

Criminal Justice Committee

29th Meeting, 2022 (Session 6), Wednesday, 23 November 2022

National Care Service (Scotland) Bill

Note by the clerk

Background

1. At a recent meeting of the Committee, Members agreed to take evidence on the [National Care Service \(Scotland\) Bill](#).
2. This Bill contains a power (s27 of the Bill) whereby the Scottish Ministers may by regulations, wholly or partly, transfer to themselves or a care board a function conferred on a local authority by an enactment mentioned in schedule 3 of the Bill.
3. In relation to criminal justice, the Bill contains a provision in s30 whereby Ministers are required to consult first on any proposals to bring children's and justice services into the National Care Service; **see Annex A**.

Today's meeting

4. At today's meeting, Members will hear from the following witnesses with a view to writing to the lead committee in the Parliament which is considering the Bill at Stage 1:
 - Claire Wilson, Lead Social Worker, Aberdeen City Health and Social Care Partnership – [written submission](#)
 - Anil Gupta, Chief Officer, Communities, COSLA – [written submission](#)
 - Representative of UNISON Scotland – [written submission](#)
 - Lynsey Smith, Chair of the Justice Standing Committee, Social Work Scotland – [written submission](#)
5. A number of these organisations have provided written evidence to the lead committee (Health, Social Care and Sport Committee); links to their full submissions are set out above.
6. In addition, the Scottish Government's Bill Team have sent additional written briefings for members of the Committee to consider; **see Annex B**.

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**Clerks to the Committee
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Duties in relation to transferring functions

- 10 **30 Consultation before bringing children’s and justice services into the National Care Service**
- (1) This section applies in relation to regulations under section 27 that would transfer the function of providing—
- 15 (a) a children’s service, or
- (b) a justice service.
- (2) Before making regulations to which this section applies, the Scottish Ministers must consult publicly about the function transfer that the proposed regulations would effect.
- (3) When laying a draft Scottish statutory instrument containing regulations to which this section applies before the Scottish Parliament for approval by resolution, the Scottish Ministers must also lay before the Parliament a summary of—
- 20 (a) the process by which they consulted in relation to the function transfer that would be effected by the regulations contained in the draft instrument, and
- (b) the responses they received to that consultation.
- (4) In this section, “a children’s service” means a service that is provided to, or in relation to (either or both)—
- 25 (a) persons under 18 years of age,
- (b) persons 18 years of age or over on account of a local authority having provided a service to, or in relation to, them when they were under 18 years of age.
- (5) In this section, the reference to “a justice service” is to be construed as follows—
- 30 (a) a justice service is a service that is provided only to, or in relation to, persons who are or have been—
- (i) in police custody having been arrested in respect of an offence,
- (ii) officially accused of committing an offence,
- (iii) the accused in criminal proceedings,
- 35 (iv) found guilty in criminal proceedings,
- (b) despite paragraph (a), no service provided in exercise of a function conferred by virtue of the Mental Health (Care and Treatment) (Scotland) Act 2003 is a justice service.

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*Part 1—The National Care Service**Chapter 6—Allocation of care functions etc.*

- (6) In subsection (5), “officially accused” and “police custody” have the meanings given in (respectively) sections 63 and 64 of the Criminal Justice (Scotland) Act 2016.

ANNEX B

Additional briefing material from the Scottish Government

National Care Service (Scotland) Bill – summary

- The Bill sets out a legal framework for the establishment of the National Care Service. Further details will be established through co-design and set out in regulations, or through guidance and other documents.
- The Bill will require the Scottish Ministers to promote a care service designed to secure improvement in the wellbeing of the people of Scotland. They will be required to do this in accordance with the NCS Principles set out in the Bill.
- The Bill allows Scottish Ministers to create local care boards, and to transfer functions from local authorities and health boards to those care boards to form the NCS.
- Functions that can be transferred from local authorities include adult social care and social work, children’s social care and social work, and justice social work.
- The Bill requires a further public consultation to be held in relation to children’s services and justice social work and the results to be laid before Parliament alongside any regulations.
- A final decision on whether to pursue such a transfer in relation to the areas of children’s and justice social work, and how that might be phased, will be subject to further detailed consideration and evidence gathering with key partners.
- The Bill also provides for:
 - a charter to help people understand their rights and responsibilities supported by a robust complaints and redress system to help people claim those rights
 - arrangements for independent advocacy services to help people ensure their voices are heard
 - a scheme and standards for sharing information, to facilitate a nationally-consistent electronic health and care record.
 - rights to breaks for unpaid carers
 - “Anne’s Law”, ensuring residents living in adult care homes can keep in touch with those who are important to them.

Reasons for creating a National Care Service and co-design approach

- The aim for a National Care Service is to put people back at the centre of care and end the postcode lottery that currently exists.
- We have heard repeatedly from people with direct experience that the system needs to change in order address consistency and improve quality.
- The NCS is being developed following the Independent Review of Adult Social Care that recommended reform to improve services for those who need them.
- The Bill sets out a framework for the changes we want to make but, importantly, gives us time to work through the detail with those who either deliver or receive community healthcare, social work and care services.

Local provision

- Services will continue to be designed and delivered locally. That is right, to support delivery with and for our communities and the people they serve.

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- The Bill sets out that at a national level the functions of the NCS are focused on consistency through oversight.
- Care boards will provide the understanding of local needs and ensure that local engagement is maintained.

Workforce

- In partnership with COSLA, the Scottish Government published the National Workforce Strategy for Health and Social Care on 11 March 2022.
- The Strategy outlines our shared vision for a sustainable, skilled workforce with attractive career choices where all are respected and valued for the work they do.
- The Bill provisions on staff and assets are required to support emergency, operator of last resort functions.
- Any future decision on the transfer of staff will be a matter for individual local authorities; local authorities will be able to continue to provide social care services if they wish, commissioned by the local care board.
- We will work closely with local government, the workforce and unions to ensure that the impact on staff of any changes is fully considered.

Finance

- The Financial Memorandum sets out the costs of implementing the Bill, as required by Standing Orders. It does not cover issues such as growth in demand or changes to policy on charging, which are separate from the issue of establishing a NCS.
- Costs in the financial memorandum cover a range of areas, with a significant amount, in fact 43%, of costs for care boards relating to staff costs.
- Other costs relate to areas such as investment in IT and data which is vital for ensuring evidence can be gathered to improve value for money from investment made.
- Some structural reform is required in order to move accountability to Scottish Ministers, but these costs will be minimised to maximise investment in care.

National Care Service (Scotland) Bill: Summary of programme of work to support decision on Justice Social Work

Background

1. The National Care Service (Scotland) Bill proposed to transfer accountability for social work and social care services from local authorities to the Scottish Ministers. Based on recommendations of the Independent Review of Adult Social Care, the Bill will enable the Scottish Ministers to establish local care boards to deliver services, and special care boards for national functions. Ministers will be able by regulations to transfer to care boards or to themselves functions conferred by enactments listed in schedule 3 of the Bill.
2. Schedule 3 includes enactments that provide for justice social work (JSW) services. Section 30 of the Bill requires that a further public consultation be undertaken and the results be laid before the Scottish Parliament alongside any regulations that propose to transfer JSW services (or children's services).
3. This provision reflects that responses to the consultation on the Bill were mixed on the possible inclusion of JSW services within a future NCS. Although a majority of respondents were in favour, concerns were highlighted by key stakeholders including Social Work Scotland and COSLA. This included a perceived lack of evidence to support a decision, reflecting the fact that JSW services were not considered in detail by the Independent Review of Adult Social Care, resulting in a call for further research, analysis, and consultation to be undertaken.

Current position

4. JSW services are currently the responsibility of local authorities. They may be delegated to Integration Authorities (also known as Integration Joint Boards (IJBs) or Health and Social Care Partnerships (HSCPs), but are not required to be delegated. This has resulted in a mixed approach across the country, in which JSW services are delegated in eighteen local authority areas and are retained by the local authority in twelve areas. With the introduction of the NCS, and local care boards replacing Integration Authorities, there will therefore be changes in many areas, whether JSW functions are transferred to the NCS, or remain with local authorities.

Programme of work

5. To meet this provision, Scottish Government officials have worked collaboratively with stakeholders to scope a programme of work. This included facilitating a scoping group with representatives from COSLA, Social Work Scotland and Community Justice Scotland. This collaboration has been constructive and has resulted in agreement on the key stages of the work and the scope and objectives of the proposed research to be commissioned by the Scottish Government.

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6. This programme of work is now being progressed with stakeholders and will consist of three key elements:
 - **Research:** The collation of an evidence base on the strengths and weaknesses of current practice and the prospective implications of the inclusion or not of JSW within a future NCS. The research brief was developed with stakeholders and is being commissioned via an open public procurement exercise.
 - **Options Appraisal:** Running concurrently to the research will be activity to support collaboration with stakeholders and people with lived experience to scope, analyse and, where appropriate, co-design prospective delivery models (including with JSW within and outwith an NCS). This structured appraisal will analyse a range of options and test the desirability, viability and feasibility of each.
 - **Public Consultation:** A twelve-week public consultation to seek views on the proposed approach to the future delivery of JSW. This consultation, when combined with the evidence gathering and options appraisal, will be presented to help inform a final decision on the future delivery of JSW services.
7. The timeline for this programme of work would support Ministers to make an in-principle decision in autumn 2023 and a final decision in spring 2024. This schedule aligns with that of the comparable decision to be taken in relation to children's services, ensuring possible synergies are fully considered.

Working with stakeholders

8. The Scottish Government is committed to working closely with stakeholders and people with lived experience of JSW, making sure that the voices of those affected by the decision are heard throughout.
9. As a starting point, a reference group with representatives from the main stakeholders has been established. This group will meet regularly to guide the work and support wider engagement with JSW staff and people with lived experience. The organisations currently represented on the group are:
 - Care Inspectorate
 - Community Justice Scotland
 - COSLA
 - Criminal Justice Voluntary Sector Forum
 - Risk Management Authority
 - Social Work Scotland
 - Scottish Association of Social Workers
10. Beginning in early 2023, as part of the options appraisal process, a programme of engagement opportunities will be established. This will include a series of in-person sessions across different parts of Scotland to develop, and gather views

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on, different options for the future delivery of JSW both within and outwith a future NCS.

Alignment with wider NCS development

11. This programme of work will be fully aligned with the overall NCS policy and design activity. This includes ensuring that this wider activity be approached on the basis that JSW could be included within a future NCS should a decision be taken to include JSW. Conversely, this approach ensures that should JSW not be included, that the implications of this are understood and that effective collaboration with services within an NCS can continue.