

Health, Social Care and Sport Committee
Tuesday, 26 November 2024
34th Meeting, 2024 (Session 6)

National Care Service (Scotland) Bill – Update from the Minister for Social Care, Mental Wellbeing and Sport

Note by the Clerk

Background

1. The Scottish Government introduced the National Care Service (Scotland) Bill in the Scottish Parliament on 20 June 2022.
2. The Health, Social Care and Sport Committee published its [Stage 1 report](#) on the general principles of the Bill on 22 February 2024. On 29 February 2024, the Parliament voted to approve the general principles of the Bill at Stage 1.
3. During its Stage 1 scrutiny of the Bill, the Health, Social Care and Sport Committee received notification of the Scottish Government's intention to propose amendments to the Bill at Stage 2, to reflect a consensus agreement it had reached with COSLA that the proposed National Care Service should be governed by a revised model based on shared legal accountability between Scottish Ministers and local government..
4. The Committee's Stage 1 report requested that the Scottish Government provide the draft text of its Stage 2 amendments in advance of formal Stage 2 proceedings to enable the Committee to take further oral and written evidence prior to those proceedings.
5. On 24 June 2024, the Minister for Social Care, Mental Wellbeing and Sport [wrote to the Committee](#), supplying the following package of documents from the Scottish Government:
 - [National Care Service \(Scotland\) Bill - draft Stage 2 amendments | Scottish Parliament Website](#)
6. The Committee issued a written [call for views](#) on the Scottish Government's proposed Stage 2 amendments on 1 July 2024. Following a request from stakeholders, the deadline for responding to the call for views was extended from Friday 30 August to Friday 20 September 2024. [Responses](#) to the call for views are available on the Scottish Parliament website, in those cases where consent was given to publish the response.
7. The Committee took further oral evidence on the Bill from selected stakeholders at its meetings on [24 September](#), [1 October](#) and [8 October 2024](#) ahead of

formal Stage 2 proceedings, which were scheduled to commence at its meeting on 26 November.

8. The Scottish Parliament Information Centre (SPICe) has produced an overview of the Scottish Government's proposed Stage 2 amendments to the Bill, included at **Annexe A** and a summary of further evidence the Committee has taken in relation to those proposed amendments at Stage 2, included at **Annexe B**.
9. On 13 November 2024, [the Minister for Social Care, Mental Wellbeing and Sport wrote to the Committee](#) outlining the Scottish Government's intention to seek a delay to Stage 2 consideration of the Bill and to "work with the committee and the Parliamentary Bureau to agree a revised timetable, for the New Year".
10. On Tuesday 19 November the Minister for Parliamentary Business submitted motion [S6M-15539](#), on behalf of the Parliamentary Bureau, that the Parliament agrees to a number of revisions to the programme of business. This included a Ministerial Statement on the National Care Service on Thursday 21 November 2024. The motion was agreed to.

Today's meeting

11. Further to her letter of 13 November 2024, the Minister for Social Care, Mental Wellbeing and Sport has been invited to attend today's meeting to provide a further update and answer questions on the National Care Service (Scotland) Bill.

Clerks to the Committee
21 November 2024

Annexe A



Health Social Care and Sport Committee

National Care Service (NCS) Bill Stage 2

Overview of proposed Scottish Government amendments

This paper provides an overview of the Scottish Government’s proposed Stage 2 amendments.

National Care Service Bill as introduced and Stage 1 consideration	4
Overview of proposed Stage 2 Scottish Government amendments ('the proposed amendments')	4
Introduction	4
Outline of key proposals and revised policy intentions	5
Expert Legislative Advisory Group	7
Accountability and National Care Service Board	8
National Care Service Board composition	9
National Care Service Board Staff	9
National Care Service principles	9
National Care Service strategy	10
Monitoring and Improvement	10
Changes to integration arrangements	10
National Social Work Agency and Chief Social Work Adviser	12
Charter of rights and responsibilities and complaints	12
Other areas still under discussion	13

National Care Service Bill as introduced and Stage 1 consideration.

The [NCS Bill was introduced on 20 June 2022](#). A [SPICe briefing on the Bill](#) was published on 10 October 2022.

Overview of proposed Stage 2 Scottish Government amendments ('the proposed amendments')

Introduction

This background briefing is intended to provide an overview of the Scottish Government's proposed Stage 2 amendments to the National Care Service (Scotland) Bill to support the Health, Social Care and Sport Committee's scrutiny of those amendments in advance of formal Stage 2 proceedings.

The Health, Social Care and Sport Committee published its [Stage 1 report](#) on the general principles of the Bill on 22 February 2024. On 29 February 2024, the Parliament voted to approve the general principles of the Bill at Stage 1.

During its Stage 1 scrutiny of the Bill, the Health, Social Care and Sport Committee received notification of the Scottish Government's intention to propose amendments to the Bill at Stage 2, to reflect a consensus agreement it had reached with COSLA that the proposed National Care Service should be governed by a revised model based on shared legal accountability between Scottish Ministers and local government.

The Committee's Stage 1 report requested that the Scottish Government provide the draft text of its Stage 2 amendments in advance of formal Stage 2 proceedings to enable the Committee to take further oral and written evidence prior to those proceedings.

On 24 June 2024 the [Minister for Social Care, Mental Wellbeing and Sport wrote to the Committee](#) supplying the following package of documents from the Scottish Government:

[National Care Service \(Scotland\) Bill - draft Stage 2 amendments | Scottish Parliament Website](#)

[Read the Bill as Introduced marked up with proposed amendments \(1MB, pdf\)](#)

[Read the Bill as Introduced with side lined proposed amendments \(638KB, pdf\)](#)

[Read the list of draft Scottish Government Stage 2 amendments \(501KB, pdf\)](#)

[Read the updated Explanatory Notes \(302KB, pdf\)](#)

[Read the updated Memorandum \(522KB, pdf\)](#)

[Read the Public Bodies \(Joint Working\) \(Scotland\) Act 2014 marked up with proposed amendments \(339KB, pdf\)](#)

[Read the update on co-design of the National Care Service Charter \(240KB, pdf\)](#)

[Read the draft National Care Service Charter \(125KB, pdf\)](#)

SPICe published a blog the following week, providing an overview of the main proposed government amendments.

[Read a SPICe Spotlight blog on the Scottish Government's documents.](#)

On the same day (1 July 2024), a call for views on the Scottish Government proposed Stage 2 amendments to the National Care Service Bill was launched, which closed on 20 September. A total of 148 [Submissions were received](#) and are available on the Scottish Parliament website.

Please note that a number of inconsistencies and omissions are present in some of the documents provided by the Scottish Government on 24 June. For example, in the Adjusted Explanatory Notes, in paragraph 43, Section 26B is referred to as Section 28B, which isn't in the marked up Bill. Also, there appears to be a word missing in **p.61** of the NCS Bill marked up amended draft, Chapter 2, Powers to Modify Chapter 1 on the powers re the National Care Service Board, between 'further' and 'about':

"17(1) states: 17 "The Scottish Ministers may by regulations make further ...about the composition of the National Care Service Board and the appointment of its members."

No Committee report will be written following these evidence sessions, but SPICe will produce a summary of both the written and oral evidence ahead of formal Stage 2 proceedings.

Outline of key proposals and revised policy intentions

One of the key changes to Scottish Government policy on proposals for a National Care Service and hence the Bill as introduced is the change in accountability arrangements. These will be covered in most detail in the rearranged session with CoSLA and SOLACE on 8 October. However, it might be helpful to outline how the Scottish Government has sought to reflect its agreement with CoSLA on shared accountability arrangements for the proposed National Care Service in their revised proposals and proposed Stage 2 amendments. ([The SPICe blog - The National Care Service Bill – the next chapter\(s\)](#)) provides a more detailed overview of the amendments and revised proposals.

The proposed amendments are nearly all in Part 1 Chapter 1, with a number of new sub-chapters and sections added. Chapters 2 – 6 of Part 1 would be removed. Parts 2, 3 and 4 of the Bill remain unchanged, but the Schedules have been modified.

- **The establishment of a National Care Service Board** (Chapter 1B and section 26B) which would provide national oversight and governance, while the statutory responsibilities of local authorities and NHS boards for staff and services would remain as they are. Paragraph 317 of [the revised Memorandum](#) highlights those aspects of governance via a national board and implications for local government that remain unclear:

“The Bill will affect local government in Scotland, primarily through the creation of the NCS Board and the new national shared accountability for social care and social work. The nature of the impact on local government from the establishment of the NCS will depend on decisions about scope of the NCS Board and its interaction with NCS Local Boards. It is not possible to fully quantify these impacts until decisions are taken on what services are to be included in the NCS. The Scottish Government will work with COSLA and SOLACE? to identify the implications at the appropriate time, and further impact assessment information will be developed alongside the relevant secondary legislation.”

New section 26B would give regulation-making powers to the Scottish Ministers to confer functions on the national board.

The Board would have a duty to comply with Ministerial directions and have regard to Ministerial guidance. The board would also have responsibility for monitoring and improvement through a ‘support and improvement framework’.

- **A return to the narrative of integration and amendments to the Public Bodies (Joint Working) (Scotland) Act 2014** which were absent from the original proposals and the Bill as introduced.
- Along with this, the Scottish Government states:

“There is a presumption in favour of integration where there is current inconsistency, and a consistent approach to delegation across Scotland is our aim. Specifically, this may mean that services should move from the ‘may be delegated’ category to the ‘must be delegated’ category in order to achieve that aspiration.”

This has implications for how social work services will function and have to be reorganised in relation to the provision of children’s services and justice social work services, where there is currently variation across Scotland because areas have been able to choose which, if any, of these services to delegate (see table below in Theme 5 which shows how each of the integration authorities has chosen to organise social work and children’s services).

- There would **only be one integration authority model (Chapter 1A)**, an Integration Joint Board. Highland alone opted for the Lead Agency model under the 2014 Act, so these amendments would have most effect on Highland Council and NHS Highland.
- **Current IJBs will be renamed National Care Service local boards (amended 2014 Act and Chapter 1A of Bill)** and they will report to the National Care Service Board – within the parameters of the shared accountability arrangements.
- **A National Social Work Agency (Chapter 1C)** will be established as an executive agency.
- **The role of the National Chief Social Work Adviser would be put on a statutory footing (Chapter 1C)** with the National Social Work Agency established as the body to support them.
- Section 14 (**Complaints service**) remains, and is included in new Chapter 1C ‘Functions of the Scottish Ministers in Relation to Care’. Under ‘Regulation-making powers’, ‘Information’ and advice’ has been added to section **13 ‘Independent advice, information and advocacy**. However, given the insertion of 26B, the assumption is that these functions, and responsibility for complaints, might be conferred on the National Service Care Board.
- **Many key and other aspects remain under discussion and require further work regarding the best legislative approach.** Some of these are set out by the Minister [in her letter of 24 June](#): Anne’s Law, Direct funding, inclusion of children’s services and Justice Social Work. Details regarding fair work and ethical commissioning also require further development, as do details on board composition.

Expert Legislative Advisory Group

- [One of the Recommendations \(107\) of the Committee’s Stage 1 Report on the Bill](#) was to set up an Expert Legislative Advisory Group. A number of meetings were held by the group in 2024.
- A number of other stakeholders, [members of ELAG, also wrote to the Committee on 30 July 2024](#). The letter presents an overview of how the Group operated as a forum for discussion rather than a co-design group, and expresses some frustration that the reports from the Group seemed to suggest widespread support for some of the Scottish Government’s proposed Stage 2 amendments when this was not necessarily the case.

The text of the proposed amendments was not shared with the Group.
The letter states:

“It is not immediately clear from many of the draft amendments to what extent feedback from ELAG members, or people with lived experience of social care have been reflected in their design.”

Accountability and National Care Service Board

[The updated Memorandum](#) accompanying the Scottish Government’s proposed Stage 2 amendments reminds us that, following the introduction of the Bill, discussions held with CoSLA led to a shared accountability agreement whereby statutory functions would not be transferred to Scottish Ministers, and local authorities would remain legally responsible for the delivery of social work and social care support and would keep the staff and assets required for providing those services. NHS Health Boards would remain legally responsible for the delivery of community health services. This would leave current arrangements in place. As an alternative approach to the Bill as introduced, the proposed amendments would create a National Care Service Board through which accountability would flow, and national approaches would be generated.

Chapter 1B would establish a National Care Service Board and a ‘general operating framework’. A schedule (at the end of the Bill) would make provision for its constitution and operation.

Sections 12E – 12M cover more provisions about the national board:

- 12 E Purpose of the National Care Service Board
- 12F Duty to comply with Ministerial directions.
- 12G Duty to have regard to Ministerial guidance.
- 12H Financing of the board (Ministers may provide such financial assistance as they consider appropriate)
- 12I and 12J Corporate plan
- 12K and 12L Improving care via having responsibility for monitoring and improvement via a support and improvement framework.
- 12M - Commissioning – this is about procuring goods and services for others – mainly NCS institutions, and is not about the commissioning process. Explicit reference to ‘ethical commissioning’ would be removed. However, the updated Memorandum makes several references to ethical commissioning being a feature of NCS services. [See particularly paras 167 - 174](#)

National Care Service Board composition

Under the Scottish Government's proposed Stage 2 amendments, the NCSB would have a chair and ordinary members, to be appointed by the Scottish Ministers, who could also determine the terms and conditions of membership, (see new schedule 2c – NCSB constitution and general operation). However, Scottish Ministers can only appoint members once they've exercised the relevant regulation-making power to allow them to do so. These regulations could specify the experience, criteria and qualifications required. Section 17 of the new schedule 2C provides quite a high level of detail on these criteria, as explained in the [Adjusted Explanatory Notes](#).

National Care Service Board Staff

Part 5 of new schedule 2C provides that the first chief executive of the NCSB would be appointed by the Scottish Ministers, with subsequent chief executives appointed by the Board, but only with the Scottish Ministers' approval.

It is also provided that the Board would be able to appoint staff, under terms and conditions determined by the Board with the Scottish Ministers' approval.

[Annex A accompanying the Minister's letter](#) sets out a number of areas related to the proposed National Care Service Board, where the Scottish Government intends to reflect further:

- “how the board will link to other regulatory bodies in the health and adult social care system (for example the Care Inspectorate),
- suggestions about other stakeholders we should engage with,
- the best way to support lived experience board members,
- views that the board needed to have “teeth” so that it could hold other parts of the system to account,
- suggestions for the type of committees that we need to set up to support the board,
- the need for national priorities to be identified to direct the work of the different parts of the system.”

National Care Service principles

Under the Scottish Government's proposed Stage 2 amendments, a number of the National Care Service principles would be amended. More detail has been added to some, some have been added and some replaced. One new principle would be that people and carers would experience services as integrated.

In addition to changes in wording and additional principles, including some clarification on human rights, Section 1A would require a review of the principles within 5 years, which would involve consultation with the National Care Board, anyone they consider appropriate and individuals who use services or who work in

NCS services. Section 1B would also allow Scottish Ministers to amend the principles by regulation.

National Care Service strategy

Sections 1C – 1E cover a NCS strategy. Scottish Ministers must prepare such a strategy, covering what challenges they and NCS institutions should focus on. These institutions are defined as the NCS Board, local boards, health boards (integration functions only) and local authorities (integration functions only). The public and these institutions would be consulted, but this would not include the NCS board or local boards for the first iteration of the strategy.

The strategy would be reviewed every five years, unless a statement is issued by Scottish Ministers that a new strategy is not required.

Monitoring and Improvement

Sections 12K and 12L cover the responsibility of a national care service board for monitoring and improvement. The amendments state that the board would monitor services, identify need for improvement and take action to implement improvement. It would do this with reference to the NCS strategy, the local board's strategic plan, and to a 'support and improvement framework. The wording suggests an escalation type framework, stating that: "the framework must describe, on a graduated scale, the actions the Board may take when it identifies a need for improvement"

Changes to integration arrangements

The [updated Memorandum](#) accompanying the Scottish Government's proposed Stage 2 amendments states:

"There is a presumption in favour of integration where there is current inconsistency, and a consistent approach to delegation across Scotland is our aim. Specifically, this may mean that services should move from the may be delegated category to the must be delegated category in order to achieve that aspiration." (para.12)

The documents accompanying the Scottish Government's proposed Stage 2 amendments remind us of current integration arrangements:

"At present, local authorities have statutory responsibility for providing social care support, and Scottish Ministers, through NHS 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 I(ntegration) A(uthorities)s, to manage a range of services

collectively, including budgets. They are required to delegate certain functions (and budgets) to a local integration authority, and may delegate others.”

Under current arrangements, different integration authority areas could choose, to an extent, which services were delegated. Consistency in social work services in particular could, it is argued, become fragmented as a result of children’s and justice services being delegated to integration authorities in some areas but not in others. Functions of local authorities that may be delegated are set out in an IJB’s Integration Scheme, as set out in [the Schedule in the 2014 Act](#). (see also table in Theme 5)

As the Committee heard during its pre-budget scrutiny on 3 September, sometimes these arrangements have not worked smoothly and, on the whole, budgets and services are not necessarily managed or agreed collectively or easily.

Cam Donaldson, who appeared before the Committee on 10 September as part of its scrutiny of the proposed National Outcomes, was co-author of [a short article about integration, which made the case for IJBs to be strengthened, and pointed out examples where its promise has been realised in Scotland, describing:](#)

“strengthening IJBs as a basis for a locality-based approach combined with place-based planning. Budgets could still be allocated to IJBs (or some other form of such) via a formula, but include greater accountability and responsibility for healthcare as well as social care resources... the promise of a combination of funding uplift and ring-fencing together with more comprehensive locality-empowered integrated care has actually been shown in emergency care and in reshaping care for older people in Scotland [11, 12]. If successful on a more-widespread basis, the prize would be treating people closer to home through re-allocating to social care the £1bn Scotland currently spends annually in hospitals for delayed discharges”

These and other issues related to integration of health and social care were also identified in the [Independent Review of Adult Social Care \(IRASC\), published in February 2021:](#)

- 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.”

The Scottish Government’s proposed Stage 2 amendments would amend the 2014 Act so that there is only one integration model. Existing integration joint boards would be renamed to become NCS local boards. The new boards would be accountable to a National Care Service Board, so changing the current governance

arrangements and introducing a whole new tier of governance via the National Care Service board.

Under the 2014 Act, Highland was the only area that opted for the 'lead agency' model of integration, instead of establishing an IJB (body corporate model). This means NHS Highland and Highland Council would be the most affected area in terms of the governance and structural changes brought about by proposed Stage 2 amendments to the Bill. These bodies would have to establish a new IJB under the terms of the amended 2014 Act.

Health and Social Care Scotland provide [a clear description of the arrangements and models provided for by the 2014 Act](#).

National Social Work Agency and Chief Social Work Adviser

As part of the Scottish Government's proposed Stage 2 amendments, new Chapter 1C, new section 26A requires the Scottish Ministers to designate one of its civil servants as the National Chief Social Work Adviser, who must be a registered social worker, and to re-organise other members of its staff into an executive agency to be called the National Social Work Agency.

In the [Scottish Government's guide to public bodies](#), it describes Executive Agencies as:

“an integral part of the Scottish Government. They support Ministers in their work, focussing on delivering parts of Government business or providing a specialised function. They have well-defined remits which are aligned with and help deliver the Government's purpose and objectives. They generally have a strong focus on the management and direct delivery of public services. However, our Agencies also, to one extent or another, provide strategic policy input. In some cases, our Agencies carry responsibility for a discrete area of Government policy and activity and thus work very closely with Ministers. Their staff are civil servants including the Chief Executive, who is directly accountable to Ministers.”

Other examples of Scottish executive agencies include Education Scotland, Social Security Scotland, Transport Scotland and the Scottish Prison Service.

Charter of rights and responsibilities and complaints

Some considerable time and resource has gone into drafting the NCS charter of rights and responsibilities. [The initial proposals set out in the Bill appeared to follow the model of the NHS Charter of rights and responsibilities, as set out in the Patient Rights \(Scotland\) Act 2011](#). However, since the 2011 Act was introduced, a charter

has been co-designed to support Social Security Scotland. During Stage 1, it wasn't wholly clear whether a charter would follow the provisions in the 2011 Act or be more like the co-designed [Social Security Scotland charter, which does not include 'responsibilities'](#).

Section 11 of the Bill as introduced covers the NCS charter of rights and responsibilities. As part of the package of documents shared with the Committee in June, the Scottish Government has provided a [specific paper which shows the progress made so far in this piece of co-design work](#), along with a [copy of the draft charter](#).

Under the terms of the Bill as introduced, there is no intention to introduce any new rights or responsibilities. So, for example, currently there is no specific right for someone to receive care and support, but people do have a right to an assessment of their needs and means by social services, and social services have a duty to provide services and information for their populations.

The draft charter does not yet include any information on the complaints and redress service, only what information might be included to guide people through a process. It remains unclear how a complaints and redress service would operate in relation to the Care Inspectorate, Scottish Social Services Council, local authorities, NCS local care boards or the National Care Board. However, it is envisaged that the new single point of access system would remain under the jurisdiction of the Scottish Public Services Ombudsman.

Some of the evidence heard from stakeholders about the current system of complaints to social services highlighted a perception that local authorities were merely 'marking their own homework', with the result that complaints and issues weren't being dealt with.

Other areas still under discussion

The marked-up Bill, showing the proposed Stage 2 Scottish Government amendments, and the updated Memorandum describe areas where issues remain under discussion, and include sections that have not been amended. The letter from the Minister accompanying the Scottish Government's proposed Stage 2 amendments highlights four areas "where further work is needed to confirm which legislative approach would best deliver the intended changes". These are:

- Direct funding
- Inclusion of children's services
- Inclusion of Justice Social Work
- Anne's Law

Anne's Law (Section 40 of the Bill)

In the recently published [Programme for Government](#), the Scottish Government explicitly undertakes to deliver Anne's Law by the end of this Parliamentary term.

A number of submissions are focused specifically on the delay in introducing Anne's Law, and in what is being proposed in this regard.

The development of "Anne's Law" 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, now deceased, for prolonged periods during the height of the pandemic.

In a letter sent to the Committee on 30 July, COSLA made clear that, while discussions are ongoing, they had:

"requested that Scottish Government reconsider publishing draft amendments for which no consensus has been reached between spheres of Government at this time. We wish to correct an error in the Minister's correspondence and clarify that COSLA did not request further time to consider amendments related to Anne's Law. COSLA has consistently expressed support for Anne's Law, recognising that care homes are people's homes, and that they should not be reduced to a clinical setting. COSLA continues to engage constructively with partners on the effective implementation of Anne's Law."

The Committee has subsequently received [correspondence from the husband of Anne](#), of Anne's Law, and [Care Home Relatives Scotland](#) in early September 2024, expressing concern about the lack of any progress with 'Anne's Law', as set out in section 40 of the Bill as introduced.

The Scottish Government, which [consulted on proposals in 2021](#), acknowledges more detailed concerns about the proposals, which are expressed in some of the submissions to the call for views.

"some individuals and groups have expressed concern that section 40, as introduced, does not explicitly reflect the core aims of Anne's Law. Furthermore they have indicated that the direction-making powers in and of themselves appear to give powers to Ministers but not to residents and visitors and there is concern that Ministers could revoke visiting arrangements at any time."

As an interim measure, the Care Inspectorate has set up the Meaningful Connection and Anne's Law Project to support and promote the importance of all types of meaningful connection for people who live in adult care homes, and to help the sector prepare for Anne's Law. [Two new Health and Social Care Standards were introduced in March 2022, pending implementation of Anne's Law](#). The standards

are used by the Care Inspectorate in assessing services, and care homes are expected to meet these standards.

These are the new Standards:

- If I am an adult living in a care home and restrictions to routine visiting are needed to prevent infection, I can nominate a relatives/friends (and substitutes) to visit me. My nominated relatives/friends will be supported by the care home to see me in person day-to-day and to be directly involved in providing my care and support if that is what I want.
- If I am an adult living in a care home, I can nominate a relatives/friends (and substitutes), who will be supported by the care home to be directly involved in providing my day-to-day care and support if that is what I want.

Inclusion of children's services and justice social work

[In her letter to the Committee, the Minister stated:](#)

“My preference continues to be, as set out in the Stage 1 debate, inclusion of children's services, including children's community health services, in the scope of the NCS in all parts of Scotland. Achieving this ambition requires progressive move towards consistent delegation of services across the country.”

With regards to justice social work, the Minister's letter sets out her approach, again with an emphasis on consistency:

“Including justice social work in the National Care Service would therefore:

- Ensure that justice social work is aligned with the other areas of social work
- Ensure the National Care Service Board is responsible for all justice social work services across Scotland
- Promote a joined-up approach for justice social work with other areas of social work, care, and community health Policy development on the inclusion of justice social work is ongoing. So as not to pre-empt the outcome of those discussions, no proposed amendments relating to justice social work are included in this pack.”

In its letter to the Committee of 30 July, COSLA expresses disappointment that an amendment at section 35 (3A) “would set the scope of the National Care Service Board to include children's services and justice social work services where these functions have been included within a local integration scheme.”

There is nothing in the revised Explanatory Notes that covers this new section, but the [Memorandum goes into detail about the rationale for bringing children's services into the purview of the NCS](#) (paras 204-218), with the aim of making integration more consistent across the country, as well as aligning with other policies such as Getting it Right for Every Child (GIRFEC) and the Promise.

The [Scottish Government commissioned research on the impact of integrating or not justice social work services](#). The findings were inconclusive as to the advantages and disadvantages.

[CELCIS was commissioned, via an independent steering group to research the reform of children’s services](#) and has [published a number of papers on the subject](#).

The table below shows how social work services are currently delegated across the country:

Health and Social Care Partnerships (HSCPs): Delegated services beyond minimum requirements				
The table below shows which HSCPs have delegated services beyond minimum requirements to include children's health services, children's social care services, criminal justice social work and other services.				
	Children's Health Services	Children's Social Care Services	Criminal Justice Social Work	Other delegated
Aberdeen	✓	✗	✓	
Aberdeenshire	✓	✗	✓	
Angus	✗	✗	✗	
Argyll and Bute	✓	✓	✓	"All acute services"
Clackmannanshire and Stirling	✗	✗	✗	
Dumfries and Galloway	✓	✗	✗	"All acute services"
Dundee	✗	✗	✗	
East Ayrshire	✓	✓	✓	
East Dunbartonshire	✓	✓	✓	
East Lothian	✓	✗	✓	
East Renfrewshire	✓	✓	✓	
Edinburgh City	✗	✗	✗	
Falkirk	✗	✗	✗	
Fife	✓	✗	✗	
Glasgow City	✓	✓	✓	
Highland	Lead agency model. NHS Highland responsible for adult health & social care; Highland Council responsible for children's health & social care			
Inverclyde	✓	✓	✓	
Midlothian	✗	✗	✓	
Moray	✗	✓	✓	
North Ayrshire	✓	✓	✓	
North Lanarkshire	✓	✗	✗	
Orkney	✓	✓	✓	
Perth and Kinross	✗	✗	✗	
Renfrewshire	✓	✗	✗	
Scottish Borders	✗	✗	✗	
Shetland	✗	✗	✓	
South Ayrshire	✓	✓	✓	
South Lanarkshire	✓	✗	✗	
West Dunbartonshire	✓	✓	✓	
West Lothian	✗	✗	✓	
Western Isles	✗	✗	✓	

Source: [Health and Social Care Scotland](#).

Direct funding

In her letter to the Committee, the Minister reiterated the Scottish Government's intention to give Scottish Ministers the power to directly fund reformed integration authorities for specific purposes. The letter argues that current arrangements:

“[lead] to variance across the country in terms of how services in the system are funded and, can lead to delays in getting funding to the frontline, as well as make it difficult to fully gauge the true nature of funding available for key priorities on a national scale.”

The letter goes on to inform the Committee that work is ongoing with statutory partners and finance experts on developing amendments in this area that would avoid any unintended consequences.

Anne Jepson, Health and Social Care, SPICe Research

November 2024

Annexe B



Health Social Care and Sport Committee

National Care Service (NCS) Bill Stage 2

Scrutiny of proposed Scottish Government amendments: Summary of views

This paper provides a summary of views expressed in written and oral evidence to the Health, Social Care and Sport Committee.

Summary of Views on the Proposed Stage 2 Scottish Government amendments ...	19
Key messages	19
Background	19
Important information about this summary	20
Theme 1: General views on the proposed Stage 2 amendments and bill	21
Theme 2: Accountability for a national care service	24
Theme 3: Creation of a National Care Service Board	26
Representation	26
Delegated functions and powers of Scottish Ministers	27
Theme 4: Public Bodies (Joint Working) (Scotland) Act 2014 and changes to integration arrangements	28
Theme 5: National Social Work Agency	30
Theme 6: Ethical commissioning and procurement	31
Theme 7: Monitoring and improvement of the NCS strategy and services	33
Theme 8: Anne’s Law	35
Theme 9: The Charter of Rights and Responsibilities	37

Summary of Views on the Proposed Stage 2 Scottish Government amendments

Key messages

- **Stakeholders remain frustrated by:**
 - Lack of progress
 - Uncertainty on many aspects eg Anne's Law, representation on board/s
 - 'power play' between central and local government
 - Status of proposed amendments (i.e. they are not 'lodged') so will they change
 - Exclusion from process to respond to changes in accountability arrangements and amendments (via the Expert Legislative Advisory Group).
- **There is increased uncertainty among stakeholders following the removal of support for the Bill (after the proposed amendments were presented) by:**
 - CoSLA
 - Unions
 - Opposition parties
- **The proposed amendments do not provide clarity about the status, independence or representativeness of a National Care Board.**
- **Significant reform is possible without new primary legislation and the structural reform it proposes.**
- **Mention (and definition) of Ethical commissioning has disappeared from the Bill with the proposed amendments, which many stakeholders regard as a fundamental building block for social care reform and Fair Work.**
- **The Bill does not address, nor would it improve the immediate and pressing issues affecting social care such as recruitment, retention, or lack of resource to provide care and support.**

Background

This summary provides an overview of views received and heard by the Health, Social Care and Sport Committee on the proposed Scottish Government amendments at Stage 2 of the National Care Service (Scotland) Bill. There will be no

Committee Report on the views expressed from the call for views or the Committee Meetings held in September and October 2024, so this summary will provide some additional information ahead of the normal Stage 2 proceedings, during which any MSP is entitled to suggest amendments to the Bill as drafted. This interim process prior to Stage 2 proceedings allows Members and others to assess how the Scottish Government intended to progress with a national care service up to June 2024, and how its proposals developed or changed up to that point.

While scrutiny of the proposed amendments was underway, COSLA and trade unions withdrew their support for the Bill. Written and oral evidence was provided by these bodies.

The [Call for Views was launched on 1 July 2024 and closed on 20 September 2024 and received 148 submissions. 113 of these were from organisations.](#)

[**The submissions about the proposed Scottish Government Stage 2 amendments are available via the Committee’s web pages and the National Care Service \(Scotland\) Bill pages.**](#)

In the Committee’s Stage 1 report, a majority of Committee Members requested the Scottish Government provide the draft text of its Stage 2 amendments in advance of formal Stage 2 proceedings. This was to enable the Committee to take further evidence on proposed amendments prior to normal Stage 2 proceedings. This request was made because of the substantial changes, mainly to accountability arrangements, that emerged soon after the bill was first laid.

On 24 June 2024, the Committee received the following package of documents from the Scottish Government:

[National Care Service \(Scotland\) Bill - draft Stage 2 amendments | Scottish Parliament Website](#)

On July 2 2024, [SPICe published a blog – the National Care Service Bill – the next chapter\(s\)](#) providing an overview of these changes to the proposals.

While the questions in the call for views were quite specific, some respondents chose to express general and specific views in the ‘other comments’ option, passing over the survey options.

Important information about this summary

As with all calls for views issued by the Scottish Parliament, this one sought a range of views from whomever wanted to respond. This summary will not and cannot present those views as being representative of the Scottish population, nor even of all stakeholders who might have an interest in the topic. A range of views allows Members the opportunity to consider issues from a range of perspectives, and SPICe summaries seek to reflect this range.

The use of survey-style software over recent years, which allows for quantitative analysis of some questions, might suggest that quantitative information presented is somehow demonstrative of a representation of views of the population at large. It isn't, and can't be, because all respondents are self-selecting, and not randomly selected via a sortition process. This summary presents a range of views from interested stakeholders: individuals and organisations.

Many respondents took time to provide detailed answers on individual draft amendments in a relatively short timescale which were insightful and constructive. Unfortunately there is not space here to present all of those specific views and ideas here, but all of the submissions can be viewed. As was also highlighted during oral evidence, the status of these amendments is unknown. It is not certain that the Scottish Government would actually lodge them prior to Stage 2 proceedings.

Unusually for a SPICe briefing, oral evidence from Committee Meetings held on [24 September 2024](#), [1 October 2024](#) and [8 October 2024](#) is also covered by this summary.

Theme 1: General views on the proposed Stage 2 amendments and bill

Submissions and panels expressed the view that there was still insufficient detail in many parts of the Bill with proposed amendments to allow them to form a view on many aspects, such as the National Care Board, Ethical Commissioning and fair work.

The view was also expressed that the amendments fundamentally change the Bill because the proposed structures and approach to accountability would fundamentally change.

[The Law Society of Scotland provided narrative answers](#) to many of the specific questions on the amendments, under the final section – ‘other comments’. They also provided a general overview:

“The draft amendments would make significant changes to the Bill as introduced. Whilst we note the Scottish Government’s view that purpose of the Bill and the ‘vision’ for the NCS remain unchanged, the draft amendments would fundamentally change the proposed structures of the NCS and the approach to accountability. The scope of the amendments reflect a significant change in policy intention and will render much of the evidence given at stage 1 nugatory...

They conclude:

“In light of all of the above, and whilst we do not take a position on the policy issue of whether a National Care Service should be established, we would query whether a more appropriate approach may have been to withdraw the

current Bill and introduce a new Bill, possibly subject to a focused and abbreviated Stage 1 with agreement of the lead committee. We are concerned that the current approach at Stage 2, whereby fundamental changes are being made to reflect a significantly revised policy intention, limits the scope for full and effective parliamentary scrutiny and is therefore inconsistent with the creation of good law.”

[CIPFA also responded](#) that the revised FM lacks sufficient detail:

“While there is additional information contained in the revised FM, it is CIPFA’s view that there remains a lack of sufficient detail to say with confidence that the estimates provided are accurate or that it represents value for money and a worthwhile investment. It is vital that a robust and realistic FM is provided to parliamentarians and stakeholders to allow for sufficient scrutiny, and to enable effective decision making. The Scottish Government faces a significant financial challenge, and ensuring that money is directed to where it can be of greatest impact, and where it can achieve the best value for money is of great importance.... CIPFA is concerned that there is a focus on structural change rather than on improving health and integration, funding, governance, outcomes, value for money, and strategy within the current integration framework. The proposed structural change involves rebranding, adding layers of complexity and bureaucracy, and fails to address the fundamental challenges in social care in Scotland.”

In oral evidence, Fiona Davies, CE of NHS Highland described the current situation in terms of sustainability and workforce issues. Under current arrangements commissioners of care services have no control over the bulk of social care provision, because it is provided by private companies or not for profit organisations, which the Bill would not address:

“As colleagues might be aware, we have lost more than 200 care home beds in Highland over the past two years, predominantly due to the availability of workforce and the cost of supplementary or agency staff making it not viable for care in those homes to be delivered in the same way. As Julie Murray has said, we in health and social care are flexible, and we find solutions, but losing services in such an unplanned and unstrategic way, because of access to workforce and the attractiveness of social care as a career, puts us under strain and is highly problematic.”

The [Centre for Care](#) submitted a response, and is a research-focused collaboration between the Universities of Sheffield, Birmingham, Kent and Oxford, the London School of Hygiene & Tropical Medicine, the Office for National Statistics, Carers UK, the National Children’s Bureau and the Social Care Institute for Excellence. They have conducted and published research comparing social care in all of the UK nations. In their view, [from their research with local authorities](#):

“Structural reform won’t solve the problems of social care. Interviewees and consultation respondents were unclear how the structural reforms proposed in the National Care Service would lead to improved outcomes. Introducing new structures and governance arrangements does not guarantee transformation. Sustainable funding of existing bodies and services was viewed to be more important to ensure better outcomes for people drawing on care. Structural reconfiguration was also viewed as potentially creating further pressures in a system already under strain, as organisations would need to plan for reform while also maintaining business as usual.”

The authors argue that “a convincing theory of change has (still) not been established... (which could) would explain the mechanisms behind the proposed reforms and how they will lead to better outcomes.” They also highlight the tension between establishing consistency and increased centralisation with the ability to develop community-based, innovative solutions.

The [Scottish Women’s Budget Group](#) query the lack of detail to changes to integration arrangements:

“The information set out in the Bill Amendments focuses on the change of Integrated Joint Boards to NCS local boards. Within the information of the Bill there is little detail about how these Boards will change in function and where improvements to existing structures will be built into the new NCS Local Boards. The amendments appear to focus on changing names, this focus will miss opportunities to change what does not work well within the existing structures and risk the NCS being seen as a new name for existing provision at a local level.”

[Orkney Integration Joint Board](#) explain the challenge of a national project, particularly for rural, remote and island communities:

“Section 1D (1) and (2) details that in preparing the strategy, Scottish Ministers should have regard to the NCS principles and consult with the public in Scotland as well as the NCS Board, NCS local boards, local authorities and health boards. In consulting the public in Scotland, there is no reference made to how this is done and, therefore, no mention made of how local systems, and existing and effective mechanisms for meaningful public consultation would be utilised.

If it is anticipated that public consultation is undertaken via a national exercise, as a small, remote and rural islands authority, we have some concern that our voice, and the issues that are most pressing to our communities, could be lost. Although Orkney shares many of the pressures and challenges that are being experienced across the country, there are undoubtedly issues that exist that will be anathema to many larger mainland

areas. An additional section here that recognises the planning requirements of local boards, and the need for Scottish Ministers to have regard to these plans in preparing the national strategy, would be helpful.”

Theme 2: Accountability for a national care service

Changes relating to accountability for a national care service made up the major elements of the proposed amendments, and the Bill as introduced was quickly reimagined following talks with COSLA. Proposals changed from Ministerial control and overall accountability to an agreement of shared accountability between local government, the Scottish Ministers and the NHS. The views of local government were made clear during Stage 1 Scrutiny (see above link to Stage 1 Committee Report).

In September 2024 COSLA withdrew their support for the Bill, even in the context of the revised accountability arrangements. This was explained in the [meeting on 8 October 2024](#) by Paul Kelly and Eddie Follan:

“At this stage, our position is that we have withdrawn from the process and want to work with partners and others on the reform that we think needs to happen to the system right now to make the changes that are required to support the people who need support... I will just add to what Councillor Kelly said, Ms Harper, about COSLA leaders taking the decision after lengthy negotiation around the shared accountability arrangement. At the moment, we do not feel that the arrangement reflects the discussions that we had with the Scottish Government over a long period of time.”

Views of those representing people using social care services were clear in the belief that accountability should be well-defined and that if Scottish Ministers were accountable for social care, then transparency about responsibility would emerge, and there would be clear leadership for reforms.

The SDS Collaboration wrote:

“People had hoped for real change at the inception of work towards the NCS, based on the findings of Feeley. Now, we have a sense of exclusion & a lack of transparency with the whole process. The Verity House agreement was reached behind closed doors- the debate about the place of local authorities & CoSLA is immaterial when we consider the process did not adhere to the NCS’ ambitions of valuing the voice of lived experience as equal to that of other stakeholders. In effect, the NCS ‘failed at the first hurdle’ on this point.”

[Adam Stachura \(Age Scotland\)](#)

“It is essential that Scottish Government ministers have responsibility for the care service in Scotland, which is in desperate need of reform. From the work

of the Feeley review, Age Scotland’s core principles were about having proper accountability and responsibility, which will breed better resourcing”

[Fiona Collie \(Carers Scotland\)](#)

“We have held a number of events with carers; when there has been discussion about things not working well, people have said that the difficulty is that they do not know who is responsible.”

[Jim Elder-Woodward \(Inclusion Scotland\)](#), believes that the only way to provide consistency of equity and service is through direct ministerial accountability:

“We were delighted with the original idea of the minister being responsible for the whole of Scotland because we would not lose equality of service across Scotland. We spent two years talking to COSLA about the postcode lottery system whereby people have to be reassessed by a new authority when they move from one area to another. We want equality; we want the same level of service provision.”

[Rachel Cackett \(Coalition of Care and Support Providers in Scotland\)](#) pointed out the problematic situation the Bill is in:

“We have a bill that is sitting as an amended bill— although amendments have not been lodged— which we did not ask for and which we had no part in amending, along with a shared accountability agreement that was not part of what we were looking for. We now have the removal of shared accountability, which we also had no part in.

In the Bill as introduced, accountability would move to the Scottish Ministers. However, [criticism during Stage 1 scrutiny](#) was that a move from local accountability ran counter to the recommendations of the Christie Commission, and that evidence of other services, such as the NHS displayed local variation and inconsistencies, so central accountability wasn’t any guarantee of equity.

Throughout scrutiny, queries about the need for a bill to reform social care were raised, alongside views that the proposed changes would not bring about significant reform, or even lay the foundations for it through structural reform.

The [Chartered Institute of Public Finance and Accountancy \(CIPFA\)](#) are not convinced that the amended proposals will address the ‘existential challenges’ in social care:

“CIPFA is an advocate of social care reform in Scotland. We believe that any programme of reform can only be successful if it is built on solid foundations. The Independent Review of Adult Social Care (IRASC) begins by setting out three steps to improving social care in Scotland: 1. Shift the paradigm; 2: Strengthen the foundations; 3. Redesign the system. We are concerned that not enough has been done to strengthen the foundations upon which a

reformed system can be built. Rather, redesigning the system has taken priority even when it has involved using stronger measures than necessary to address challenges when solutions could be found within the existing legislative framework. Furthermore, there is little evidence that the proposed measures will improve people's outcomes and the impact of the public pound in the social care system in Scotland.

CIPFA agrees in principle that social care in Scotland would benefit from enhanced national oversight to drive improvement. While CIPFA believes in the principle of subsidiarity, there is currently inconsistency in the quality and availability of care across the country. Meanwhile, demand for social care is rising and funding for social care is falling in real terms, leading to an unsustainable financial and operational position. While the proposals for the NCS may improve national oversight, it is unclear how the proposed changes will address these existential challenges.”

Colin Poolman, (Royal College of Nursing):

“there are many aspects for those who receive services and their families that could be taken forward without the need for the bill”.

Theme 3: Creation of a National Care Service Board

Respondents were mixed in their views on establishing a national care service board (43 partly opposed, partly supported, 34 not answered, others were fairly evenly distributed between 'support' and 'oppose'. [The Nuffield Trust](#), a UK health think-tank wrote:

“Our analysis of social care across the UK ('Adult social care in the four countries of the UK') has pointed to key areas in which there is potential for the most gains from strengthened national direction: setting a clear vision, providing stable and sustainable funding to support this, pooling and sharing knowledge and good practice, and improving conditions for the workforce, and dealing with crises such as the Covid-19 pandemic. The Board's new roles and functions can go some way to delivering some of this, although will require certainty of funding and status in the long-term to be able to achieve results.”

Representation

Who should sit on the board presented a major issue for many respondents and panels. Membership is not detailed in the proposed amendments, but there was a view that representation should be both broad and specific, ensuring that all views and voices be represented. For example, local authorities, integration joint boards (NCS local boards) and NHS boards all serve different types of community, so a single representative from each of these groups could not represent the others.

Equally, staff groups from social care staff, unions and representative bodies for nursing and AHPs also argued that their members needed to have a voice.

Organisations representing different groups accessing care and support, unpaid carers and providers of care and support from the independent and voluntary sectors also argued for broad representation on any national board. More than 70% of care is provided by independent or not for profit providers.

[Karen Reid](#) outlined concerns about the representation of NHS boards on any National board:

“We have some concerns about how to ensure that 22 independently legally-constituted boards have representation on the national care service board. We would also like to see more information about the removal of members of the national care service board, given that, from an NHS perspective, board members are appointed through the public appointments process.”

The trade unions, Zero Tolerance, Engender and Close the Gap all highlight how gendered social care is: [80% of those working in the sector are women, 61% of those receiving care and support are women. It is also estimated that there are around one million unpaid adult carers in Scotland who are predominantly women, with around 47% being women of working age \(18-64\). Above age 65, the percentage of men and women providing unpaid care equalizes.](#) Zero Tolerance states that the National Care Service proposals [are ‘entirely gender blind’ to these facts](#), when it comes to representation at board level.

The [Scottish Women’s Budget Group](#) extends this to the NCS Strategy as a whole:

“SWBG has previously highlighted the NCS Bill’s failure to acknowledge the potential of the NCS to tackle gender inequality. The amendment on the NCS strategy offers another opportunity to correct this missed opportunity. The NCS strategy needs to be underpinned with gender analysis of current challenges and the proposed solutions to drive improvements across the system and to tackle the gender inequality that the current system relies upon. Inclusion of an outcome on gender equality within the national and local strategies would in turn drive forward progress.”

Delegated functions and powers of Scottish Ministers

[Eddie Follan](#) highlighted an example of Ministerial control over integration arrangements, with the new proposal to move services (such as children’s and justice social services) from a ‘may be delegated’ to the integration joint board (national care service local board) to a ‘must be delegated’. During Stage 1, concerns were raised at integration authorities, only recently settled into joint working arrangements, having to undergo major reorganisation. Eddie Follan believed that a national board could set national strategic direction and standards, but that it would

not deal with national terms and conditions, and would still be ‘overly focused’ on Scottish Ministers. He also highlighted a perceived shift from the role of the National Care Board being about support and improvement to monitoring and scrutiny.(col.9). He also stated that CoSLA was concerned at the proposed power for Scottish Ministers to remove members from care boards.

The updated Memorandum states that the proposed amendments propose a power for Scottish Ministers to expand the provisions about Board membership through secondary legislation.

Theme 4: Public Bodies (Joint Working) (Scotland) Act 2014 and changes to integration arrangements

In submissions to the Committee’s Call for Views, and in oral evidence stakeholders argued reform was possible through some modifications to the 2014 Act. Some of this appeared in the proposed amendments. Mention of the 2014 Act was absent from the Bill as introduced.

[West Lothian IJB](#) was among those who regarded this point to be

“the opportunity to fully review terms of the Public Bodies (Joint Working) (Scotland) Act 2014 to ensure clarity and address some of the existing challenges. The proposed amendments do not take advantage of this opportunity with the proposed changes instead relating to terminology.”

[Stephen Morgan, Social Work Scotland](#), responded to a question on Self-directed Support, the legislation that dictates how social care should be delivered:

“When self-directed support was introduced, we were also dealing with the Public Bodies (Joint Working) (Scotland) Act 2014 and integration, and the two became conflicted. Between structural reform around integration joint boards and the delivery of self-directed support, the emphasis was put on the structural change. Leaders and practitioners were forced into new structures. We are potentially creating something similar now.”

Stephen Morgan held that changes to policy and legislation don’t provide space for services to stop and re plan how they will respond:

“We have no choice but to continue doing what we are doing. We are here to meet the needs of the most vulnerable people in Scotland, and we have to do that.

In terms of what structures look like, we have local structures across Scotland. The Public Bodies (Joint Working) (Scotland) Act 2014 is still in existence. Many of us argue that we are still implementing it, and the reform could be around that legislation and providing clarity on what needs to be in

and what needs to be out. Do we have a clear definition of community health services? The answer is no, and work is under way to look at that.

We have the mechanisms and the legislation in place to keep going. Given Scotland's fiscal position at this time, Social Work Scotland's position would be for us to take a break, pause and reflect."

[Moray Integration Joint Board](#) feared that the Bill could represent a backward step in integration:

"The MIJB is concerned that the proposal for the National Board to direct the function of local Boards will lead to a backward steps in the progress that has been made to develop services which are truly reflective of local need, local democracy and decision making. Whilst we do support the principle of 'no backtracking' on the gains achieved so far through integration there are risks that the reform as set out reduces the impact and influence of local boards and their ability to direct services to meet local demand, geography and demographics and is, therefore, driving backtracking from those important elements of the Public Bodies Act."

The proposed amendments would see alternative integration models disallowed, such that an integration joint board would be the only model. This would only impact Highland. Fiona Davies, Chief Executive of NHS Highland, reflected that the Board, working with Highland Council was broadly supportive of the proposed removal of alternative integration arrangements, removing the Lead Body model that Highland uses.

The [Nuffield Trust](#) provided an external view of integration and the creation of two parallel systems:

"Integration Joint Boards face a number of challenges in the divide between health and care cultures and working practices, and the different priorities and power imbalances between them. The new model of local NCS boards has the potential to partially rebalance power, in that the NCS nationally will increase the presence of the Scottish Government in support and accountability for social care.

But without good enough alignment, providing two different national institutional focuses could also worsen the risk that different parts of the system have different priorities and focuses. If policy and performance management across the NHS and NCS chains of command are not aligned, sets of local leaders will feel justified in pursuing in different agendas based on the mandates they each receive from the Scottish Government.

There is also a risk of community and primary care services being

disempowered as NHS boards which are often dominated by hospital services, and a social care sector with a clearer national mandate, thrash out issues and funding together.

It is worth scrutinising the policy intentions relating to the power to add further powers for delegation - what might these be, why would they be suitable, and why is this not currently the case?"

Theme 5: National Social Work Agency

Views about establishing a dedicated agency were generally welcomed.

"The chief officers group is supportive of the proposed national social work agency. I think that it would bring the profession much-needed parity of esteem with professions in the NHS."

[Frank Reilly \(Scottish Association of Social Work\)](#) said:

"Having both the agency and the chief social work adviser role in legislation is the last best hope for social work—that is what our members have told us—but we do not need this bill for that to happen. That has been a clear message from our members."

However, views were caveated by arguments that its establishment should not mean that proper consideration and parity of esteem for the wider social care sector workforce was downplayed.

[Katie MacGregor, of the Allied Health Professions Federation](#) were not in support, asking for an agency that represented all the professions involved in the delivery of social care services:

"AHPFS is opposed to the creation of a national social work agency. Instead, we would like there to be an agency that includes all the professions that are involved in the delivery of social care services. Our concern about an agency that is exclusive to one profession is that it could become divisive and create silos, and it would not improve multidisciplinary working or integration."

There were also concerns about further 'cluttering' an already cluttered and confusing scrutiny and regulatory landscape, and how it would operate in relation to the National Care Board and bodies such as the Care Inspectorate and SSSC, the regulator for social work and social care staff. However, [Maree Allison, \(SSSC\)](#) was supportive of the Agency, following discussions about how the two agencies would work together.

Theme 6: Ethical commissioning and procurement

There was [a full discussion on ethical commissioning](#) in the Committee meeting of 8 October.

[Age Scotland](#) argues that a definition of ethical commissioning is required:

“We would like to re-emphasise the importance of including ‘ethical commissioning’ under the new s12M which was mentioned at the NCS ELAG and would recommend this is reinstated with a clear definition of ‘ethical commissioning’ so there is no misinterpretation of what ethical commissioning could be or inconsistencies in the commissioning process.”

[Scottish Care](#) highlights that innovation in commissioning and procurement practice is already possible, with two examples where collaboration between all the respective partners is the key feature. Further guidance could, in theory, facilitate more widespread use of collaborative models.

“IJB-related case studies which evidence innovative and effective ways of commissioning and procuring services include the Granite Care Consortium and the Fife Care Collaborative. What these have in common are an emphasis on trust-built relationships and all stakeholders actively involved in sharing mutual priorities, resulting in improved delivery of support, reduced duplication and maximised resource. Mechanisms to better incorporate best practices and lessons learned into a unified framework that can be applied consistently across Scotland are welcomed to guide a more universally effective IJB model.”

[Scottish Care supplied supplementary comprehensive evidence to the Committee following the Committee meeting on 8 October](#) in response to the question : “In general, are there any other changes to the bill that could help to facilitate more innovative and collaborative commissioning?”

During the same meeting [Rachel Cackett](#) said:

“I was interested to hear one of your previous witnesses say that ethical commissioning is much more expensive. Ethical commissioning is perhaps expensive because it reflects the true cost of care. That goes back to the point that was made. Either we make a contract, through our social care service, with the people of Scotland to meet the needs that they have, and we are honest about some of the costs that are involved in that, or we end up with a non-ethical commissioning process that tries to drive down the price”

[The GMB union](#) was critical of those who commission and procure services, as well as engagement with Scottish Ministers on Fair Work:

“We have been clear that local authorities, health and social care partnerships, and Integrational Joint Boards have not managed social care effectively to date and they have not been prepared to take action against poor employers. They have time and time again procured these employers. We have been promised ethical commissioning underpinned by Fair Work, but given no detail on what this will look like. Our union’s experience of and engagement with Scottish Ministers on Fair Work has been poor.”

[Self-directed Support Scotland](#) were disappointed at the removal of references to ethical commissioning stating:

“We feel that many of the current challenges around provision of social care support are influenced by market-driven and competitive commissioning practices which have the result of pricing providers out of the market, leading to a decreasing level of choice for supported individuals. This in turn undermines the principles and successful delivery of Self-directed Support legislation.

We feel that inclusion of ethical commissioning on the face of the National Care Service Bill would be an opportunity to change the discourse and improve policy on commissioning practice in Scotland, recognising that a definition of ethical commissioning may need to be agreed outwith the Bill itself.”

The Nuffield Trust sees potential for a National Care Service Board to embed good commissioning standards:

“The establishment of a National Care Service Board in Scotland has the potential to increase the visibility of social care at a national level and could support more consistency of what social care people can expect to receive at a local level, in particular through setting a support and improvement framework, as well as its proposed research and training functions. The National Care Board in Wales has developed National Commissioning Standards, which has also been a commitment in England. There is potential for the National Care Service Board to use its new powers and expertise to develop commissioning standards to set a national level of expectation around what good care and support looks like.”

However, they also warned that:

“there is a risk that non-hospital, non-social care services will benefit from neither new national backing and oversight nor traditional prioritisation. The Feeley Review heard that IJBs could still be seen as relatively distant and short-termist, separated from direct procurement and contracting functions, and there is a risk that this will remain largely unchanged.”

Theme 7: Monitoring and improvement of the NCS strategy and services

This theme was most comprehensively covered in oral evidence in the meeting of [1 October 2024](#).

Karen Reid highlighted the potential confusion in relation to monitoring and improvement under shared accountability arrangements and a national care board when NHS boards already have an escalation framework, subject to ministerial oversight.

Potential confusion and duplication was also raised by Julie Murray:

“we feel that the relationships with the national improvement bodies such as the Care Inspectorate and Healthcare Improvement Scotland need to be defined to ensure that there is clarity and no duplication or confusion of roles. We are also interested in finding out what actions the NCS board will take if a service has been deemed to fail through inadequate funding, and with whom those actions will be taken. There are lots of questions around the issue at the moment, and not a lot of clarity.”

She added:

“HSCPs are already accountable to integration joint boards and their sub-committees, health boards and their sub-committees, and councils and their sub-committees. Therefore, unless there was significant streamlining of the process, it would simply add to an already very complicated set of reporting and accountability arrangements”

[West Lothian IJB](#) summed up the current status of monitoring and the opportunity for creating clarity and streamlining:

“Local health and social care planning and delivery is already subject to a very high level of reporting and scrutiny in a range of formal governance. As such, there is a potential risk that a new NCS Board that would bring further bureaucracy. The proposals would be strengthened by a greater emphasis on and commitment to be simplifying, streamlining and coordinating monitoring and improvement support for local services.

There is a case for improved coordination and clarity of national monitoring and improvement activity across health and social care, across Scottish Government and the range of national regulatory, scrutiny and improvement bodies.”

Others queried whether monitoring and evaluation was about continuous improvement and support to improve or performance management, or quality

assurance. Robbie Pearson said that it was important to be clear about what is behind the terminology, as well as the accountability:

“There is an element of the national care service board holding to account, which is different from quality assurance and external assurance of the local system, which is about driving improvement. We have to be quite careful with our language in relation to “external assurance” of the system and “performance management” of the system. That can create some difficulties in relation to the balance of roles and responsibilities between the national care service board and, for instance, Healthcare Improvement Scotland and the Care Inspectorate.”

[Midlothian IJB](#) responded to the call for views:

“Monitoring and improvement is important, but could be explored within current frameworks. These proposals do not seem realistic and in many respects divisive. Midlothian IJB would support new provision for monitoring and improvement if there were assurances that this will genuinely focus on outcomes for people, not system outputs;

- see investment and progress in integrated data collection and metrics used to measure performance;
- recognise where variance from national targets is appropriate and/or enables support, advice, guidance and training to be provided appropriately;
- and not result in reporting the same information to multiple sources in varying formats and timescales.

Outcome focused improvement must be bottom up and not top down across both health and social care, be well led, and designed by those who are closest to our communities... Data must be reliably linked and visualised in ways that allow the development of forecast modelling to support planning, monitoring and evaluation, support understanding local variance, and identify and stratify risk. Unless the specification meets this level of design, there will be limited value in sanctions for failing to comply with the regulations. There is perhaps a misconception that a significant volume of data sharing is already undertaken across integrated health and social care. The example in the memorandum is a partial, limited single electronic record where implementation was contractually mandated.”

[The Care Inspectorate](#) is more positive about the monitoring and improvement proposals:

“We welcome draft amendments in Section 12L that will ensure the new Support and Improvement Framework will be prepared with regard to the work of other public authorities including the Care Inspectorate. We have previously

sought reassurance from the Scottish Government that our scrutiny and quality improvement work would not be duplicated by any new framework, and this amendment appears to acknowledge our concerns... However, there are wider questions about where other standards and policy sit within this Framework, such as the current National Improvement Framework and the Scottish Learning and Improvement Framework.

The 'policy memorandum' confirms the Support and Improvement Framework will focus on "proactive improvement". It is envisaged that co-designing the framework will ensure the activity of existing improvement and regulatory bodies is recognised and factored into the Board's support and improvement role."

Overall, [The Food Train](#) supports the development of a strategy,(Sections 1C – 1E), but argue that a National Care Service strategy should "include measures of success, including how progress will be monitored & responsibility for effective delivery, which is more explicit than undertaking a review (Section 1E). [Audit Scotland](#) also highlight that:

"It will be critical for a NCS Board to ensure that it receives a high standard of data to inform its monitoring, scrutiny, planning and decision making against the strategy. Work needs to be progressed now to ensure that there is improvement to the range and quality of national data available to a shadow board and the Board once established."

[Age Scotland](#) also argue that any NCS strategy should be:

"viable, achievable and feasible with adequate resources invested, including financial, human and other requirements to empower NCS institutions to act. Data collection should be included to monitor progress towards aims of the strategy and measure compliance with principles. Data should also be publicly accessible for scrutiny and research purposes."

Theme 8: Anne's Law

There is very wide support among stakeholders and respondents to the call for views in support the introduction of Anne's Law, and frustration and dismay that it is taking so long to implement, regardless of the introduction of [two related new Care Standards](#). These were introduced to 'put Anne's Law into practical effect while legislation is being prepared' (Scottish Government, March 2022).

[About Dementia, Age Scotland](#) wrote:

"Overall, we support and urge for the introduction of Anne's Law into legislation in Scotland to enable people living in care homes to be visited by close friends and family, even during an outbreak of infectious disease. With

the campaign behind this law coming from the family of Anne Duke, who was living in a care home with early-onset dementia during the COVID-19 pandemic and was not allowed to see her family for months, we are strongly supportive of this law to prevent the impact of this isolation and potential distress for many people living with dementia.

Whilst we support the Government's commitment to delivering Anne's Law within the NCS Bill, we have some concerns about the delay to this being included within the Bill at stage 2. With it now being over four years since the start of the COVID pandemic, we want to see further progress on the implementation of Anne's Law into legislation as no one knows when the next pandemic may occur and for those in care homes, we cannot afford to wait."

They also express concerns that its implementation could be further delayed because of the framework nature of the Bill, meaning that there would be a wait for the secondary legislation to be passed.

The Donaldson Trust write that the proposed approach does not match the proposals in the consultation paper.

[Anne Duke's husband, Campbell, responded to the call for views](#), expressing profound frustration and dismay, with the further possible delay, and that concerns with the wording of the section in the Bill had not been heeded. Campaigners are asking for a specific right of care home residents to have a nominated relative/friend with them, even in times of a pandemic. The wording in the Bill instead places a duty on care homes to comply with visiting directions, but with the caveat that before issuing such a direction Ministers must consult with Public Health Scotland and others, and may also vary or revoke a visiting direction.

"Inspired by a Petition started by our daughter Natasha Hamilton in June 2020, myself and others such as Care Home Relatives Scotland began to Campaign for Anne's Law, to guarantee the Right of Care Home Residents to have a nominated relative/friend with them even in times of a Pandemic.

The experience has been a searing and brutal lesson in human nature and an indictment of civic Scotland's apparent inability to respond to human distress.

My Wife (62) - the "Anne" of Anne's Law - died behind the Locked Doors of her Care Home in November 2021. We have continued to Campaign in Her memory and on behalf of many others, but have become entangled in a growth industry of meetings - committees - inquiries - academic reports – and experts!"

"WHY CAN WE NOT DEVISE A STRATEGY TO DELIVER A "DIRECTIVE" THAT WILL SANCTION THE RIGHT OF EVERY CARE HOME RESIDENT

TO HAVE DAILY ASSOCIATION WITH A NOMINATED CARER EVEN IN THE MIDST OF A PANDEMIC. SOMEBODY WHO KNOWS THEM! SOMEBODY WHO LOVES THEM! WHY? BECAUSE IT MATTERS!"
(Campbell Duke)

During the pandemic, relatives of care home residents asked that they could be regarded as joint carers for their loved ones, allowing them to enter the care home, under the same circumstances and levels of health protection as staff.

[Jenni Burton](#) also expressed concerns:

"Anne's Law is in danger if it remains coupled to this legislation. It has cross-party support and needs to be delivered as promised. However, not in the form it is currently written in this draft. It is inadequate reassurance that Scottish Ministers will set directions when Scottish Ministers were those who perpetuated separation."

There are also calls and acknowledgement that could extend Anne's Law to hospital settings. [West Lothian](#) write:

"In relation to Anne's Law the West Lothian IJB is generally supportive and would consider the further extension of these provisions to include people within hospital settings while having due consideration of public safety"

Theme 9: The Charter of Rights and Responsibilities

The Scottish Government dedicated time and effort in the co-design of the charter, and sent documentation along with the proposed amendments. Views expressed in written evidence were both broad and very detailed in some cases, with many references to people's rights. The [People-Led Policy Panel \(via Inclusion Scotland\)](#) has been involved in developing the draft charter. While its initial inclusion may have followed the [NHS charter of rights and responsibilities established by the Patient Rights \(Scotland\) Act 2011](#), which places responsibilities on users of health services stakeholders of the NCS understood that it should more resemble the [Social Security Scotland Charter](#), and are pleased that it is framed around people's rights (albeit that that Bill proposes no new rights to be created) :

"The PLPP strongly believe that there shouldn't be responsibilities in the charter for supported people and carers. "My expectations are that a charter tells me about my rights and what I should expect from the government". The PLPP thought that the Charter should include examples of what the rights look like in practice so that people understand what they mean and how they may apply to them.

The language throughout the draft Charter requires further consideration. "As well as your legal rights, you can also reasonably expect that the NCS will

deliver everything set out in this charter, even if the law doesn't say we have to." This suggests that it is not legally binding or enforceable and that it will not lead to accountability. Inclusion Scotland asked for a robust Charter and accountability which can be challenged in court...The PLPP had been involved in co-design of the Charter and raised questions about who was involved in the consultation. We feel that by involving people who deliver services, it has become muddled. Some members felt that the draft charter appears to be about protecting workers and their reputation, rather than realising rights for people accessing support"

The [SDS National Collaboration](#) were disappointed with the draft:

"We agree with the principle of having a charter, but at this stage we feel that the current version fails on four key principles:

1. There have not been enough voices of lived experience included in shaping the Charter.
2. It is not accessible
3. It does not refer to the values & principles of SDS, which should be the opening gambit to the charter
4. It only references independent advocacy & does not include the right to independent information & advice.

Fundamentally if SDS is how we do social care in Scotland, why is this not mentioned first in the charter?

The Minister makes reference to the Expert Legislative Advisory Group in her Letter & associated papers. We have concerns that the ELAG's work was rushed & did not fully and inclusively include people with lived experience or fair representation from registered support providers. An improvement to ensure people are appropriately supported to engage needs to be considered for future collaborations."

When considered in relation to complaints, views were expressed, as in Stage 1 scrutiny, that:

"The complaints process as outlined would not change the current complaints processes in place for Local Authorities and NHS Boards and recognises the role of the SPSO. However, there is a risk of the National Care Board complaints route simply adding a further avenue to complain should a citizen not be happy with a service, it is not clear how this would be managed where a patient or service user has complained via multiple routes." ([North Ayrshire Council](#))

This was confirmed during oral evidence by [Rosemary Agnew, SPSO](#) who spoke in detail about complaints about public bodies, and health boards and local authorities in particular. She argued that the provisions in the Bill would not materially change

how complaints are handled, with a NCS Board having a role of ‘passing on complaints’:

“The issue is with the way in which section 14 of the bill is worded, because “receiving complaints about ... services” is not the same as responding to complaints, and although “passing those complaints on to the appropriate person” sounds great in principle, I am not sure that it would help people who make complaints for their complaints simply to be passed on. We already pass complaints on and we signpost, and that puts all the onus back on the service user.

The fact that someone makes a complaint means that they are not getting the service that they require or they are almost certainly going through something stressful and difficult. It is disappointing that there is not more emphasis on an advocacy role rather than a signposting role. That is my first big concern about what has not changed since the bill’s introduction.”

Anne Jepson, Health and Social Care, SPICe Research

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