

National Care Service (Scotland) Bill

Data Protection Impact Assessment

June 2022



Scottish Government
Riaghaltas na h-Alba
gov.scot

Data Protection Impact Assessment

National Care Service

Version date: 09/06/2022

Review date:

Primary legislation to create the National Care Service, giving Scottish Ministers responsibility for delivering social care.

This Data Protection Impact Assessment (DPIA) works in conjunction with the [Article 36\(4\) ICO](#) consultation form submitted in advance of this, as the proposal requires consultation with the Information Commissioner's Office (ICO).

1. Contact and schedule information

1.1	SG department	Data and Digital Division, Social Care and National Care Service Development Directorate
1.2	Contact email	DataDigitalSocialCare@gov.scot
1.3	Data protection support email Data protection officer	dpa@gov.scot dataprotectionofficer@gov.scot
1.4	Is your proposal primary legislation, secondary legislation or other form of statutory measure?	Primary
1.5	What stage is the legislative process at? Please indicate any relevant timescales and deadlines.	Bill sent to Presiding Officer for Parliamentary Checks. Impact Assessments, including DPIA, are to be finalised in June 2022. The Bill, along with Impact Assessments and other accompanying documents, to be laid in Parliament in June 2022.

2. Introductory information

	Questions	Comments
2.1	Summary of proposal	<p>Any citizen may need social care at some point in their lives, with an estimated 1 in 20 people of all ages in Scotland reported as receiving social care support and services in 2018/19 (latest official statistics). Social care encompasses people who need help with day-to-day living because of illness, physical disability, learning disabilities or mental health conditions, or because of older age, frailty or dementia. Social care also supports people with or recovering from alcohol or drug addictions, and those who are or have been homeless or are at risk of becoming homeless. Children's social care services also provide help for children and families who may need additional support, or where children are unable to live with their own families. The delivery of social care support is currently the statutory responsibility of Local Government under the 1968 Social Work (Scotland) Act. The Scottish Government sets out the policy and makes legislation on social care, and therefore has a role in supporting improvement and ensuring positive outcomes for people across the country by having the right policy and legislation in place.</p> <p>On 1 September 2020, the First Minister announced that there would be an Independent Review of Adult Social Care in Scotland as part of the Programme for Government to 'recommend improvements to adult social care in Scotland'. The Independent Review of Adult Social Care, published in February 2021, 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 in receipt of care. The review recommended the creation of a National Care Service.</p> <p>A consultation on a National Care Service for Scotland was subsequently launched in August 2021 which sought the views of social care users, the workforce, carers, members of the public and organisations on the purpose, scope and scale of a National Care Service, including proposals to widen the scope beyond adults to</p>

	Questions	Comments
		<p>include children and young people, community justice, alcohol and drug services and social work. Responses were received from 1,291 respondents, with broad agreement on the proposals to bring together social care and community health services for all ages under the National Care Service. While concerns and risks were also raised, for example, around potential disruption to services and loss of local accountability.</p> <p>The National Care Service bill is part of the Scottish Government's response to this consultation, and in line with the recommendations of the Independent Review, Scottish Ministers will become accountable for social care, through the new National Care Service. The consultation proposed, and found support for, the National Care Service going beyond social care to include children's social work and social care, social care services in justice, social work, drugs and rehabilitation, and related services (many of which are already delegated to Integrated Joint Boards). Therefore the bill proposes to bring all these services together into the National Care Service, though a final decision on the scope of the National Care Service has not been announced by Scottish Ministers.</p> <p>The National Care Service is proposed as either a Directorate within the Scottish Government or an executive agency. Centrally, the National Care Service will define strategic direction, provide national standards, commission and procure contracts for complex and specialist services, conduct market research and analysis, and lead on national workforce planning and data. Many of the day-to-day functions, including planning, commissioning and procuring services will be carried out by Local Care Boards, which will have their own legal set-up.</p> <p>The Scottish Government is committed to the establishment of a functioning National Care Service by the end of the current parliamentary term, and to bringing forward legislation to enable its creation by the end of June 2022.</p>

	Questions	Comments
		<p>The National Care Service, and its Local Care Boards, will need to process personal and non-personal data in order to undertake their functions. This will include personal data that relates to citizens being assessed for social care and/or other services within its responsibilities and personal data relating to staff employed by the National Care Service, and its Local Care Boards.</p> <p>The National Care Service Consultation included a specific section on using data to support care. This followed the clear frustrations expressed by social care users in the Independent Review around the need to repeat the same information to different professionals involved in their care, within both social and health care. A lack of consistent and timely data sharing not only causes frustration, but can impact on the quality of care provided to people because care professionals are not acting upon the most up-to-date information. Much of the frustration stems from the assumption by social care users that data sharing is already taking place. But while there are examples of this, it is fragmented and inconsistent across the country.</p> <p>The Consultation proposed the creation of a nationally consistent, integrated and accessible, electronic social care and health record which was strongly supported by respondents. There was also strong support for the proposal that information on health and care needs should be shared across services. Significantly, a large majority agree that legislation should be used to require all care services and other relevant parties to provide data as specified by the National Care Service, including the requirement to meet common data standards and definitions.</p> <p>There were concerns and risks raised however, for example around the ability of current IT systems to deliver and data protection and security.</p> <p>In specific regards to data processing and fulfilling the ambitions set-out with the Consultation, the National Care Service bill will:</p>

	Questions	Comments
		<ul style="list-style-type: none"> • give Scottish Ministers a regulation making power to provide a scheme that allows information to be shared to ensure services can be provided efficiently and effectively by and on behalf of the National Care Service and the National Health Service, and, • ensure Scottish Ministers can produce an information standard, a document setting out how certain information is to be processed, which they must make publicly available, that Care Boards, Health Boards, Special Health Boards, the Common Services Agency for the Scottish Health Service, Healthcare Improvement Scotland and Scottish Ministers insofar as exercising their functions related to social care and health, must comply with and include in any contract for the provision of a service to individuals a requirement that the other party also complies with these information standards. <p>This version of the DPIA focuses on the specifics of the NCS Bill. Future secondary legislation will set out a scheme for information sharing (including personal data) – this will be assessed in due course. There will be further engagement on the development of, for example, the electronic social care and health record.</p>
2.2	<p>Description of the personal data involved</p> <p>Please also specify if this personal data will be special category data, or relate to criminal convictions or offences</p>	<p>Given the nature and scope of the service it is inevitable that special category data will be gathered and shared including criminal conviction data. This will also be included in future plans and regulations to ensure compliance with UK GDPR and DPA 2018.</p>
2.3	<p>Will the processing of personal data as a result of the proposal have an impact on decisions made about individuals, groups or categories of persons?</p>	<p>At the moment there will be no new processing as a result of the legislation.</p> <p>The legislation creates a power to set regulations for information sharing. We will update the DPIA as those regulations develop to fully assess the implications for data protection.</p>

	Questions	Comments
	<p>If so, please explain the potential or actual impact. This may include, for example, a denial of an individual's rights, or use of social profiling to inform policy making.</p>	<p>We can anticipate that the bill will impact on those who receive social care as the purpose of the information sharing is to provide efficient and effective services by, and on behalf of, the National Care Service and National Health Service. The intention is to enable processing of personal data to enable and improve delivery of care.</p> <p>Operational and legislative DPIAs will be carried out as required in order to comply with UK GDPR and DPA 2018.</p>
2.4	<p>Necessity, proportionality and justification</p> <p>What issue/public need is the proposal seeking to address?</p> <p>What policy objective is the legislation trying to meet?</p> <p>Were less invasive or more privacy-friendly options considered, and if so why were these options rejected?</p> <p>Are there any potential unintended consequences with regards to the provisions e.g., would the provisions result in unintended surveillance or profiling?</p> <p>Have you considered whether the intended processing will have appropriate safeguards in place? If so briefly explain the nature of those safeguards and how any safeguards ensure the balance of any competing interests in relation to the processing.</p>	<p>The provisions in the Bill give the Scottish Ministers regulation making powers to establish a scheme that allows information to be shared. When this power is exercised the aim of the Regulations will be to create a consistent approach to information sharing across NCS and NHS and therefore across Scotland. It will also ensure a consistent approach so individuals have access to their own information.</p> <p>An alternative approach would be to rely on existing powers to share information but, in practice, this is often fragmented and inconsistent across Scotland. This would not meet the policy aim of consistency and equity across Scotland.</p> <p>We are committed to adhering to the data protection principles and will take a privacy by design approach.</p> <p>The exact details and plan for how the above is achieved will be submitted at a later date via the introduction of Regulations.</p>

	Questions	Comments
2.5	<p>Will the implementation be accompanied by guidance or by an associated Code of Conduct?</p> <p>If the latter, what will be the status of the Code of Conduct? (statutory or voluntary?_</p>	<p>Scottish Ministers will have the power to set information standards to ensure consistency in what and how information is recorded and stored. A provision will put to those persons to the whom the guidance is addressed a duty to have regard to the guidance.</p> <p>However, it is recognised that many of the organisations involved in the collection of data will take time or may need to wait until upgrading systems in order to be able to properly follow all guidance. Provision will be made for this.</p>

3. Data Controllers

Much of the detail of the NCS will be set out in regulations. The detail of data controllers and lawful bases will be made available through assessment of those further provisions. We will engage with users, carers and professionals to ensure their voices and experiences are taken into account.

4. Consultation

	Questions	Comments
4.1	<p>Have you consulted with the ICO using the Article 36(4) form?</p> <p>(please provide a link to it)</p> <p>If the ICO has provided feedback, please include this.</p>	<p>Yes.</p>
4.2	<p>Do you need to hold a public consultation and if so has this taken place? What was the result?</p>	<p>Consultation on the National Care Service was launched in August 2021: https://www.gov.scot/publications/national-care-service-scotland-consultation/pages/1/</p> <p>The results of this consultation were published in Feb 2022: https://www.gov.scot/publications/national-care-service-consultation-analysis-responses/</p> <p>Responses were received from 1,291 respondents. The Consultation proposed the creation of a nationally consistent, integrated and accessible, electronic social care and health record which was strongly supported. There was also strong support</p>

	Questions	Comments
		<p>for the proposal that information on health and care needs should be shared across services. Significantly, large majority of organisations agree that legislation should be used to require all care services and other relevant parties to provide data as specified by the National Care Service, including the requirement to meet common data standards and definitions.</p> <p>There were concerns and risks raised however, for example around the ability of current IT systems to deliver and data protection and security.</p>
4.3	<p>Were there any Comments/feedback from the public consultation about privacy, information or data protection?</p>	<p>In response to the question on legislation being used to require all care services and other relevant parties to provide data as specified by the National Care Service, common comments in response included balancing the need for data in accordance with data protection legislation and protecting personal data from unnecessary usage and cyber security concerns. While the ethical use of personal data was a major theme, there were concerns raised around the practicalities of implementing a nationwide robust IT system.</p> <p>Of those who disagreed with legislative changes, the main themes related to: current IT systems (limitations in the existing IT infrastructure, including a perceived lack of an interface between different IT systems), data protection and security and localisation.</p> <p>Respondents were also asked if there are alternative approaches to address current gaps in social care data and information.</p> <p>The main suggestions raised were in relation to data sharing across the National Care Service and the National Health Service and the need to ensure data follows the same data structure across both. Localisation was another key consideration for several respondents, including the availability of, and access to,</p>

	Questions	Comments
		<p>services in remote areas and the need for data required to support people being as efficient as possible and not simply all data.</p> <p>A majority of respondents who used the Easy Read format agreed that their information should be shared across the different services they use. When asked why, several stated that it would reduce the time and stress associated with re-sharing the same information with different service providers and ultimately improve care. Some, however, highlighted that not all information should be shared and that consent should be gained from the supported person.</p> <p>Specific comments from the consultation can be found on page 48 of the Consultation Analysis: https://www.gov.scot/publications/national-care-service-consultation-analysis-responses/</p> <p>Further work is taking place with service users to understand what data is important to them and to understand attitudes towards data sharing.</p>

5. Further assessment and risk identification

	Question	Comments
5.1	Will the proposal require the creation of new identifiers, or require the use of existing ones?	The proposal, at the moment, will not require identifiers. In due course identifiers may be required. The National Care Service could choose to use an existing identifier or create its own, however, no decision has been made. This will be considered as part of the next phase of work.
5.2	Will the proposal require regulation of: <ul style="list-style-type: none"> • technology relating to processing • behaviour of individuals using technology 	The proposal at the moment places no requirement for regulation of technology, users of technology or the security of the technology. As future regulations are developed, this document will be updated to reflect any

	Question	Comments
	<ul style="list-style-type: none"> • technology suppliers • technology infrastructure • information security 	standards around technology processing, technology infrastructure, data flows and associated information security.
5.3	Will the proposal require establishing or change to operation of an established public register (e.g. Accountancy in Bankruptcy, Land Register etc.) or other online service/s?	No.
5.4	Please provide details of whether the proposal will involve the collection or storage of data to be used as evidence or use of investigatory powers (e.g.in relation to fraud, identify theft, misuse of public funds, any possible criminal activity, witness information, victim information or other monitoring of online behaviour)	This will be fully considered in the course of developing regulations. All the issues, for example the obligations under Part 1 of the Adult Support and Protection (S) Act 2007 will be fully considered.
5.5	Would the proposal have an impact on a specific group of persons e.g. children, vulnerable individuals, disabled persons, persons with health issues, persons with financial difficulties, elderly people? (Please specify) In what way?	There will not be an immediate impact from the Bill. In due course we anticipate that those eligible for social care support – including vulnerable adults – will be affected. We are committed to co-design to fully understand the impact and progress regulations accordingly. Of course, individuals will continue to have the same rights under the UK GDPR.
5.6	<p>Is there anything potentially controversial or of significant public interest in the policy proposal as it relates to processing of data? For example, is the public likely to views the measures as intrusive or onerous?</p> <p>Are there any potential unintended consequences with regards to the provisions e.g. would the provisions result in unintended surveillance or profiling.</p>	<p>The 2021 Consultation found strong support for proposals related to the use of data however, there were concerns raised around ensuring the safeguarding of people’s data and ensuring a balance is found between data that is necessary and people’s right to privacy.</p> <p>There is therefore likely to be public interest in the extent of data sharing, and ensuring this is proportionate and necessary, as well as around the steps that will be taken to ensure people’s data is kept safe and shared securely.</p>

	Question	Comments
	<p>Have you considered whether the intended processing will have appropriate safeguards in place? If so briefly explain the nature of those safeguards and how any safeguards ensure the balance of any competing interests in relation to the processing.</p>	<p>With Scottish Ministers becoming responsible for social care, it is possible there may be some concern around the type and extent of data that those working on behalf of Scottish Ministers will have access to.</p> <p>At this stage the data that will be collected and shared has not been fully developed. The scheme for sharing information which can be set up under the regulation making power in the Bill will be established through a co-design process which take account of the views of stakeholders. As work progresses to set-out requirements, these will comply with Article 5(1)(c) of GDPR, "<i>Personal data shall be: adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed (data minimisation)</i>"</p> <p>The National Care Service will require a number of administrative systems, however, no decision has been made on whether existing systems will be used or new/modified system will be required. Any systems that National Care Service uses to store personal data will require to meet or exceed security standards required for health systems used in Scotland including adequate encryption, secure monitoring at all times, secure access and an audit/log.</p>
5.7	<p>Are there consequential changes to in other legislation that need to be considered as a result of the proposal or the need to make further subordinate legislation to achieve the aim?</p>	<p>No.</p>
5.8	<p>Will this proposal necessitate an associated code of conduct? If so, what will be the status of the code of conduct (statutory, voluntary etc.)?</p>	<p>Scottish Ministers will have the power to produce an information standard to ensure consistency in what and how information is recorded and stored. A provision will put to those persons to</p>

	Question	Comments
		<p>the whom the standard is addressed a duty to have regard to the standard.</p> <p>However, it is recognised that many of the organisations involved in the collection of data will take time or may need to wait until upgrading systems in order to be able to properly follow all information standards.</p>
5.9	<p>Have you considered whether the intended processing will have appropriate safeguards in place, for example in relation to data security, limitation of storage time, anonymisation? If so briefly explain the nature of those safeguards</p> <p>Please indicate how any safeguards ensure the balance of any competing interests in relation to the processing.</p>	<p>The necessary safeguards for information sharing will be developed as part of the future work on regulations – this will be fully addressed in future DPIAs. Of course, we will follow relevant GDPR principles.</p>
5.10	<p>Will the processing of personal data as a result of the proposal have an impact on decisions made about individuals, groups or categories of persons? If so, please explain the potential or actual impact. This may include, for example, a denial of an individual's rights or use of social profiling to inform policy making.</p>	<p>At the moment there will be no new processing as a result of the primary legislation. Further detail will be developed with the regulations.</p>
5.11	<p>Will the proposal include automated decision making/profiling of individuals using their personal data?</p>	<p>No.</p>
5.12	<p>Will the proposal require the transfer of personal data to a 'third country'? (Under UK GDPR this is defined as country outside the UK.)</p>	<p>No.</p>

6. Risk Assessment

It is not possible to carry out a risk assessment against Data Protection legislation at this early stage of development. However, we will continue to liaise with the ICO as we develop the Regulations that will enable information sharing as part of the National Care Service and a risk assessment will be undertaken as soon as the detail of the regulations is known. We will update this DPIA of the proposed National Care Service Bill to include the outcome of the assessment.

Data Protection Officer (DPO)

The DPO may give additional advice, please indicate how this has been actioned.

Advice from DPO	Action

I confirm that the National Care Service (Scotland) Bill has been sufficiently assessed in compliance with the requirements of the UKGDPR and Data Protection Act 2018

Name and job title of a IAO or equivalent	Date each version authorised
Lorna Gibbs Deputy Director, Data and Digital Division	9 June 2022



Scottish Government
Riaghaltas na h-Alba
gov.scot

© Crown copyright 2022

OGL

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-80435-616-6 (web only)

Published by The Scottish Government, June 2022

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS1105522 (06/22)

W W W . g o v . s c o t