reform \(Scotland\) Act 2010](#), which requires the Board to publish after each financial year a report about (amongst other things) what it has done in that financial year to promote and increase sustainable economic growth. The Board is subject to that duty by reason of the amendment made to the Public Services Reform Act by schedule 2D of the Bill.

## **Members**

121. Paragraph 10 of schedule 2C provides that the National Care Service Board consists of its members. There is to be a chairing member and an unspecified number of other members. Further

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detail around the number of members the Board is to have, and how they are to be appointed, will be added to paragraphs 10 and 11 by regulations made by the Scottish Ministers under paragraph 17. Regulations under paragraph 17 are subject to the affirmative procedure (see section 46).

122. Paragraph 17 sets out constraints on the way the regulation-making power it confers can be used. All appointments to the Board must be made by the Scottish Ministers, although regulations can constrain their discretion in choosing whom to appoint by requiring that certain places on the Board be filled by the nominee of another person. One instance of an appointment having to be made on the basis of a nomination is mandated by paragraph 17(9), which provides that at least one place on the Board must be filled by a nominee of Scotland's local authorities. The process for their making that nomination is to be agreed between the Scottish Ministers and a legal person that is representative of the interests of local authorities (e.g. the Convention of Scottish Local Authorities, commonly referred to by the acronym COSLA). Paragraph 17(8) sets out other minimum requirements for membership of the Board which includes, as well as the minimum one member appointed to represent the interests of local authorities; one member to represent Health Boards; and one member to represent the Scottish Ministers:

- at least one individual who has personally received services provided by the National Care Service (see section 35 for what it means to say that services are provided by the National Care Service),
- at least one individual who has been personally involved in delivering those services directly to individuals, which means this space cannot be given to someone who has worked purely in a managerial or back-office capacity,
- at least one individual who is, or has been, a carer.

123. Certain people are disqualified from appointment by paragraph 16 of schedule 2C. The list of disqualification grounds can be amended by regulations under paragraph 18. Regulations under paragraph 18 are subject to the affirmative procedure (see section 46).

124. Amendments made by schedule 2D mean that the appointment of members, other than those appointed on the basis of nomination, will need to be carried out in accordance with the code of practice on public appointments produced by the Commissioner for Ethical Standards in Public Life in Scotland, and the Gender Representation on Public Boards (Scotland) Act 2018.

125. On appointing someone as a member, the Scottish Ministers are to specify how long the person is to remain a member as a result of that appointment (see paragraph 12 of schedule 2C). The person may continue as a member beyond that period by being re-appointed by the Scottish Ministers for another period. Paragraph 15 of schedule 2C sets out the circumstances in which someone will cease to be a member before the period of appointment is over. Paragraph 15 can be amended by regulations under paragraph 18.

## **Staff**

126. Paragraphs 19 to 22 of schedule 2C are about the staff of the National Care Service Board. The Board is to have a chief executive, who is usually to be appointed by the Board itself but as the chief executive is to be in place when the Board is first constituted the first chief executive is to be appointed by the Scottish Ministers (see paragraph 19). It is for the Board to decide what other staff to appoint and in what capacities (see paragraph 20). Paragraph 18 provides that it is

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for the Board to set terms and conditions for its staff (including its chief executive), but it can do so only with the Scottish Ministers' agreement. Reflecting the special arrangement already mentioned for the appointment of the first chief executive, in a departure from the general rule, the terms and conditions of the first chief executive are to be set by the Scottish Ministers. The Scottish Ministers' approval is also required for any arrangements made about paying pensions, allowances or gratuities to staff (see paragraph 22).

## **SCHEDULE 2D: NATIONAL CARE SERVICE BOARD: APPLICATION OF PUBLIC AUTHORITIES LEGISLATION**

### **Ethical Standards in Public Life etc. (Scotland) Act 2000**

127. Paragraph 1 of schedule 2D adds the National Care Service Board to the list of bodies in [schedule 3 of the schedule 3 of the Ethical Standards in Public Life etc. \(Scotland\) Act 2000](#). This means that it will need to:

- have a code of conduct for its members, whose compliance with the code will be policed by the Standards Commission for Scotland, and
- maintain a public register of its members' interests.

### **Scottish Public Services Ombudsman Act 2002**

128. Paragraph 2 of schedule 2D adds the National Care Service Board to the list of bodies in schedule 2 of the Scottish Public Services Ombudsman Act 2002. The effect is to:

- make it amendable to investigation by the ombudsman (see [section 5 of the 2002 Act](#)),
- oblige it to have its own complaints handling procedure that complies with the statement of principles published by the ombudsman under [section 16A of the 2002 Act](#),
- pave the way for its being subject to the further requirement to have a complaints handling procedure that complies with a model complaints handling procedure prepared by the ombudsman (see [sections 16B](#) and [16C](#) of the 2002 Act).

### **Freedom of Information (Scotland) Act 2002**

129. Paragraph 3 of schedule 2D adds the National Care Service Board to the list of Scottish public authorities in [schedule 1 of the Freedom of Information \(Scotland\) Act 2002](#). This means that it will be subject to the requirements that Act places on public bodies, including requirements to provide information to the public on request and to have in place a scheme for the pro-active publication of information it holds.

130. Being a public authority within the meaning of the Freedom of Information Act also makes the Board a "Scottish public authority" to which the [Environmental Information \(Scotland\) Regulations 2004](#) apply.

131. In addition, as a public authority within the meaning of the Freedom of Information Act, the Board is a "public authority" or "public body" for the purposes of the General Data Protection Regulation by virtue of [section 7 of the Data Protection Act 2018](#) (subject to the Secretary of State

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not making regulations under that section to remove its “public authority” status). The General Data Protection Regulation (also commonly referred to by the acronym “GDPR”) is [Regulation \(EU\) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data](#). There are particular rules applied to bodies classified as “public authorities” (over and above those applied to all data processors) in the GDPR and the Data Protection Act 2018. An analysis of those rules is beyond the scope of these Notes.

132. In addition, being a public authority within the meaning of the Freedom of Information Act makes the Board subject to the duties imposed by [section 44 of the Climate Change \(Scotland\) Act 2009](#), and as such liable to monitoring and investigation under [Part 4 of that Act](#).

### **Public Appointments and Public Bodies etc. (Scotland) Act 2003**

133. Paragraph 4 of schedule 2D adds the National Care Service Board to the list of specified authorities in [schedule 2 of the Public Appointments and Public Bodies etc. \(Scotland\) Act 2003](#). This means that the Scottish Ministers, when appointing its members, will need to comply with the code of practice on public appointments produced by the Commissioner for Ethical Standards in Public Life in Scotland. This, however, is subject to an exception in relation to any members who fall to be appointed on the basis of a nomination made to the Scottish Ministers, so the code of practice will not apply in relation to (for example) the representative of local authorities who is discussed in paragraph 122 of these Notes.

### **Public Services Reform (Scotland) Act 2010**

134. Paragraph 5(2) of schedule 2D adds the National Care Service Board to the list of bodies in schedule 5 of the Public Services Reform (Scotland) Act 2010. This means that it is a body in relation to which an order can be made under section 14 of the Public Services Reform Act. Such an order can (subject to restrictions and only after the Scottish Parliament has approved a draft of the order):

- modify, confer, abolish, transfer or provide for the delegation of any function of a public body,
- amend the constitution of a public body.

135. Paragraph 5(3) of schedule 2D adds the Board to the list of bodies in schedule 8 of the Public Services Reform Act. This means that the Board will be subject to the duties to report after each financial year on:

- expenditure (see section 31 of the Public Services Reform Act), and
- the steps it has taken to promote and increase sustainable growth and improve its efficiency, effectiveness and economy (see section 32 of that Act).

### **Public Records (Scotland) Act 2011**

136. Paragraph 6 of schedule 2D makes the National Care Service Board subject to the duties created by [the Public Records \(Scotland\) Act 2011](#) to produce, implement and keep under review a records management plan.

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### **Procurement Reform (Scotland) Act 2014**

137. Paragraph 7 of schedule 2D adds the National Care Service Board to the list of contracting authorities subject to the duties created by the Procurement Reform (Scotland) Act 2014 regarding their procurement activities and some specific measures aimed at promoting good, transparent and consistent practice in procurement.

### **British Sign Language (Scotland) Act 2015**

138. Paragraph 8 of schedule 2D makes the National Care Service Board a listed authority for the purposes of the [British Sign Language \(Scotland\) Act 2015](#), which means that it is required to periodically produce a plan about the measures it is taking in relation to British Sign Language (see sections 2 and 3 of the Act).

### **Public Contracts (Scotland) Regulations 2015**

139. Paragraph 9 of schedule 2D adds the National Care Service Board to the list of contracting authorities in [schedule 1 of the Public Contracts \(Scotland\) Regulations 2015](#). This means that in carrying out procurements to which those regulations apply, the Board will be subject to:

- the obligations imposed by Part 2 of those Regulations, which were enacted to implement for Scotland Directive 2014/24/EU of the European Parliament and of the Council on public procurement,
- the provisions set out in Part 3 of those Regulations about remedies (and their facilitation) in relation to procurements, which were enacted to implement for Scotland Council Directive 89/665/EEC on the co-ordination of laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts.

### **Gender Representation on Public Boards (Scotland) Act 2018**

140. Paragraph 10 of schedule 2D adds the National Care Service Board to the list of bodies in [schedule 1 of the Gender Representation on Public Boards \(Scotland\) Act 2018](#). This means that in appointing its members, the Scottish Ministers must give preference to a woman if there are equally qualified candidates of either gender and appointing a woman would result in, or be a step towards, 50% of the Board's membership being women (see [section 4 of the Gender Representation on Public Boards Act](#)). In addition, the Gender Representation on Public Boards Act requires that steps be taken to encourage women to apply to be Board members (see [section 5](#)).

141. Members of the Board who can only be appointed following nomination, for example a member appointed to represent local authorities as discussed in paragraph 122 of these Notes, are to be classified as holding excluded positions for the purposes of the Gender Representation on Public Boards Act. This means that section 4 of the Gender Representation Act does not affect their appointment, although it could only do so in any case if the nominating person nominated more than one candidate. It also means that they are ignored in calculating whether 50% of the Board's membership are women for the purpose of determining whether section 4 applies to the appointment of any other members.

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### **Islands (Scotland) Act 2018**

142. Paragraph 11 of schedule 2D adds the National Care Service Board to the list of authorities in the schedule of the Islands (Scotland) Act 2018. This means that it must have regard to island communities in carrying out its functions (see [section 7 of the Islands Act](#)) and prepare an island communities impact assessment in relation to any of its policies, strategies or services which it thinks is likely to have an effect on an island community that is significantly different from its effect on other communities (see [section 8 of the Islands Act](#)).