



## **National Care Service (Scotland) Bill (“the NCS Bill”)**

### **Report by Suzanne Ross, Principal Solicitor**

#### **1. Purpose of Report**

1.1. The purpose of this report is to:

- (i) Note that a briefing of elected members will take place on 15<sup>th</sup> August 2022
- (ii) Note the preparatory actions taken by CMT as outlined in this report
- (iii) Provide an update as to the progress of the legislation which will underpin the National Care Service;
- (iv) Provide an overview of the NCS Bill;
- (v) Draw elected members attention to the Health, Social Care and Sport Committee, and other committees, who are looking at the details of the proposals, and want to know what people think about them. Views can be submitted by 2 September 2022 as outlined in section 2.6

#### **2. Background to the Bill**

2.1. In August 2021 the Scottish Government launched a consultation on the way in which social care was delivered in Scotland. The consultation followed recommendations made in the Independent Review of Adult Social Care (the Feeley Report)<sup>1</sup>.

2.2. The consultation ran for 12 weeks and closed in November 2021. Over 1,300 responses to the consultation were received<sup>2</sup>. Midlothian Council and Midlothian HSCP provided responses<sup>3</sup>. The independent analysis of responses was published in February 2022<sup>4</sup>.

2.3. On 20 June 2022 the Scottish Parliament published the NCS Bill which will provide the foundation for the NCS. Alongside the Bill, explanatory notes, a policy memorandum, a financial memorandum and a delegated powers memorandum were also published.<sup>5</sup>

2.4. The Scottish Government also published the Statement of Benefits<sup>6</sup> and the “Co-design and National Care Service” Paper<sup>7</sup>. It is intended that through an NCS Design School the Scottish Government will work with people who access and deliver social

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<sup>1</sup> [Adult social care: independent review - gov.scot \(www.gov.scot\)](https://www.gov.scot/adult-social-care-independent-review/)

<sup>2</sup> [Published responses for A National Care Service for Scotland - Scottish Government - Citizen Space \(consult.gov.scot\)](https://www.gov.scot/published-responses-for-a-national-care-service-for-scotland/)

<sup>3</sup> [Response 312540760 to A National Care Service for Scotland - Scottish Government - Citizen Space \(consult.gov.scot\)](https://www.gov.scot/response-312540760-to-a-national-care-service-for-scotland/) And [Response 491813606 to A National Care Service for Scotland - Scottish Government - Citizen Space \(consult.gov.scot\)](https://www.gov.scot/response-491813606-to-a-national-care-service-for-scotland/)

<sup>4</sup> [National Care Service: consultation analysis - gov.scot \(www.gov.scot\)](https://www.gov.scot/national-care-service-consultation-analysis/)

<sup>5</sup> [Introduced | Scottish Parliament Website](https://www.parliament.scot/national-care-service-introduced/)

<sup>6</sup> [National Care Service: statement of benefits - gov.scot \(www.gov.scot\)](https://www.gov.scot/national-care-service-statement-of-benefits/)

<sup>7</sup> [Supporting documents - National Care Service and co-design - gov.scot \(www.gov.scot\)](https://www.gov.scot/supporting-documents-national-care-service-and-co-design/)

care support to co-design parts of the National Care Service.

2.5. A Bill passes through various Parliamentary stages. The Bill is currently in Stage 1 of the process. It has been passed to the lead committee: the Health, Social Care and Sport Committee who will speak with experts, organisations and members of the public. The lead committee is expected to provide a report on the Bill at the start of 2023. The report will usually make a recommendation as to whether Parliament should support the general principles of the Bill. The Scottish Government will also launch the NCS Design School, ahead of the first NCS Gathering. It does not appear that details of the NCS Gathering have been published yet. The Scottish Government have held a series of events over the summer months to provide more information about the Bill and how the Bill process works.<sup>8</sup>

2.6. MSPs on the Scottish Parliament's Health, Social Care and Sport Committee, and other committees, are looking at the details of the proposals, and want to know what people think about them. Views can be submitted at the following link by 2 September 2022: [National Care Service \(Scotland\) Bill \(Detailed\) - Scottish Parliament - Citizen Space](#)

### 3. An overview of the NCS Bill

It is important to note that the Bill will be subject to Parliamentary scrutiny and will pass through various stages before it becomes an Act (ie law). It is however clear that it is the intention of the Scottish Government to establish a National Care Service and to transfer health and social care functions from local authorities to the Scottish Ministers.

3.1. There are four key Parts of the Bill:

- (i) Part 1 establishes the National Care Service and care boards. It gives Scottish Ministers the power to transfer health and social care functions to the boards.
- (ii) Part 2 gives Scottish Minister's powers over health and social care records
- (iii) Part 3 modifies existing laws relating to the provision and regulation of care
- (iv) Part 4 allows further legislation and regulations to be made.

3.2. By far, the most significant part of the legislation is the intention to transfer social care responsibility from local authorities to a new, national service. However, the Bill does not provide any detail as to the logistics of this transfer. It is not clear at this stage the extent to which powers will be removed from local authorities or to what extent local authorities will continue to have involvement in the provision or delivery of services. It is however clear that the Bill anticipates the possibility of a wholesale transfer of powers and duties to NCS.

3.3. There is also the power for Scottish Ministers to transfer healthcare functions from the NHS to the National Care Service.

3.4. As part of the initial consultation process, the Scottish Government had sought views on transferring duties and responsibilities for children's services social work and criminal justice social work into the NCS. The Scottish Government have set out their intention to consult further on any proposed transfer. Section 30 of the Bill requires

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<sup>8</sup> [National Care Service - Social care - gov.scot \(www.gov.scot\)](#) (under heading "Register for an event to learn more about the National Care Service Bill")

the Scottish Government to carry out a further consultation prior to bringing to Parliament any draft regulations seeking to transfer children's or justice services.

- 3.5. Part 1 deals with practical aspects relating to the Boards, including core principles, strategic plans, complaints handling and service failures. There are also provisions allowing for TUPE transfers of staff and for the transfers of property and liabilities. Section 27 of the Bill allows the Scottish Ministers to make regulations to transfers function from local authorities to either the Scottish Ministers or care boards. The functions which can be transferred are set out in Schedule 3 of the Bill (set out as an Appendix to this document)<sup>9</sup> and include the majority of legislation underpinning social work functions, including the Social Work (Scotland) Act 1968.
- 3.6. It is envisaged that there will be two types of care board: a local care board and a special care board. Local boards will be responsible for the delivery of care. A special care board need not be given a particular geographical area of responsibility, but may have responsibility to provide certain services throughout all of Scotland. The Scottish Ministers will have oversight of those boards. The Scottish Ministers will be granted powers to make decisions about the membership of care boards.
- 3.7. It is proposed that care boards will be bodies corporate. They will have a separate legal personality, meaning that ordinarily board members will not be personally liable for actions taken, or not taken, by the board.
- 3.8. The explanatory notes to the Bill outlines that Scottish Ministers will have the power to completely transfer the function of provision a social care service away from local authorities. Where that happens, there will be no clear legal basis for a local authority to continue providing a service. In order to allow the NCS to enter into a contract with the local authority, amendments are proposed to the Local Government (Scotland) Act 1973 to provide a legal basis to allow local authorities to continue providing services as a contractor, even where they have no legal duty to do so.
- 3.9. Part 2 gives the Scottish Ministers powers by regulations to establish a scheme for information sharing between the NCS and NHS.

Part 3 provides rights to breaks for carers and gives effect to 'Anne's Law' allowing care home residents to see and spend time with people important to them. It also provides new procurement regulations which if enacted will allow the list of bidders for a contract to be limited to those who meet a particular description. A further proposed regulations strengthen the powers of the Care Inspectorate.

Part 4 contains the provisions which allow Scottish Ministers to make regulations as to the transferring of functions from a local authority to the NCS.

#### **4. Actions required by the Council**

- 4.1. At a meeting of CMT on 29<sup>th</sup> June, it was agreed that relevant Council departments establish an officer Working Group, in preparation to engage with the NCS Design School and to continue the existing work with COSLA, SOLACE, SOLAR or other relevant bodies. The Working Group will also require to prepare to engage in the

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<sup>9</sup> Link to [Appendix](#)

future consultation on the inclusion of children's services and criminal justice social work. In addition, the Working Group should also consider how to engage with those impacted by the proposed changes, including those receiving care services, children social work and care services and criminal justice social work services.

- 4.2. Further work will be required in the coming weeks to analyse in more depth the Bill and supporting documents. Briefing seminars were provided to elected members in October 2021 and August 2022, and it may be that further seminars could be offered once there is further clarity as to the proposals.
- 4.3. Work should be undertaken by the Council in due course to engage with relevant working groups and to ensure that the Council and those to whom it provides a service's views are represented to the Scottish Government.

## **APPENDIX A – Additional Report Implications**

### **A.1 Key Priorities within the Single Midlothian Plan**

Reducing the gap in learning outcomes  
Reducing the gap in health outcomes  
Reducing the gap in economic circumstances

### **A.2 Key Drivers for Change**

Key drivers addressed in this report:

- ☐ Holistic Working
- ☐ Hub and Spoke
- ☐ Modern
- ☐ Sustainable
- ☒ Transformational
- ☒ Preventative
- ☐ Asset-based
- ☐ Continuous Improvement
- ☐ One size fits one
- ☐ None of the above

### **A.3 Key Delivery Streams**

Key delivery streams addressed in this report:

- ☐ One Council Working with you, for you
- ☒ Preventative and Sustainable

- ☐ Efficient and Modern
- ☐ Innovative and Ambitious

#### **A.4 Delivering Best Value**

Not applicable at this stage.

#### **A.5 Involving Communities and Other Stakeholders**

The report did not require any involvement of communities and other stakeholders.

#### **A.6 Impact on Performance and Outcomes**

The subject of this report does not impact currently on performance and outcomes.

#### **A.7 Adopting a Preventative Approach**

As stated within the Single Midlothian Plan 2020-2021 the Getting it Right for Every Midlothian Child Board is fully committed to realising the children's rights approach to all of our work and making sure that we embed the principles of the United Nations Conventions on the Rights of the Child.

#### **A.8 Supporting Sustainable Development**

##### **Report Contacts:**

Alan Turpie

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#### **Schedule 3 of the NCS Bill**

National Assistance Act 1948

Matrimonial Proceedings (Children) Act 1958

Social Work (Scotland) Act 1968

Children Act 1975

Local Government and Planning (Scotland) Act 1982, section 24

Health and Social Services and Social Security Adjudications Act 1983, Part 7

Foster Children (Scotland) Act 1984

Children (Scotland) Act 1995

Criminal Procedure (Scotland) Act 1995

Adults with Incapacity (Scotland) Act 2000

Mental Health (Care and Treatment) (Scotland) Act 2003

Management of Offenders etc. (Scotland) Act 2005

Adoption and Children (Scotland) Act 2007

Adult Support and Protection (Scotland) Act 2007

Children's Hearings (Scotland) Act 2011

Social Care (Self-directed Support) (Scotland) Act 2013

Children and Young People (Scotland) Act 2014

Human Trafficking and Exploitation (Scotland) Act 2015

Criminal Justice (Scotland) Act 2016

Carers (Scotland) Act 2016

Age of Criminal Responsibility (Scotland) Act 2019

Management of Offenders (Scotland) Act 2019