

# **National Care Service (Scotland) Bill**

## **Child Rights and Wellbeing Impact Assessment (CRWIA)**

**June 2022**



**Scottish Government**  
Riaghaltas na h-Alba  
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## Introduction

The establishment of a National Care Service (NCS) and new local care boards for social care support services which will be directly accountable to Scottish Ministers was introduced in the Scottish Nationalist Party's (SNP) manifesto in 2021. Following the election, the Scottish Government committed to launching a public consultation within the first 100 days and to introducing the bill to the Scottish Parliament by the end of the first parliamentary session.

The NCS will be responsible for social work and social care support, including support for carers. It will also be responsible for planning and commissioning primary care and community health services, including mental health services. To ensure services are joined up, from a community healthcare context General Practitioners (GPs), Nurse Directors and other clinical and healthcare leaders will engage in the development of locality plans.

Our commitment is that the NCS will:

- enable people to access timely, consistent, equitable and fair, high-quality health and social care support across Scotland;
- provide services that are co-designed with people who access and deliver care support, respecting, protecting and fulfilling their human rights;
- provide support for unpaid carers, recognising the value of what they do and supporting them to look after their health and wellbeing so they can continue the caring relationship;
- support and value the workforce;
- ensure that health, social work and social care support is integrated with other services, prioritising dignity and respect, and taking account of individual circumstances;
- ensure there is an emphasis on continuous improvement at the centre of everything we do;
- provide opportunities for training and development, including the creation of a National Social Work Agency (NWSA) providing national leadership, oversight and support;
- recognise the value of the investment in social care support, contribute to the wellbeing economy, make the best use of public funds, and remove unnecessary duplication.

## Background

In September 2020, the Scottish Government commissioned the Independent Review of Adult Social Care (IRASC), chaired by Derek Feeley and supported by an Advisory panel of Scottish and international experts.

Taking a human-rights based approach, the review recommended improvements to adult social care, focussing on people who use social care support services, their carers and families, and the experiences of those who work in the social care sector.

The review recognised that in Scotland there is much to be proud of in the provision of social care support but that we can still do better. It recommended three things that must change in order to secure better outcomes:

- A shift in the paradigm by challenging some of the prevailing narrative around social care support and underpinning a human-rights based approach.
- Strengthening the foundations that are already in place and closing the gap between policy and implementation. Nurturing and strengthening the social care workforce and supporting the contribution from unpaid carers.
- Redesigning the system to establish a NCS to provide a consistent service across the country, set national standards and drive national improvements, improve integration with the NHS and bring national oversight and accountability to social care support.

The IRASC report was published on 3 February 2021. Although it focussed on adult services most Integration Authorities have delegated authority for a wider remit that may include health, children and families, and justice delivery. The report recognised that adult social care support does not stand alone and has strong links to wider services, such as social work and children's services.

The report contained 53 recommendations, a key one of which was the establishment of the NCS.

## **National Performance Framework**

The NCS programme will contribute to achieving the following national outcomes:

- We live in communities that are inclusive, empowered, resilient and safe
- We have a globally competitive, entrepreneurial, inclusive and sustainable economy
- We are well educated, skilled and able to contribute to society
- We have thriving and innovative businesses, with quality jobs and fair work for everyone
- We are healthy and active
- We respect, protect and fulfil human rights and live free from discrimination
- We grow up loved, safe and respected so that we realise our full potential

## **The scope of the CRWIA**

As the establishment of the NCS has the potential to impact on a large section of the population, there has been engagement with a broad range of partners, stakeholders and members of the public during, and since the close of the consultation period. Further details are given in section 7 of this paper.

We have carried out a partial impact assessment on the Bill, focussing on the Charter of Rights for social care, the potential transfer of children's social work and social care services from local authorities to the NCS, and the right to breaks for young carers.

The Scottish Government has also carried out the following full or partial impact assessments in respect of the NCS Bill:

- Business and Regulatory Impact Assessment
- Island Communities Impact Assessment
- Equality Impact Assessment
- Fairer Scotland Duty Assessment
- Strategic Environmental Assessment
- Data Protection Impact Assessment

## Which articles of the UNCRC does this policy/measure impact on?

The NCS Bill is an enabling Bill which sets out the provisions necessary for the Scottish Ministers to establish a NCS to exercise responsibility for community health, social work and social care. This includes a power (section 25) which could be exercised by secondary legislation to transfer functions for children’s social work and social care (‘children’s services’) from local authorities to the NCS. The Bill itself does not transfer any functions.

The power to transfer children’s services from local authorities will not be used until further work has been carried out. That will include gathering evidence on the impact of integration of children’s services and a public consultation will then be carried out before a decision is taken to bring forward secondary legislation to transfer children’s service to the NCS.

Further consideration will be given to children’s rights and the United Nations Convention of the Rights of the Child (UNCRC) throughout the process of deciding whether to transfer these services. The potential impact on each article and how each article may be engaged will be considered fully and the outcome of this work will be set out in a further children’s rights and wellbeing impact assessment.

At this stage the assessment is that the following articles are impacted:

Article 3 – The best interests of the child to be the primary consideration.

1. In all actions concerning [children](#), whether undertaken by public or private social [welfare institutions](#), courts of law, administrative authorities or legislative bodies, the [best interests of the child](#) shall be a primary consideration.

2. States Parties undertake to ensure the [child](#) such protection and care as is necessary for his or her [well-being](#), taking into account the rights and duties of his or her [parents](#), legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the [institutions](#), services and facilities responsible for the care or [protection of children](#) shall conform with the standards established by competent authorities, particularly in the areas of safety, [health](#), in the number and suitability of their staff, as well as competent supervision.

## Article 12 – Respect of the views of the child

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

## **What impact will your policy/measure have on children's rights?**

There are indications that the creation of a NCS will have positive impacts on children's rights.

Policies supporting the NCS will be developed through co-design with diverse voices with lived or living experience of all ages. In addition, we are engaging with a range of stakeholders, including those representing children, to ensure that the needs of children are met and that they are not impacted adversely.

In Scotland there are an estimated 700,000 to 800,000 carers, including approximately 29,000 young carers. The provision of a right to breaks for carers will allow for young carers to have time away from their caring role to focus on other activities and education.

As many caring relationships are intergenerational, positive impacts of a NCS on adults is likely to have a positive impact on the children who care for them.

### **National Structures**

There is an opportunity to rectify the current complexity of delivering support to children, young people and families affected in any way by drug and/or alcohol issues.

### **Local Care Boards**

There is an opportunity to ensure that people with lived experience are represented on local care boards and on any recruitment panels.

### **Complaints and Redress**

As part of the co-design process and to future proof any work we will ensure that the commitments within The Promise are fully understood. In particular that in a complaint situation, children and young people must have supportive advocacy provision and access to legal advice.

## **National Social Work Agency**

The majority of published responses expressed the view that the NCS should include both adults and children's social work and social care services. Reasons included being able to ensure greater consistency of services across the country, and in ensuring that the transition of services from child to adult services worked more smoothly. Another common view was that complexity across the system would be reduced. However, a frequent criticism of the NCS proposals was a lack of detail on how children's services would be delivered in the NCS. Some suggested that there may be a danger that commitments in The Promise may be compromised by the proposals. Others argued that any decisions to include children's services in the NCS should involve consultation with young people.

## **Children's Services**

Early work indicates that the inclusion of children's services in the NCS would have a positive impact on children's rights. In particular, it will ensure services are (or remain) integrated and are able to benefit from improvement work on quality and consistency led at the national level.

In addition to this, the proposed approach to the design of, and the principles of, the NCS can already be assessed as ensuring that the NCS will take a rights-based approach, which would have a positive impact on children's rights should the decision be taken, following the further research and engagement work that is planned, to include children's services.

## **Will there be different impacts on different groups of children and young people?**

Yes. Children with families who receive health, social work and social care support will be disproportionately impacted by the NCS.

Much will depend on whether children's services are included in the NCS.

The children and young people identified as impacted are all children who have contact with children's services. This would include disabled children, looked after children, young people who offend, children on the edges of care, children with health issues, children experiencing domestic abuse and gender based violence, young carers and unaccompanied asylum seeking children. It is intended that the transfer of children's services would have a positive impact on all these children and young people. The positive impact can be linked back to the strategic aims identified for considering the transfer of children's services to the NCS, namely to:

- address variation in access to and quality of services
- move to a more consistent national approach
- set standards of care and strategic planning
- reduce variation in thresholds for services
- improve accountability to Ministers and shift focus to early intervention
- improve alignment with community health services

- improve transitions between children's and adult services

These aims are intended to improve children's services, which should lead to improved outcomes for the children and young people who receive these services. It is anticipated that there would be differences in impacts for the children and young people identified as affected. This is due to the diversity of circumstances and care needs of children and young people, and their families, which social work and social care services work with. For example, responses to the public consultation for the NCS identified particular issues for disabled children when social and health services did not work in a joined up way and for the transitions to adult services. This indicates that all these services being placed together in the NCS and working together could have a positive impact for disabled children.

As at 31 July 2021, 14,946 children in Scotland were looked after or on the child protection register. 13,255 children were looked after, 2,104 were on the child protection register, while 413 children were included in both categories. Figures for the number of disabled children in Scotland vary. The pupil census for 2021 records that 16,001 school pupils have been assessed as having a disability while **1,288** children with known disabilities were looked after at 31 July 2021.

Where children come into contact with care and justice services, or into conflict with the law, Scotland must ensure that is in age-appropriate systems and settings. As such, the Programme for Government made a commitment to introduce a Children's Care and Justice Bill. A consultation running until 22 June looks across a range of topics in order to gather views and shape measures ahead of government legislation being introduced to the Scottish Parliament. As well as legislative reform, resourcing system and practice changes will also be needed to ensure we best support the needs of all young people.

The further research and engagement work that will be carried out will provide evidence and information to fully assess the different impacts on different groups of children and young people, as will the NCS co-design process.

Taking a co-design approach and engaging with groups representing children throughout the process will be used to carry out further impact assessments as all NCS policies are developed.

**If a negative impact is assessed for any area of rights or any group of children and young people, can you explain why this is necessary and proportionate? What options have you considered to modify the proposal, or mitigate the impact?**

Negative impacts have not been fully assessed for any area of rights or group of children and young people at this stage. In response to the public consultation for the NCS responses have highlighted potential negative impacts. These include that transitions for care experienced young people could be hindered by separating social

work services from housing services. Other concerns were that integrating children's and adult services in the NCS could lead to children's services being subsumed in a large complex organisation which has a predominantly adult focus. This could mean that children's voices would be less likely to be heard.

Both the co-design work and the further research and engagement work will be used to carry out a full assessment of any potentially negative impacts and to consider how such impacts can be mitigated. Once this work has progressed assessment of impacts on children and young people and their rights - both positive and negative – can be carried out comprehensively.

## **How will the policy/measure give better or further effect to the implementation of the UNCRC in Scotland?**

The Scottish Government's mission is to improve the life experience and life chances of children and young people so that they can thrive in the future. We want to recognise, respect and promote children's rights. These include the right to be treated fairly, to be heard and to be as healthy as possible. Our vision is a Scotland where children's human rights are embedded in all aspects of society. A Scotland where policy, law and decision-making take account of children's rights and where all children have a voice and are empowered to be human rights defenders.

To ensure that children enjoy the right to have their best interest taken as the primary consideration, we will use the CRWIA when developing our policies relating to the NCS, so that the rights and wellbeing of children are protected and promoted.

Further research and engagement will be undertaken to consider the impact of the inclusion of children's services and that will involve consideration of whether transferring children's services is in the best interests of children who receive services. Engagement work will include seeking the views of children and young people on services and whether these should be transferred from local authorities to the NCS. Any secondary legislation introduced to transfer these functions to the Scottish Ministers on the basis of section 25 of the Bill will be subject to further impact assessments. If children's services are transferred to the NCS it will ensure services are (or remain) integrated and are able to benefit from improvement work on quality and consistency led at the national level.

As explained in the policy memorandum for the Bill the Scottish Government is committed to the implementation of the UNCRC to the maximum extent possible, and to delivering a proactive culture of everyday accountability for children's rights across public services in Scotland. In considering the proposals for including children's services within the NCS, and the development of the NCS as a whole, the Scottish Government will seek to give further and fuller effect to the rights of children, ensuring compatibility with the UNCRC requirements.

The approach to the design of the NCS leads to an assessment at this stage that it would have a positive impact on children's rights. The Scottish Government has committed to co-designing the NCS together with people who access and deliver social care support and other relevant services to ensure that it embodies human

rights principles and delivers for the needs of people and not the system. This co-design process will ensure that the secondary legislation developed on the basis of the Bill as well as parts of the structure and operations that do not require further legislation fully take into consideration the issues people face in social care.

In order to ensure that the people who access and deliver social care support can engage effectively in the co-design process, the Scottish Government will establish a NCS Design School. It will offer training and support to the organisations and the people who access and deliver social care support to overcome barriers to participation and support them to work in partnership with design services. The NCS Design School draws inspiration from the design school model developed and delivered by The Promise Scotland in partnership with the Scottish Government Office of the Chief Designer. The design school is scheduled to be launched in summer 2022. Due to this link with The Promise design school model, the NCS Design School should have features built into its design that makes it accessible to children and easy for children and young people to participate in.

We have also established a Social Covenant Steering Group (SCSG), comprised mainly of people with experience of using social care. The group will help establish a common set of values and beliefs, a social covenant, which will underpin the NCS, including treating people with dignity prioritising people's needs and preferences and ensuring there is strong oversight of the NCS.

There are three provisions in the Bill that we believe will have a direct positive impact on children.

## **Charter of Rights**

The Bill places a duty on Scottish Ministers to prepare and publish a National Care Service Charter of Rights and Responsibilities (the NCS Charter). The NCS Charter will provide clarity as to what rights and responsibilities individuals, their families and their carers can expect and outline clearly the process for feedback.

The NCS Charter is expected to have a positive impact on people who receive social care and social work services by providing clarity on their rights in relation to these services and a means for redress should things go wrong. However, it must also be designed carefully to ensure those benefits are also realised for children and young people. In particular, the NCS Charter must be both accessible and inclusive and must therefore give consideration to issues around language and ensure that children's rights, particularly where this may differ from adults' rights, are fully reflected in the NCS Charter.

The development of the NCS Charter will take place through co-design with people with lived and living experience. That co-design process will involve working with children and young people directly and with children's stakeholder groups to ensure children's rights are carefully considered and included. Consideration will also be given to ensure that the co-design process provides for meaningful engagement with children and young people which leads to their full active participation in the process.

## **Rights to breaks for carers**

The Bill requires The Carers (Scotland) Act 2016 is amended to ensure that young carers are enabled to take sufficient breaks from providing care for a cared-for person.

The positive impacts of a right to break to breaks for carers were widely acknowledged in consultation, although there were concerns around the language used.

As stated in one response, all families benefit from babysitting opportunities and short breaks; these can also benefit children and be a time of fun, treats and love. All short breaks must mirror those routinely in place in wider family networks.

Opportunities for planned time away being available consistently to enable carers to plan breaks when most suitable for them and their families.

## **Ethical Commissioning**

The Bill sets out the remit for Scottish Ministers to develop and manage a National Commissioning and Procurement Structure of Standards and Processes for ethical commissioning and procurement (referred to here as “a framework for ethical commissioning” or just “ethical commissioning”). These standards will ensure a consistent approach to the way commissioning and procurement delivers a person centred, human rights based approach that supports the outcomes and needs of the individual, meets minimum quality standards established for social care services, ensures fair work, promotes sustainability, and ensures consistent implementation and equitable quality of service throughout Scotland. The NCS will be responsible for governance and assuring local care boards comply with the Structure of Standards and Processes, through oversight of commissioning and procurement processes at a local level. Local care boards will report their progress to the NCS national commissioning and procurement team.

In developing the framework for ethical commissioning, further engagement with stakeholders, including children’s stakeholder groups, will be undertaken to assess the impact of these proposals as they are developed.

The impact on children’s rights will be considered in full during the further research and engagement work that will be carried out over the next few years.

## **How have you consulted with relevant stakeholders, including involving children and young people in the development of the policy/measure?**

The public consultation on the proposals for a NCS ran from 9 August to 2 November 2021. The consultation sought views on a range of proposals, including:

- Scottish Ministers assume responsibility for social care across Scotland;

- A NCS that will oversee the delivery of care, improve standards, ensure enhanced pay and conditions for workers, and better support for unpaid carers;
- New local care boards that will deliver services and report to the NCS;
- The scope of the NCS includes adult social work and social care services, community healthcare provision, children’s services and social work, thereby supporting an integrated and collaborative approach to support and care for people of all ages.

During the consultation period the Scottish Government held over 100 engagement events and meetings to gather views from as many partners, stakeholders, third sector organisations and members of the public as possible. Due to the restrictions in place to respond to the Covid-19 pandemic the majority of events were held virtually; however, a small number of face-to-face events were held in Irvine, Aberdeen and Greenock. In total, around 3,000 people engaged with the Scottish Government at these sessions.

Specifically in relation to young carers, the Scottish Government liaised with stakeholders to listen to their views on the rights to breaks. Stakeholders included the Carers Rights and Support Steering Group, national carer organisations including the Scottish Young Carer Services Alliance and Carers Trust Scotland, and the Carers Parliament.

At the end of the consultation 1,291 responses were received: 703 from individuals and 575 from organisations<sup>1</sup>. Of the individual respondents, the majority came from people who were a friend or a family member of someone who receives, or has received, social care support. From the organisations, the biggest percentage of responses came from third sector organisations who provide care or support services, and organisations that classed themselves as “other”<sup>2</sup>.

Responses were received from relevant stakeholders, including The Promise Scotland, Children in Scotland, The Children and Young People’s Commissioner Scotland,

The consultation analysis report was published on 10 February 2022. The Promise Scotland also commissioned analysis of the consultation responses on children’s services and held engagement sessions with care experienced young people and professionals who support them. This has also been published as a report.

The Scottish Government has also carried out an initial consultation event with Who Cares? Scotland which was attended by care experienced young people. This focussed on the areas that attendees considered should be improved in children’s services.

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<sup>1</sup>Thirteen respondents didn’t select either category in their response.

A survey was carried out by Young Scot on behalf of the Scottish Government which Young Scot members completed answering questions on locating children's services within the NCS. The survey included space to add additional comments on what matters to the young person and their family.

These consultation exercises have provided information from children and young people and stakeholders on aspects of children's services which they consider need to improve. The responses to the NCS consultation and the workshops held by The Promise Scotland have provided detailed feedback from stakeholders that further information is needed on how the NCS will work, which services should be included and whether there are differences in the models currently operating for children's services which would indicate whether this policy should be implemented.

As the Bill places a duty on the Scottish Government to carry out a public consultation on the proposal to transfer children's services, this will provide an opportunity to consult on all these areas. The Scottish Government will also carry out a programme of engagement events with children and young people and relevant stakeholder groups to discuss and explore the benefits and hindrances of transferring functions from local authorities to the NCS. The first event will be a Youth Parliament session in July 2022.

## **What evidence have you used to inform your assessment?**

The evidence base for this assessment includes the Children's Social Work Statistics, Scotland 2021, responses from the NCS consultation, the independent analysis of the consultation, and the analysis report commissioned and published by The Promise Scotland.

This is a partial impact assessment based on the provisions of the National Care Service (Scotland) Bill and focuses on the provisions contained therein. It focuses on the Charter of Rights for social care, the potential transfer of children's social work and social care services from local authorities to the NCS and the provision for a right to breaks for carers. This impact assessment will be updated as policy is developed.

As set out in the policy memorandum for the Bill, the Scottish Government recognises that as the IRASC did not cover children's services there is not an evidence base which has considered the full range of benefits and/or impacts of a model like the NCS for children's services. This work will now be carried out to provide further evidence and inform decision making regarding the potential inclusion of children's services in the NCS.

## **How will the impact of the policy/measure be monitored?**

The Carers Census will continue to monitor support under the Carers Act. We will continue to engage with care experienced children and young people, and the organisations that represent them.

A further CRWIA will be completed in relation to any Regulations which are brought forward. As part of the normal decision making process, the implementation of the policy/measure will be monitored including further consideration to children's rights and the UNCRC. Wellbeing is defined by eight wellbeing indicators: Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible, and Included.

## **How will you communicate to children and young people the impact of the policy/measure on their rights?**

We will update the Carers Charter, which sets out carers rights under the Carers Act. We will engage with organisations representing and supporting adult and young carers to help carers understand these expanded rights.

Following further work to consider whether to bring forward Regulations to include children's services within the NCS, we will consider how best to provide information to children and young people on how their rights will be impacted. We are committed to publishing child-friendly and accessible material and to continued engagement with children, young people and representative organisations throughout the development and implementation stages of the work.

## **Sign & Date**

Policy Lead Signature & Date of Sign Off:

Colin McKnight  
National Care Service Division  
7 June 2022

Deputy Director Signature & Date of Sign Off:

Anna Kynaston  
Deputy Director, National Care Service Division  
7 June 2022

## Summary of data sources

The CSPS consultation 1.3.4 on impacts of caring. [Carers strategic policy statement: consultation - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/carsers-strategic-policy-statement-consultation-2019/pages/1-3-4-impacts-of-caring.aspx)

Scotland's Carers – chapter 2 on health and wellbeing - [Scotland's Carers - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/scotland-s-carers/pages/chapter-2.aspx)

[4. A National Care Service - National Care Service: consultation analysis - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/national-care-service-consultation-analysis/pages/4-a-national-care-service.aspx)



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