

National Care Service (Scotland) Bill

Business and Regulatory Impact Assessment

June 2022

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Final Business and Regulatory Impact Assessment

Title of Proposal

National Care Service (Scotland) Bill.

Purpose and intended effect

The purpose of the National Care Service (Scotland) Bill is to improve the quality and consistency of social care and social work support alongside community health across Scotland. It aims to improve the experience of people who access care and support, provide additional support for unpaid carers, and ensure the workforce is skilled, professional and valued. It also aims to strengthen the integration of health and social care by enabling the creation of a single system and accountability for social care, social work and community healthcare.

The Bill seeks to do this principally by setting a framework to create a National Care Service (NCS), making Scottish Ministers accountable for social care and social work support which will be delivered through a network of local bodies, known as local care boards. The proposal is that the local care boards would be responsible for strategic planning and ethical commissioning of all social care support and community (i.e. non-acute) healthcare. Healthcare would continue to be delivered by health boards with the local care boards responsible for delivering social care through procurement or other arrangements including with local authorities who may choose to continue to deliver care or through in-house delivery. Both nationally and locally, the NCS will work within a set of principles to ensure social care, social work and community healthcare is designed with those who use it, supports the realisation of human rights, and is recognised as an investment in society.

As part of the NCS, the Bill

- Requires Scottish Ministers and the local care boards to produce strategic plans and ethical commissioning strategies for the delivery of care;
- Provides for a streamlined system of complaints about NCS services, and the introduction of a Charter of Rights;
- Provides for Scottish Ministers to have the power to set up a statutory scheme through regulations to permit data sharing for efficient and effective provision of services by, or on behalf of, the NCS and NHS. Scottish Ministers will also have the power to set information standards; and
- Enables the invitation to tender for social care contracts to be restricted to mutual organisations.

This BRIA identifies the costs, benefits and impacts of these changes, where they are known at present.

The Bill also makes a number of other legislative changes aimed at improving people's experiences of social care and support but which are not directly connected to the establishment of the NCS:

- The creation of a right to breaks from caring for both adult and young carers who provide unpaid care, which aims to reduce any negative impacts of their caring role,
- "Anne's Law", to create a right for adults living in care homes, in circumstances where restrictions are needed to prevent infection, to have a named person (or substitute) that is supported to see the resident in person, and
- Strengthening the regulation of care services so that regulators can take action more quickly when services do not perform as they should, provide better protection to people who access care and support and drive up the consistency and quality of care.

As appropriate, this BRIA assesses the impact of these provisions in the Bill under separate headings within each section.

This BRIA should be read alongside the Policy Memorandum and Financial Memorandum for the Bill which provide more details on the provisions of the Bill. It should also be read alongside the National Care Service Statement of Benefits and the social care evidence papers that have also been published. More details about the costs, benefits and impacts of the National Care Service will be set out in a Strategic Outline Case that will be published separately and the future publication of a full Programme Business Case.

Framework and Co-design approach

It is essential that the NCS and other improvements are co-designed with the people who access support and those who provide it. The Bill therefore does not set out full details of how the new system will operate. Instead it establishes the overall framework and gives Scottish Ministers powers to fill in the detail following further co-design and engagement with people. This also allows flexibility for services to develop in the future and to respond to new approaches.

The Bill enables children's services and justice social work to be brought into the NCS alongside adult social work and social care. This is a significant change in the way that these services are organised, particularly in the case of children's services and justice social work and it is important that the risks and opportunities, costs and benefits are fully assessed before a decision is made to implement the transfer. Recognising that more data and evidence is needed before a transfer of children's services and justice social work, the Bill requires Scottish Ministers to carry out further consultation on a proposed transfer of a children's or justice service from local authorities. A summary of the consultation process and responses must be laid before the Parliament with the implementing regulations for parliamentary scrutiny before any transfer takes place.

This BRIA does not detail all the potential costs, benefits and impacts from the establishment of the NCS and the related provisions in the Bill because the details still need to be developed through co-design and further engagement. As further

decisions are made, and particularly where they are implemented through secondary legislation (under this Bill or through pre-existing powers), they will be subject to further business and regulatory impact assessment.

As set out in the Financial Memorandum, the establishment of the NCS and other changes made by the Bill are part of a wider programme of social care reform, backed up by a commitment to increase public investment in social care by 25% over the current Parliamentary session ahead of the NCS being established. Once established, the NCS will support many of these reforms; for example, it is intended that it will support greater consistency in the provision of services focusing on early intervention and prevention, and it will support the strengthening of Fair Work in social care and human rights based and preventative approaches to care. However, these are developments that are made easier by the new arrangements for accountability and delivery of community health and social care, not necessary consequences of the Bill provisions and so they are not considered in detail in this BRIA.

Background

As set out in the Policy Memorandum, around one fifth of people in Scotland are directly involved in social care, either through accessing care and support, caring for loved ones or as part of the workforce. The adult social care sector is a major employer in the Scottish economy, particularly in areas of high socio-economic deprivation and can be an important employer for young people.¹ It is also a major contributor to the Scottish economy. The total estimated economic value of the adult social care sector is between £3.5 billion - £3.9 billion. In 2018, the sector made up 3.2% of the Scottish economy and had grown by 18% in real terms over ten years compared to 11% for the economy as a whole. The Policy Memorandum, the Financial Memorandum and the evidence papers provide more details.

Improving social work and social care support, particularly increasing early intervention and prevention and supporting unpaid carers to protect their health and wellbeing, also reduces costs which would otherwise fall on other parts of the public sector. This can include unplanned hospital admissions, additional residential care needs, and family breakdown.

¹ The Economic Value of Adult Social Care: [The Economic Value of Adult Social Care | Scottish Social Services Workforce Data \(sssc.uk.com\)](https://www.sssc.uk.com/workforce-data)

Right to Breaks from Caring

Scotland's health and social care systems rely heavily on the input of unpaid carers. There were 700,000 – 800,000 unpaid carers before the pandemic, including 30,000 young carers. Latest estimates suggest that there were 839,000 adult carers in September 2020².

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

The Scottish Government estimates unpaid care is currently saving Scotland £12.8 billion per year in social care costs, plus £320 million in health care costs – a total saving of £13.1 billion per year³. For comparison, in 2019 the NHS Scotland budget was £13.4 billion.

Anne's Law

Currently, visiting arrangements are undertaken with reference to Scottish Government Guidance Open with Care and the Health and Social Care Standards which have been strengthened to ensure that people living in care homes and their families remain connected even during infectious outbreaks. The Health and Social Care Standards form the basis of the Care Inspectorate's oversight of adult care homes and although non-compliance with the Standards may result in actions for care homes to improve, the intention with these proposals for Anne's Law is to create legal obligations to support visits. The preference for legislation in addition to the Health and Social Care Standards was a clear outcome of the Scottish Government's public consultation on Anne's Law

The proposals for Anne's Law are intended to apply to adult care homes registered with the Care Inspectorate. There are around 1,000 care homes for adults and 33,000 residents aged 18 years and over in care homes in Scotland⁴. The vast majority are long term, providing support for elderly residents many of whom will have disabilities such as dementia (approximately 64%). Most care home provision is delivered by the private sector (around 75%) but local authorities (15%) and the voluntary and not-for-profit sector (11%) also play an important role.

² Scotland's carers update release, Scottish Government, 2022: www.gov.scot/publications/scotlands-carers-update-release-2

³ Scottish government calculation of replacement care and hospital days avoided (April 2022) using results in Weaver et al: Does availability of informal care within the household impact hospitalisation? Health Econ Policy Law. 2014 Jan; 9(1):71-93.

⁴ Care Home Census for Adults in Scotland, published in December 2021.

Rationale for Government intervention

As detailed in the Policy Memorandum, local authorities are currently responsible for providing social work and social care support and health boards for providing health services. The current arrangement is that local authorities and health boards work together as integration authorities to assess, plan and commission local community health and social care services.

There are 31 integration authorities across Scotland: 30 have formed integration joint boards (IJBs) with additional representation from carers, people who use services, private and third sectors. Highland has a different arrangement, known as a Lead Agency arrangement, in which Highland Council takes responsibility for all health and social care services for children, and NHS Highland provides all health and social care services for adults.

The health and social care partnership in each local area is responsible for the delivery of local community based health and social care services on behalf of the integration authority, including adult social services, primary care and most community health services. Some local areas also have responsibility for children's health, children and families social work and social care, justice social work, and homelessness and housing support.

Over many years, various issues have demonstrated that social care support, and the integration of health and social care services, is not working as well as it should. In September 2020, the Scottish Government commissioned an Independent Review of Adult Social Care (IRASC) to systematically consider the problems. The IRASC report concluded that whilst there were strengths in Scotland's social care system, it needed revision and redesign to enable a step change in the outcomes for the people accessing care and support.

The challenges identified by the IRASC include:

- Inconsistency of user experience (“postcode lottery”);
- Complex and inconsistent governance arrangements;
- Lack of national oversight and collaboration;
- Lack of collaborative and strategic leadership;
- Non-integrated budgetary and financial planning.

The IRASC report recommended that Scottish Ministers should be responsible for the delivery of adult social care and that the integration authorities should be reformed to become the only bodies with responsibility for social care, social work and community health instead of this being shared by local authorities and health boards. It recommended that a National Care Service should be established on a similar basis to the National Health Service in Scotland to make these changes.

Consultation

Public consultation

A public consultation on the proposals for a National Care Service ran from 9 August to 2 November 2021. There were over 100 engagement events during this time including 35 open public meetings and a small number of face to face meetings. In total, around 3,000 people engaged with the Scottish Government at these sessions. Just under 1,300 responses to the consultation paper were received, just over 700 from individuals and just over 570 from organisations. An independent analysis of the consultation responses has been published alongside individual responses where people gave permission for them to be published.

The headline findings of the consultation demonstrated broad agreement with the Government's proposals to bring together social care, social work and community health services for all ages under a National Care Service accountable to Scottish Ministers. Most people who responded to the consultation agreed with the changes and agreed that the scope of the National Care Service should extend beyond adult social work and social care. There was broad agreement that this would lead to more consistent outcomes for people accessing care through better co-ordination and that more guidance and standards would mean more consistency in the way care was provided. There was also broad agreement with the proposals to reform the integration authorities to become local delivery bodies of the National Care Service to be the single organisation with responsibility for community health and social care locally with their own dedicated budgets and staff.

There were concerns and risks raised in the consultation responses about:

- The loss of local accountability for social care and concerns about centralising services and a one size fits all approach which would not be right for everyone or suit people's local circumstances;
- Particular concerns about whether the needs of remote, rural and island communities would be met or understood within a National Care Service;
- Concerns about too much political interference in the way services are run and excessive bureaucracy;
- Impacts on local authority workforces of the potential move of social care and social work from local authorities to Scottish Ministers;
- Whether human rights and equality would be respected within the way services were provided by the National Care Service; and
- The potential for disruption to people's care and support during the transition to the National Care Service.

People and organisations responding to the consultation were also broadly supportive of the proposals for ethical commissioning, increased market oversight of social care provision, strengthened regulation, strengthened complaints and redress for social care and the development of an integrated electronic social care and health record. Where concerns were expressed about these they were usually to do with the need to respect local circumstances and take account of people's individual needs. There are further details in the Policy Memorandum and in the [consultation analysis report](#).

Right to breaks from caring

The NCS Consultation consulted on options to amend the Carers Act to establish a right to breaks from caring. This showed support for a hybrid approach, combining rights to:

- Easy-access support for carers with low levels of need, similar to existing Time to Live grants accessed via carer centres; and
- Personalised breaks support for any carer who is not currently able to access sufficient breaks from caring – accessed via their personalised plan under the Carers Act.

As part of the NCS consultation the Scottish Government funded Carers Parliament 2021 was run as a consultation event, with over 200 carers taking part, providing detailed feedback on the consultation proposals. (This covered the whole NCS consultation, not just the right to breaks from caring proposals.)

Anne's Law

The public consultation on delivering Anne's Law launched on 24 September 2021 and closed on 5 November 2021. Two-hundred and eighty-three responses from a combination of individuals and organisations were submitted via the Citizen Space platform with one further response being submitted. In addition, five workshops were held.

The analysis of the consultation results showed clear and almost unanimous agreement with the overall aim of Anne's Law; i.e. that people living in adult care homes should have the right to see and spend time with those who are important to them in order to support their health and wellbeing. Support for the proposals came from a wide range of stakeholders that included care home providers, groups representative of residents and families, NHS and Local Authorities and third sector organisations.

The preference is for legislation to give effect to the aims of the proposals. This is considered to be rooted in human rights legislation with respondents indicating that these rights should be reinforced in statute, particularly since people in residential care are not well placed to challenge any breaches of the European Convention on Human Rights.

The consultation process has also prompted suggestions that Anne's Law should be extended to cover other settings such as hospitals, adults' supported accommodation and also children's care settings.

Within Government

The Bill touches on a wide range of areas of responsibility within the Scottish Government. A cross-Government programme has been set up to ensure coherent development of policy to underpin the Bill.

Business

Establishment of the National Care Service

Of the care provider organisations that responded to the NCS consultation:

- 21 were private sector providers
- 122 were third sector care providers
- 16 were independent health care providers

Local authorities, health boards, integration authorities and other public sector bodies also responded. Businesses and public sector bodies also took part in the consultation events and are represented on a key stakeholder reference group that has been established to inform the National Care Service Programme.

Some key findings from consultation responses from care providers, local authorities and public sector bodies and subsequent engagement are:

- Support for the overall aims of the reforms, in particular the moves towards rights based person centred care and Fair Work in the social care sector;
- Support for the proposals for changes to commissioning and procurement to be put on a more collaborative, ethical footing as this could help address market instability and introduce longer term funding arrangements;
- Concerns about a loss of local accountability, loss of local knowledge and expertise and about the impacts on the workforce and assets of local authorities;
- Concern that the National Care Service could disrupt working relationships at local level and about widening the scope of the NCS beyond adult social care; and
- Funding shortfalls in social care would need to be addressed for the benefits of the NCS to be realised.

The public consultation showed high levels of support for proposals for using data to support care with:

- a large majority of respondents agreeing or strongly agreeing to 'there should be a nationally consistent, integrated and accessible electronic social care and health record';
- strong support for 'information about your health and care needs should be shared across the services that support you'; and
- strong support for the question: 'should legislation be used to require all care services and relevant parties to provide data as specified by the National Care Service, and include the requirement to meet common data standards and definitions for that data collection?'

The provisions in the Bill will enable the creation of the electronic social care and health record. We are committed to co-design of the electronic social care and health record which includes engaging with providers (which includes private sector businesses).

As discussed below, the provisions in the Bill that establish the National Care Service are unlikely to directly affect businesses. There will be full consultation and engagement with businesses as further policies are developed. We will, in particular, engage with care providers as we develop the proposed approach to ethical commissioning and procurement, the details of the new system for complaints and redress, and a new approach to oversight of, and shaping of, the market for social care provision.

Right to breaks from caring

While preparing the consultation proposals we consulted with a range of third sector organisations affected by the new legislation. These organisations included carer and user support groups, such as local carer centres and young carer projects. The national carer organisations (Carers Scotland; Carers Trust Scotland; Coalition of Carers in Scotland; Minority Ethnic Carers of Older People Project (MECOPP); Scottish Young Carers Services Alliance; Shared Care Scotland; and Family Fund) played a key role in helping to inform the alternative right to breaks from caring options.

Anne's Law

Workshops were held during the public consultation, and care home providers, as well as their representative groups, have been engaged both during these workshops and on a regular basis since. Care home providers sit on several stakeholder groups that have been established to develop the work on Anne's Law and shape the approach.

In addition, three one-to-one meetings have taken place with care home providers to talk specifically about the impacts of Anne's Law and one such meeting has also taken place with the Care Inspectorate given its role in inspecting and regulating care homes in Scotland. In addition to this, Public Health professionals have been similarly engaged in relevant stakeholder groups to inform the development of Anne's Law.

Care Inspectorate – Enforcement and related powers

No discussions have been had directly with care providers in addition to those held during the consultation period. However, we plan to hold discussions with stakeholders, including care service providers, as part of the development of secondary legislation resulting from the Bill on regulation.

Options

The options considered for establishing the National Care Service are set out in the Policy Memorandum for the Bill and will be considered in detail in the Strategic Outline Case which will be published around the same time as the Bill and the future Programme Business Case for the National Care Service.

The Bill makes Ministers accountable for the delivery of social care and social work to be delivered through local care boards. At a national level, the NCS will provide leadership, oversight, and accountability for social care, social work and community healthcare. It will set standards and frameworks at the national level, and will be responsible for ensuring these are put into practice on the ground through performance monitoring of the local care boards and by leading improvement nationally. Health services will continue to be delivered by health boards as at present. Social care services may be delivered by a range of public, private and third sector organisations as they are now. This could include local authorities continuing to provide social care, through contracting or other financial arrangements with the local care boards. Alternatively, a local care board could take over direct delivery, with staff transferring to the care board. These will be decisions to be taken locally as the local care boards are established.

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

The Bill provides for a new system for complaints about social care and community health services to be put in place, backed up by a Charter of Rights. The NCS Charter of Rights will set out what rights people have when accessing NCS services. The Charter will summarise these rights and provide a clear pathway to empower people to claim their care specific rights. The Charter will not, in itself, create new rights or services that the NCS or the local care boards should provide. We are proposing that a national complaints portal is established to improve accessibility and provide a clearer pathway to make complaining easier and minimise complaints being directed to the wrong organisation. At national level, the NCS will be able to provide directions and guidance on the handling of complaints by the local care boards and oversee their performance on complaints. It will also review where complainants remain dissatisfied following local processes. There will be further co-design with people with lived and living experience and key stakeholders such as organisations from sectors impacted to develop the details of this new system.

The Scottish Government recognises the importance of independent advocacy in supporting people to access the care they need. Further co-design and engagement of stakeholders is needed to determine what independent advocacy will be needed to safeguard people's rights when the NCS is established with proposals to be set out in secondary legislation. Any secondary legislation relating to independent advocacy services will be subject to further business and regulatory impact assessment.

The Bill requires Scottish Ministers and the local care boards to have a strategic plan which will include an ethical commissioning strategy for delivering care. The Policy Memorandum provides further information on the requirements of an ethical commissioning strategy, but in summary, there must be appropriate consultation and the latest version of the strategy must be made public.

In addition, service provision must be designed to reflect NCS principles, including the implementation of Fair Work, and a person-centred care first/human rights approach, ensuring that strategies focus on high quality care. Ethical commissioning also includes climate and circular economy considerations, financial transparency and commercial viability of outsourced services, involvement of people with lived experience, and shared accountability between all delivery partners.

Information sharing and information standards

The Bill provides for Scottish Ministers to have a power to set up a statutory scheme through regulations to permit data sharing for the efficient and effective provision of services by, or on behalf of, the NCS and NHS. Scottish Ministers will also have the power to set information standards (covering data and digital) which will set out how certain information is to be processed and will be made publicly available. Both are needed to facilitate the creation of a nationally-consistent, integrated and accessible electronic social care and health record which provides a significant opportunity to address the current issues around information sharing, and ensure professionals get timely and accurate information to enable them to safeguard people at risk of harm and provide the highest levels of care. There will be further co-design and engagement with stakeholders, and business and regulatory impact assessment as this is developed.

An alternative option to a new regulation making power to create a scheme that allows information to be shared would be to rely on existing powers to share data between organisations. Some data sharing already exists, including for example the sharing of personal data between primary medical services and emergency responders. However, information sharing is inconsistent across social care and health – information might be shared in different formats and rarely in full with the individual concerned. It is difficult for providers to be sure that information is up-to-date. The creation of the nationally-consistent, integrated and accessible electronic social care and health record will ensure up-to-date and relevant information is available, shared in a safe and secure way and shared under agreed data standards. Setting out in regulation an effective and efficient scheme for sharing information, coupled with information standards, will ensure there is a consistent approach across Scotland.

Restricting the invitation to tender for social care contracts to mutual organisations

The Bill proposes to transpose Article 77 of the founding EU Procurement Directive (2014/24/EU) enabling the reservation of NCS contracts to mutual organisations as qualifying organisations.

At the time of transposing the procurement Directives into Scottish law in 2015, this article was not included as public consultation responses did not identify any particular advantage or reason for doing so in Scotland. The largest number of responses to the consultation were undecided, and 28 [of 140] respondents saw advantages in implementing this proposal.

Organisations who operate in the third sector are part of the social care and social work sector, and have a history and expertise in providing social care, social work and community health services and support. The Scottish Government recognises the role this part of the social care and social work sector can offer alongside other sectors in supporting the NCS ambitions, and therefore sees merits in now providing this option.

The Bill enables Scottish Ministers to make regulations to change the definition of qualifying organisations and the category of service contracts this provision applies to in order to give effect to this change. There will be further engagement, consultation and impact assessments about any regulations to that effect.

Right to breaks from caring

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

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

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

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

Anne's Law

There were three options considered for the introduction of Anne's Law.

- **Option 1: Do nothing.** Care home providers have been asked about the option of maintaining the status quo and doing nothing. However, there is no support that we are aware of for this option. Providers support Anne's Law because it will provide them with clarity in the context of uncertainty about

visiting restrictions during the pandemic. A requirement to allow for residents to name and see those who they wish to maintain contact with during an outbreak situation removes any doubt as to whether such visits are possible.

- **Option 2: Non-legislative solution.** This option is based on the possibility of updating the Health and Social Care Standards to give effect to the aims of Anne's Law (the Standards form the basis of the inspection and regulation of care homes). To an extent this has already been achieved as the Standards were separately consulted on around the same time as Anne's Law and subsequently updated on 31 March 2022. However, care home providers (and other stakeholders) are clear that, although welcome, this non-legislative solution is not sufficient and legislation is required to give the clarity that everyone is seeking.
- **Option 3: Legislative solution.** This is the option favoured by care home providers and their representative groups as it offers the most clarity and certainty with regards to the visiting arrangements in adult care homes. This has come across clearly through the public consultation, subsequent engagement with stakeholder groups and in direct discussions with individual providers.

Care Inspectorate – Enforcement and related powers

The Bill proposes to strengthen the ability of the Care Inspectorate (CI) to regulate and scrutinise social care through:

- Powers for the Inspectorate to set out further criteria to determine when the Care Inspectorate might propose to cancel a service's registration, including on the basis of previous enforcement action.
- Additional powers to enable Healthcare Improvement Scotland (HIS) to provide assistance to the CI in carrying out an inspection.
- Enhanced data sharing powers to support a new market oversight by Scottish Ministers and the local care boards. Market oversight will inform commissioning decisions, and allow for early intervention or contingency planning by acting as an early indicator of deterioration in service quality and of likely failure of care providers.

An alternative legislative approach considered to strengthen regulation and scrutiny of care services was to use secondary legislation powers currently available under the Public Services Reform (Scotland) Act 2010. However, this approach would have been limited in scope, and to make the fundamental changes required to strengthen the Care Inspectorate's enforcement regime, primary legislation is required.

Sectors and groups affected

At this stage we anticipate that the sectors and groups affected by the establishment of the NCS and related provisions are:

- Local Government, including Scotland Excel. The nature of the impact on Local Government from the establishment of the NCS will depend on the details of the transfer of functions for social care to Scottish Ministers;
- Health boards – the Bill creates the potential for new governance arrangements for delivery of community health and mental health services;
- Third and private sector social care, carer support and social work providers – the Bill sets out principles for the delivery of care through the NCS and enables the development of ethical commissioning and procurement which would change the framework within which care and support providers and advocacy organisations operate. Care and support providers and advocacy organisations will also be affected by the provisions on Anne’s Law and the right to breaks from caring;
- Regulators – Scottish Social Services Council, the Care Inspectorate, Healthcare Improvement Scotland, Mental Welfare Commission – the Bill sets out principles for the delivery of care through the NCS which will change the framework for scrutiny and regulation; and
- Higher Education Institutions may become involved in undertaking research and analysis, for example, for a National Social Work Agency.

We anticipate that the following people and sectors will ultimately benefit from the Bill, subject to the details of the way the NCS is established and will work:

- People, including children and families, who access care and support;
- Their family, friends and unpaid carers, some of whom will themselves be accessing carer support;
- The social care and social work workforce who will benefit from a National Social Work Agency and strengthening Fair Work in social care;
- Strategic planning, commissioning and procurement professionals who will benefit from national level support and training; and
- Care providers – may benefit from clearer national level expectations about the principles and standards for care being provided.

Right to breaks from caring

The key sectors impacted by the introduction of a right to breaks from caring are:

- Local Government (cost of commissioning additional services and replacement care, until these responsibilities transfer to the NCS); and
- Third and private sector social care providers (National and local commissioning to adapt and increase short breaks provision).

People/sectors who will benefit from the introduction of a right to breaks from caring are:

- People who access care and support (Improved access to short breaks will promote independence from family/carers and help sustain caring relationships.)

- Their family, friends and unpaid carers (Improved access to short breaks will help enable carers to look after their own health and wellbeing and have a life alongside caring, such as maintaining and developing other relationships or accessing education or employment.)
- Care providers (There will be opportunities to expand and increase short break provision.)
- Increased funding to carer centres (Increasing their capacity to support easy access short breaks for carers.)
- NHS, Local Authorities and Integration Authorities (Sustaining caring relationships will reduce costs which would otherwise arise through unplanned hospital admissions, failed hospital discharge and additional residential care when caring relationships break down.) and
- Wider Scottish economy (Protecting carer health and wellbeing should also lead to wider benefits by enabling more carers to remain economically active, reducing the gender pay gap and social security costs.)

Anne's Law

The Anne's Law provisions will apply to adult care homes registered with the Care Inspectorate. They will benefit people living in care homes as well as their families and friends.

Care Inspectorate – Enforcement and related powers

The proposed changes to the Care Inspectorate's enforcement powers aim to impact positively on people who use social care services. The powers will help to ensure that the regulator is able to take swifter and more effective action when issues are identified and ensure that a high standard of care is provided across Scotland.

Costs and Benefits

Establishment of the National Care Service

The Financial Memorandum for the Bill sets out details of the costs of establishing the National Care Service. The costs and benefits of this and the other options will be discussed in the Strategic Outline Case to be published separately and a future Programme Business Case.

Under all of the options considered, there may be additional funding requirements for social care and additional improvement for example, to improving pay in social care, strengthening implementation of Self-directed Support, moving services towards more prevention and early intervention. Under all of the options considered, it would be possible to establish a National Social Work Agency to improve support for the social work profession.

The introduction of the Charter of Rights will provide clarity to people accessing services about what they can expect, and a breach of rights within the Charter can be the basis for a complaint. The proposed reforms to complaints and redress processes will provide clearer pathways for people to make complaints about the NCS. These will support people accessing NCS services to better hold the system

accountable and receive the services they need to thrive. However, it is possible that this greater accountability may lead to an increase in complaints or feedback from people accessing services which could increase the administrative and resource burden on some delivery bodies and oversight bodies. Taken together, it is anticipated that the Charter and the reforms to complaints and redress will have minimal impact on sectors but will result in increased accountability to people accessing services that will in turn facilitate service improvement.

The information sharing and information standards within the Bill will enable the creation of the integrated social care and health record, as well as support wider digital and data services to deliver the NCS. The social care and health record will allow safe, secure and efficient sharing of data across relevant care and health settings and with the individual. Individuals will be enabled to engage positively with their care to help them live independent and fulfilling lives. Having up-to-date information will support high quality care, portability of care and ensure individuals do not have to repeat their stories.

More widely improved data and digital infrastructure will underpin the ambitions of the NCS. Having consistent information standards will ensure all relevant bodies are using the same approach to data and digital, ensuring national consistency. There are no immediate impacts to businesses, however, this may result in associated costs in the future as organisations adapt, update and change systems to be able to meet these standards. There may be future opportunities for businesses in the delivery of digital services. There will be further business and regulatory impact assessment at the time that these regulations and standards are developed.

The transfer of functions from local authorities is likely to have additional financial implications and there will be risks to manage. These may include, for example, costs for the transition process, and potential savings on central services. It is possible that people (staff), assets and contracts could be transferred from local authorities to the NCS when the functions are transferred. It is also possible that local authorities could continue to deliver social care, commissioned by the local care boards. These changes will have impacts on local authorities, not least in terms of their workforce and the assets they manage. The transitions to the new arrangements, once these have been determined, will need to be managed very carefully to make sure that there is no detrimental impact on people accessing social care and support and care workers.

It is not possible to quantify these impacts until decisions are taken on what services are to be included in the NCS, when the transfer is to take place and how the transition process will be staged. The Scottish Government will work with COSLA to identify the implications at the appropriate time, and further impact assessment information will be developed alongside the relevant secondary legislation.

The financial implications for health boards are expected to be less significant, because of the expectation that they will continue to deliver services commissioned by the NCS. As with local authorities, those implications will be considered when more detail of the arrangements is known.

It is not anticipated that the establishment of the NCS and local care boards, and the transfer of functions to those bodies, will have any financial implications for any other public bodies, businesses or third sector organisations, or for individuals.

When social care functions are transferred from local authorities to the local care boards, it is assumed that in the first instance, all contracts and arrangements with external organisations for the provision of social care support services will also transfer. Over time, changes to policies on ethical procurement and Fair Work may lead to changes in the requirements on potential providers. While the Bill will enable the Scottish Ministers to promote such policies more effectively, the detail is not set out in the Bill and will be subject to separate financial and regulatory impact assessment.

As set out in the Policy Memorandum and described above alternative approaches to establishing a National Care Service would allow for improvement in people's experiences of care in line with current work that is already underway. Under all of the alternative approaches, we expect that outcomes for people accessing care and support and care workers would be similar. In all cases, the lack of national leadership, oversight and accountability would continue, and therefore the scale and impact of the changes that the IRASC proposed could not be achieved. Existing measures to address the current problems in social care have fallen short, as highlighted in the IRASC. The NCS can only effectively fulfil its purpose to improve social care if there is a clear line of accountability for improvement to Scottish Ministers which can be exercised locally by local care boards.

Making Scottish Ministers responsible for social care and social work with local care boards commissioning social care and community healthcare together enables:

- The development of a system based on and driven by shared principles which enshrine human rights and person-centred care with opportunities for the voice of lived experience to be embedded in all levels of decision making;
- Opportunities to build on health and social care integration and to bring together different services with a focus on outcomes and to help smooth transitions for people - noting that there needs to be further evidence gathering to see if children's services and justice social work should be brought within the scope of the NCS;
- Strengthening of ethical commissioning of care;
- The development of clear and consistent standards and to support the delivery of high quality services and improve consistency; and
- Market oversight to promote the financial sustainability of social care providers and, where necessary, inform service design and market shaping to help ensure the market for social care as a whole remains vibrant and stable which will ensure continuity of quality social care provision.

This in turn, is expected to lead to benefits for people and for Scotland's wider society and economy through improved community health and social care and support for people who need it and their families, with people accessing services when they need to.

It is also expected to lead to improved experiences for those who work in social care through strengthening Fair Work in the sector. This will help with workforce retention and recruitment.

There will also be an opportunity to support and invest in the whole social work profession through the National Social Work Agency, enabling social workers to work with people to transform their lives and implement rights-based practice as part of the overall objectives of the NCS. We expect that the changes will lead to improved recognition and status of social care and social work.

We anticipate there will be wider benefits for society in terms of increased health and well-being, tackling inequalities, including child poverty, and providing a means of addressing the climate crisis and wider environmental objectives.

These wider benefits are set out in more detail in the National Care Service Statement of Benefits.

Right to breaks from caring

As set out in the Financial Memorandum, based on data from the Carers Census, we estimate that it will take approximately ten years to build gradually to a steady state of support; and that by 2034/35 the additional cost of breaks as a consequence of these provisions will be between £82 million and £133 million. As explained in the Financial Memorandum, the easy-access breaks support element of the policy does not require new legislation and the full cost of the right to breaks policy including that aspect is estimated at between £116 million and £170 million, with the central estimate being £143 million.

Costs for the other options would be similar, but the proposed option is considered to provide the greatest benefit to unpaid carers and those they are looking after.

These measures are designed to protect carers' health and wellbeing, helping sustain caring relationships. This will reduce costs which would otherwise arise for the NHS, Local Authorities and Integration Authorities through unplanned hospital admissions, failed hospital discharge and additional residential care when caring relationships break down. Protecting carer health and wellbeing should also lead to wider benefits to the Scottish economy by enabling more carers to remain economically active, reducing the gender pay gap and social security costs.

As set out in the Financial Memorandum, it is not possible to estimate the size of these wider savings and benefits but to illustrate their potential scale:

- There are around 156,000 people in Scotland providing 35 hours of unpaid care or more per week⁵. If the right to breaks helps prevent 1% of these intensive caring relationships breaking down, that will save £68 million per year in health and social care costs. If the right to breaks protects 5% of these intensive caring relationships, the saving will be £318 million per year⁶.
- If the right to breaks helps 1% more carers to remain in work, the benefit to them and to Scotland's economy would be worth £71 million. If it means an extra 5% are working, the benefit would be £353 million per year.

Care Inspectorate – Enforcement and related powers

It is not anticipated that the proposed changes to the enforcement powers would incur additional costs or resource requirements to service providers, the Care Inspectorate, local authorities, health boards or Integration Authorities.

There is, however, potential for increased legal costs to the Care Inspectorate should the regulator's enhanced enforcement powers be contested in a court of law. The Care Inspectorate may need to engage external Counsel to pursue a new raft of actions or increase in appeal cases. These potential costs have not yet been determined.

Anne's Law

Feedback from care home providers is that significant costs from Anne's Law are not anticipated. This is, however, conditional on the future provision of Personal Protective Equipment (PPE) and testing kits etc. in the event of an upsurge in COVID-19 infections or a future pandemic. During the current COVID-19 pandemic these have either been widely available and either low cost or free and/or something that families themselves have taken responsibility for e.g. bringing their own face coverings. In case of a future pandemic similar to COVID-19 it would need to be considered who was to pay for any PPE and testing kits (for example) should these be required to support visits. This could be a concern for care home providers if it was to be expected that they should pay for these. A related concern would be if visitors to care homes were required to pay for any PPE or testing and they chose not to do so. This could create an awkward conflict between requirements for care homes to facilitate visits and a visitor choosing not to comply with a Direction or guidance that recommends or mandates PPE or testing. Care home providers' ask

⁵ The number of adult carers is based on the Scottish Health Survey (SHS) 2020 (published at: Scotland's carers: update release - gov.scot (www.gov.scot), Scottish Government 2021) and the profile is based on Scottish Surveys Core Questions (SSQC) data (2016-19).

⁶ Scottish government analysis of replacement care and hospitalisation (April 2022)

would be that central support for PPE/testing costs is considered so that they are not put in this position and to avoid them facing sanctions for non-compliance.

The Care Inspectorate will incur costs in the lead up to and following the introduction of Anne's Law, as there is a need to promote new guidance and prepare the sector for Anne's Law with the aim of building capacity and capability within the sector for improvement.

This is likely to involve dedicated support for care homes to develop policies, staff induction and training; resources to support self-evaluation; improvement support for services; and developing capacity within the Care Inspectorate to enable immediate resolution of complaints through direct engagement with providers and services. In the year 2022/23, total Care Inspectorate costs to support the introduction of Anne's Law and handle increased complaints are estimated to be £186,000, and £90,000 in 2023-24.

The possibility of an upsurge in complaints was noted and we estimate that there will be heightened public interest in the new legislation and this may result in adults living in care homes, or their friends and families, exercising their right to complain. Complaints to the Care Inspectorate may increase in the short term, while improvements to visiting become embedded in the sector, but are expected to fall away within 2 years. It was felt to be manageable based on past experiences of changes to visiting guidelines during the pandemic.

In terms of benefits, care home providers welcomed the clarity that legislation would bring. Providers noted that one of their main aims is to foster a positive environment in their homes that welcomes both residents and their families. Restrictions during the pandemic had a detrimental effect on this to an extent, particularly where there was confusion as to what was permitted in terms of visits. The clarity that legislation can offer has been noted by multiple care home providers and also by the Care Inspectorate.

Benefits should also be viewed in the context of the benefits to the health and wellbeing of adult care home residents and their friends and families, with a case to be made that there will be savings realised in other aspects of the Health and Social Care system.

In the consultation many respondents commented on their own experiences of family members being isolated in care homes over the course of the pandemic and the lasting harm this has caused.

Reference to the potential individual and wider system benefits as a result of improved health and wellbeing was highlighted by one stakeholder:

"There is a wide range of evidence internationally that social connectedness is required for good health. Anne's Law would reduce social isolation, poor mental health and associated effects on physical health. This creates a more efficient and effective service as there are less care needs for staff to manage and residents, carers and staff are happier"

Scottish firms impact test

As noted in the Financial Memorandum and summarised above, we do not expect the establishment of the NCS and local care boards, and the transfer of functions to those bodies, to have any financial implications for any other public bodies, businesses or third sector organisations, or for individuals. Over time, the development of the ethical commissioning and procurement approaches through the NCS will lead to changes in the expectations on care providers. We will ensure we engage with stakeholders, including care providers, as we develop the proposed approach to ethical commissioning and procurement.

We do not anticipate any immediate impact of the provisions on information and data sharing for Scottish firms. Over time the development of an integrated electronic social care and health record may impact on Scottish businesses of various sizes that provide social care services. This may include the need to update, adapt or change systems for new data requirements. We anticipate there will be a need to appropriately up-skill staff. This will be subject to future regulatory impact assessment.

Social and other specific services are recognised across Europe, as a category of public contract type, which have limited cross border interest. There are no proposals to make changes to the procurement procedural rules that apply to the procurement of services and support in the NCS. It is therefore not expected that there are any international trade implications from the procurement provisions in the Bill.

We do not anticipate that the draft provisions as outlined in the Bill around strengthened enforcement powers will have a specific impact on businesses operating a care service. Additional regulations still to be developed will set out further criteria on who can provide a care service at point of registration. This may have a negative impact on prospective providers who have a history of enforcement action taken against them by the Care Inspectorate.

Scottish Government officials consulted with a range of third sector organisations affected by the new legislation to create a right to breaks from caring. These organisations included carer and user support groups, such as local carer centres and young carer projects. The national carer organisations (Carers Scotland; Carers Trust Scotland; Coalition of Carers in Scotland; Minority Ethnic Carers of Older People Project (MECOPP); Scottish Young Carers Services Alliance; Shared Care Scotland; and Family Fund) played a key role in helping to inform the alternative breaks from caring options.

No impacts on Scottish firms from Anne's Law were highlighted in discussions on the proposals with care providers.

Competition assessment

This section of the BRIA considers the impact of the Bill on competition between firms and on whether it will hinder new entrants to the sector or limit consumer choice or information.

The main impacts on competition arise from the provisions in the Bill on procurement and changes to the enforcement powers of the Care Inspectorate. As noted above we are not proposing any changes to the procurement procedural rules which are founded on principles of transparency and non-discrimination. Over time, the development of ethical commissioning and procurement, strengthening Fair Work in the sector and market shaping and market oversight of social care provision could impact on competition between firms but it is not possible to analyse these in detail at this stage.

The approach to ethical commissioning and procurement and market shaping and oversight will be consistent with the wider approach to strategic planning and public procurement already in place in Scotland. This aims to streamline the public sector's dealings with business, and adopt more efficient and collaborative systems.

In respect of public procurement, all public bodies are required to conduct their procurement activities in an open and transparent fashion, and in particular to advertise their contractual requirements on a single website, Public Contracts Scotland, all of which should increase the public contract opportunities available to suppliers. Public bodies are also able to conduct preliminary market consultation in advance of a tendering opportunity, which can foster collaboration, for example, by seeking advice from independent experts or the market itself.

For social and other specific services, the requirement to advertise and compete for a procurement opportunity applies at a higher threshold (currently £663,540 and above) than for other service contracts. This recognises that a procurement process for these contract types can be conducted in a way that for example, takes into account the quality, continuity and accessibility of the service and the involvement and empowerment of users in contract award decisions.

The NCS will operate within these rules so market shaping in and of itself should not give rise to significant impacts on competition. The market shaping role will involve engaging with the market to stimulate a diverse range of care and support services to ensure people's needs are met and that the market as a whole remains vibrant and stable.

The procurement provisions in the Bill will allow the NCS and local care boards to have the option to consider targeting mutual organisations when seeking invitations to bid for contracts. While the impacts on competition between firms could be significant, they are likely to be outweighed by the benefits to people who access care and support and the wider economy and society.

We do not anticipate any immediate competition impacts of the information sharing and information standards provisions of the Bill. In due course we expect that clear requirements will support competition but this will be subject to future regulatory impact assessments.

Right to breaks from caring

The right to breaks from caring, does not directly or indirectly limit the number or range of suppliers, nor does it limit the ability of suppliers to compete or reduce suppliers' incentives to compete.

The right to breaks from caring provision will result in an increase of the number of carers seeking access to the social care support market. This implies a need for more support, which will increase the demand for short breaks provision and therefore potentially promote greater competition in the market place. The legislation may also foster competition among large, small and micro enterprises in relation to the delivery of short break services.

Anne's Law

No impacts on competition and providers' ability to enter the market were noted in consultations with care providers on Anne's Law.

Care Inspectorate – Enforcement and related powers

We do not anticipate the provisions outlined in the draft Bill will have an impact on competition and providers' ability to enter the market. However, we aim to introduce additional regulations, via secondary legislation, to strengthen the current fitness of provider requirements. This will set further criteria on who can register a care service and those could have an impact on prospective providers. A further consultation will be carried out for more detailed provisions set out in the secondary legislation.

Consumer assessment

We do not anticipate any direct impacts on consumers from the Bill itself. The Bill aims to establish a system which results in consistent, fair and high quality social care and community health services which are provided to everyone who needs them. The Bill sets out the principles that the NCS will work towards which emphasise human rights, early intervention and prevention, Fair Work for care workers and financial stability in the services provided by the NCS. This overall approach should increase the quality of social care, social work and community healthcare provided to people and should safeguard vulnerable people by ensuring care is provided on a fair and equitable basis.

It is likely that the legislation and additional funding for the right to breaks from caring, will increase choice and availability of short break services for consumers, which may increase competition between businesses and result in reduced costs.

It is not considered that any of the other Bill provisions will have a negative impact on consumers or a disproportionate impact on vulnerable consumers.

Test run of business forms

There will be no new forms for businesses introduced as a direct consequence of the Bill provisions on the establishment of the NCS, reservation of the right to participate in procurements by certain types of organisation and enhanced enforcement powers for the Care Inspectorate.

The right to breaks from caring will use the existing structure of the Carers Act and adult carer support plan/young carer statements, therefore existing forms/documentation will continue to be sufficient.

The introduction of Anne's Law is likely to require a care home resident's Care Plan to record their preferences as to who they wish to nominate to support their care. This is not an express requirement of the Bill but it is not expected to be problematic. Care Plans are already a standard part of the process when a resident moves into a care home. There is no proposal to introduce any other forms in connection with Anne's Law. Should any be required the intention would be to utilise or expand existing forms where that is possible as any additional information is not expected to be significant.

Digital & data impact test

The Bill provisions do not give rise to any immediate or direct impact on technology or technological advances. The Bill allows Scottish Ministers to set information standards which will require compliance by relevant bodies but allow these data and digital standards to be updated as required (including technology changes). We are committed to ensuring that people will be able to engage with the NCS, including through the integrated electronic social care and health record, through non-digital routes to ensure that it is fully inclusive to everyone regardless of digital literacy and skills and access to digital devices.

Legal aid impact test

None of the Bill provisions give rise to an immediate impact on the legal aid fund.

Enforcement, sanctions and monitoring

There are several mechanisms built into the Bill itself that provide a means of making sure that the intentions behind the Bill are achieved.

The Bill sets out the overall principles that Scottish Ministers and the local care boards must work within when delivering services within the scope of the NCS. It also requires both Scottish Ministers and the local care boards to consult on and produce strategic plans and ethical commissioning strategies for the delivery of community health and social care. Through these plans, Parliament and the public will be able to scrutinise the activities of the NCS and hold Scottish Ministers and the NCS to account for the way the NCS principles are put into practice.

The Bill sets out that Scottish Ministers will be responsible for monitoring and improving the quality of community health and social care services provided to

people. This will involve the setting of standards and frameworks at national level and the effective use of data, evidence and lived experience to make sure that the national standards and expectations are being met.

Scottish Ministers will also have an important role to monitor the performance of the local care boards. We anticipate that this will be done administratively in the same way that Ministers oversee the performance of health boards. However, the Bill enables Scottish Ministers to take steps to address poor performance by the local care boards through the ability to set legally binding Directions to them. In extreme cases, Ministers can abolish a local care board and ask another local care board or another body to take over their functions.

In relation to Anne's Law, the proposals are designed to follow the existing regulatory and inspection framework and neither providers nor the Care Inspectorate raised any issues with this. Several providers did however note that it would be helpful if, where possible, the guidance that follows on from the legislation encouraged early resolution with the care home direct as opposed to immediate escalation to the Care Inspectorate. This is in the spirit of care home providers seeking to build positive relationships with residents and their families and resolving any issues before they intensify.

Implementation and delivery plan

The Bill has been introduced in June 2022. Subject to completing the Parliamentary process, we expect it to become an Act in Summer 2023. Scottish Ministers have committed to establishing a functioning NCS by the end of the current Parliamentary term in 2026. As set out earlier in this BRIA, it will be important to design and deliver the NCS together with people who access care and support and with people who work in the system and key aspects of the new system will be co-designed with them. A cross-Government programme has already been put in place to develop robust plans for delivery of the NCS, including further consultation, engagement and co-design with people with lived experience and other partners and stakeholders. Subject to the final shape of the Bill when it has completed this Parliamentary process, this programme will also oversee delivery of the plans to establish the NCS.

The provisions of Anne's Law empower Scottish Ministers to issue Directions to care homes regarding their visiting arrangements and a draft set of Directions will accompany the legislation as it progresses through the Parliament. This will allow any comments to be taken into account quickly and for a set of Directions to be issued as soon as is practicable after the completion of the parliamentary process.

Post-implementation review

As noted above, the Bill requires Scottish Ministers and the local care boards to produce strategic plans and ethical commissioning strategies for the delivery of social care, and community health services every three years. This will enable regular reviews of the effectiveness of the reforms introduced by the Bill locally and nationally.

The Scottish Government will keep the effectiveness of the Anne's Law provisions under review including by working with the stakeholder groups who helped to develop the proposals.

The Scottish Government will review the legislation to ensure that it is still fit for purpose within 10 years of enactment.

Summary and recommendation

Establishment of the National Care Service

The National Care Service (Scotland) Bill aims to improve the quality and consistency of social care support in Scotland, provide additional support for unpaid carers and ensure the social care workforce is professional, skilled and valued. It also aims to strengthen the integration of health and social care by enabling the creation of a single system and accountability for social care, social work and community health. The Independent Review of Adult Social Care published in 2021 recommended that the Government take action to tackle inconsistencies in adult social care support, ensure a human rights based approach to care, introduce an ethical approach to commissioning of care and create a National Care Service with Scottish Ministers accountable for social care similar to the way that they are responsible for healthcare.

The Bill sets out a framework to create a National Care Service, making Scottish Ministers accountable for social care and social work which will be delivered through a network of local care boards. Local care boards will be responsible for strategic planning and ethical commissioning of social care and community health in their local areas. Healthcare will continue to be delivered by health boards as at present. Social care could be delivered through procurement or other arrangements including by local authorities or in house by the local care boards or by third and private sector providers. Both nationally and locally, the NCS will work within a set of principles to ensure social care, social work and community health is designed with those who use it, supports the realisation of human rights, and is recognised as an investment in society. As part of the NCS the Bill provides for:

- A streamlined system of complaints and the introduction of a Charter of Rights for people accessing care;
- Scottish Ministers to have the power to set up a statutory scheme through regulations to permit data sharing for efficient and effective provision of services by, or on behalf of, the NCS and NHS. Scottish Ministers will also have the power to set information standards; and
- Requires Scottish Ministers and the local care boards to produce publically available strategic plans and ethical commissioning strategies and enables the invitation to tender for social care contracts to be restricted to mutual organisations.

The costs and benefits of the different options considered for the establishment of a National Care Service will be considered in detail in a Strategic Outline Case and Programme Business Case to be published separately. Wider benefits to people accessing social care and support, unpaid carers, care workers and to Scotland's

economy and society are discussed in the National Care Service Statement of Benefits published alongside the Bill.

Alternative options considered to establishing a National Care Service retain the existing arrangements with local authorities having responsibility for social care and social work. These options would allow for improvements to be made along the lines of existing work including through the strengthening of Self-directed Support, the strengthening of Fair Work in social care and continuing to grow and spread good practice and preventative approaches to care. However, the scale and impact of the changes sought in the IRASC are unlikely to be achieved.

Whilst there was a balance of views expressed in the NCS consultation, when asked, the majority of respondents were in favour of the establishment of the NCS. Concerns were expressed around the loss of local level accountability for social care, whether it could address the needs of remote, rural and island communities, impacts on local workforces and the potential for disruption during the transition to a National Care Service.

Establishing a National Care Service and making Scottish Ministers responsible for social care with local care boards commissioning community health and social care together, means it is possible to have national standards, backed up by improvement activities and performance management. This will mean it will be possible to:

- Embed human rights based approaches to care and make sure people's experiences of social care and support improve;
- Strengthen the integration of health and social care to help smooth transitions for people between different services;
- Strengthen ethical commissioning of care and ensure there are clear requirements for care providers; and
- Help to ensure the social care market remains vibrant and stable, ensuring continuity of care.

It is important that the NCS is developed through co-design and engagement with people with lived experience and with partners and stakeholders. The Bill does not therefore set out full details of how it will work. As such it is difficult to fully estimate the costs and benefits of the establishment of the NCS. These will be developed through further business and regulatory impact assessment as the NCS develops including of any secondary legislation from the Bill.

The introduction of the Charter of Rights and reforms to complaints and redress will support people accessing NCS services to better hold the system accountable and receive the services they need to thrive. This may lead to an increase in complaints or feedback from people accessing services which could increase the administrative and resource burden on some delivery bodies and oversight bodies. Taken together, it is anticipated that the Charter and the reforms to complaints and redress will have minimal impact on sectors but will result in increased accountability to people accessing services that will in turn facilitate service improvement.

The information sharing and information standards provisions within the Bill would enable the creation of the integrated electronic social care and health record, as well as support wider digital and data services to deliver the NCS. This is subject to co-

design and there will be further business and regulatory impact assessment as this is developed.

Right to Breaks from Caring

The results of the NCS consultation demonstrated clear support for the introduction of a right to breaks from caring. There was also support for a hybrid, flexible approach enabling easy-access support for carers with low levels of need and the option of personalised breaks support under the Carers Act for those in more intensive caring roles.

These measures are designed to protect carers' health and wellbeing, helping sustain caring relationships. This will reduce costs which would otherwise arise for the NHS, Local Authorities and Integration Authorities through unplanned hospital admissions, failed hospital discharge and additional residential care when caring relationships break down. Protecting carer health and wellbeing should also lead to wider benefits to the Scottish economy by enabling more carers to remain economically active, reducing the gender pay gap and social security costs.

The costs for all the options would be expected to be similar, between £116 million and £170 million, with the central estimate being £143 million. (As above, the costs of additional personalised breaks under the Carers Act as a consequence of the NCS Bill would be between £82 million and £133 million by 2034-35. The easy-access breaks support does not require new legislation.) The preferred option is considered to bring the greatest benefit to unpaid carers and the people they support. This is the option provided for in the Bill.

Anne's Law

The consultation on Anne's Law demonstrated a clear desire for legislation to introduce a right to visiting in care homes. This is supported by care home providers and by the Care Inspectorate. It offers the most clarity and certainty for residents, families and care home providers.

Care home providers do not anticipate significant costs from the introduction of Anne's Law although this is conditional on the availability of PPE and testing kits etc. in the event of an upsurge in COVID-19 infections or a future pandemic. There will be some additional costs for the Care Inspectorate in terms of the development of new guidance and increased complaints. These are estimated to be between £186,000, and £90,000 in 2023-24.

The preferred option, of legislation for Anne's Law, is expected to bring benefits to care home providers and to residents and their friends and families with a case to be made that there will be savings realised in other aspects of the Health and Social Care system.

Care Inspectorate Enforcement and related powers

The two options considered to strengthen the Care Inspectorate's enforcement powers were to use the secondary legislation powers currently available under the Public Services Reform (Scotland) Act 2010 or to introduce new primary legislation through the NCS Bill.

It is not anticipated that the proposed changes to the enforcement powers would incur additional costs or resource requirements to service providers, the Care Inspectorate, local authorities, health boards or Integration Authorities. Of the two options, the introduction of new primary legislation enables more fundamental changes to be made and this is the option being pursued.

Declaration and Publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impacts of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed: Kevin Stewart

Date: 10/06/2022

Minister's name: Kevin Stewart MSP

Minister's title: Minister for Mental Wellbeing and Social Care

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