

National Care Service (Scotland) Bill

Equality Impact Assessment

June 2022



Scottish Government
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EQUALITY IMPACT ASSESSMENT

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| Title of Policy | National Care Service (Scotland) Bill | |
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| Directorate | Directorate for Social Care and National Care Service Development | |
| New policy and/or legislation | To provide the legislative framework necessary for the creation of a National Care Service | |

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Executive Summary

This is a summary of the full Equalities Impact Assessment (EQIA) conducted on the National Care Service (Scotland) Bill. The findings here are based on local EQIAs conducted by separate Scottish Government divisions into the impacts of a National Care Service (NCS) on people in protected characteristic groups to whom their policies apply. Those findings are based on desk based research, independent analysis of consultation and stakeholder engagement feedback.

The EQIA process has found that the Bill, as introduced, will have a positive impact on the protected characteristics by taking a person-centred and human rights approach to improving the quality and consistency of social work and social care services in Scotland.

The NCS will aim to improve people’s experiences of accessing social work and social care support, increase prevention and early intervention, and to ensure that social work and social care support (both for people with support needs and unpaid carers) is human rights-based and outcomes-focused. The NCS will aim to ensure everybody in Scotland can access a consistent social work or social care support service, while noting the importance of local decision making and flexibility, and also that they can access early intervention and preventative support.

The Scottish Government will co-design parts of the National Care Service that will operate at national level with people who access and deliver social work and social care support, delivery partner and stakeholders. This will include co-designing a Charter of Rights, a national complaints process, and an electronic social care and health record.

Local care boards will continue to play a crucial role in the design and delivery of services that people access directly for social work and social care support. We will work with them to support a consistent approach to co-design across the country.

In conducting this EQIA we found that the National Care Service, at a national level, will put in place measures to address the recommendations of the Independent Review of Adult Social Care. This will include addressing inconsistencies in standards of care across the country and shifting the focus to preventative care and early intervention. At a local level it will enable local care boards to work directly with stakeholders and organisations working with protected characteristics, to further explore ways to improve engagement and representation.

Further positive impacts will arise from the NCS Charter, which will provide clarity as to what people can expect from the NCS and empower them to claim their rights, including with regards to complaints and redress.

We found that the NCS will have a positive impact on the social work and social care workforce as it will aim to address inconsistencies across the sector in access to and provision of training and development. The establishment of a National Social Work Agency will invest in the social work profession through improved workforce planning, leadership, career progression, training and development.

We further found that carers, many of whom belong to one of the protected characteristics, will benefit from the provision for a right to breaks.

The EQIA also identified some potential negative impacts. However, in all areas it is recognised that a co-design approach must be taken throughout the creation of the NCS as policies are developed. They must be discussed with the people they affect most, and further impact assessments must be conducted.

Screening

Policy Aim

Introduction

The establishment of a National Care Service (NCS) and new local care boards for social care and social work services which will be directly accountable to Scottish Ministers was introduced in the SNP's 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 GPs, Nurse Directors and other clinical and healthcare leaders will engage in the development of locality plans.

While the details of the NCS will be developed in conjunction with people with lived and living experience, the overarching approach of the NCS will be to:

- Provide leadership, oversight, and accountability for community health and social care, including by providing strategic direction and planning at the national and regional levels;
- Uphold the NCS principles and develop and adhere to the charter of rights for people who access care and support and ensure human rights are embedded throughout its work;
- Develop and maintain a national system for effective complaints and redress for NCS services;
- Create, manage and promote national social care policies, setting national standards and developing practice standards, models and guidance to improve access to care;
- Create a framework for ethical commissioning and procurement to support the NCS principles and other important priorities, such as decarbonisation and the circular economy;
- Support fair work in social care, and carry out workforce planning;
- Include the National Social Work Agency to support and invest in the social work profession;
- Procure complex and specialist services at the national level;
- Plan and commission social work, social care support and community health services via geographically-based local care boards;
- Deliver social work and social care via geographically-based local care boards.

Background

In September 2020, the Scottish Government commissioned the Independent Review of Adult Social Care, 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 and 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 National Care Service 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 and support.

The Independent Review of Adult Social Care report was published on 3 February 2021. Although it focussed on adult services most Integration Authorities have delegated authority for a wider remit that includes 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 National Care Service.

The NCS Bill has been introduced to reform the way social care and social work is delivered in Scotland whilst strengthening the integration with community health services. The proposals contained in the bill are designed to put into practice the recommendations of the Independent Review of Adult Social Care, including that the Scottish Ministers should have statutory responsibility for social care, a National Care Service should be established, a person-centred and human-rights based approach should be taken to social care, and that Integration Joint Boards should be reformed to provide services as overseen by the National Care Service.

In addition to making recommendations, the Independent Review, along with other reports and audits, identified a number of challenges in the current approach to social care. These can be summarised as:

- Inconsistency of people's experience of social care ("postcode lottery")
- Complex and inconsistent governance arrangements
- Lack of national oversight and co-ordination
- Lack of collaborative and strategic leadership

- Non-integrated budgetary and financial planning

In developing the proposals for the NCS, officials have focused on addressing the above challenges.

Consultation

The public consultation on the proposals for the 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 National Care Service 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 National Care Service;
- The scope of the National Care Service includes adult social work and social care services, community healthcare provision, children’s social work and social care services, 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 Troon, Aberdeen and Greenock. In total, around 3,000 people engaged with the Scottish Government at these sessions.

At the end of the consultation 1,291 responses were received: 703 from individuals and 575 from organisations¹. 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 or 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”.

The consultation analysis report was published on 10 February 2022.

Much will depend on the eventual scope of the NCS and whether services such as Justice Social Work and Children’s Services are included. However, at a minimum it will affect adults accessing social work and social care support, their carers and families, and individuals providing social care in Scotland. By social work we mean the statutory role which involves assessing need, managing risk and promoting the wellbeing of individuals and communities. By social care support we mean services which directly support people to meet their personal outcomes. The Bill therefore will

¹Thirteen respondents didn’t select either category in their response.

include adult social work services including adult support and protection, mental health and drug and alcohol services.

The Bill also enables the opportunity for children's services and Justice Social Work to be brought together alongside adult social work and social care and managed in a single framework with social work in prisons, alcohol and drugs services, mental health services and other non-acute, community, health care. This would be a significant change in the way that these services are organised, particularly in the case of children's services and justice social work.

The Bill will give the Scottish Ministers the power to transfer relevant responsibilities in relation to children's services and justice social work services from local authorities to themselves or to a local care board. Given that neither children's services nor justice social work were considered as part of IRASC, it is important that the risks and opportunities, costs and benefits are fully assessed before a decision is made to implement the transfer.

For children's services, establishment of the NCS will bring change to the landscape in which those services are currently delivered, in which they are integrated in some areas but not others. To fully consider the potential benefits and challenges of locating children's services in the NCS, a programme of work will be taken forward to gather evidence on the impact of integration of services. A crucial aspect of this will be to assess implementation of The Promise in both integrated and non-integrated areas and the impact on transition between children's and adult services.

The policy intention is that a preferred model of delivery will be co-designed with stakeholders, backed by relevant assessment of evidence, and be subject to consultation, parliamentary scrutiny and approval before any transfer takes place

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

As with any major change in policy, there is a risk that disruption to services may have a detrimental impact on people. The evidence in the EQIA shows that the protected characteristics of age, disability and sex are at risk of being disproportionately affected due to the over-representation of older people and people with disability who access social care support, and women working in the sector.

This paper shows how the Scottish Government aims to prevent negative impacts on protected characteristic groups by explaining how we will work closely with people most affected to ensure a smooth transition from the current process to the NCS. As policy continues to be developed, further impact assessments will be undertaken to ensure that their impact is understood.

The scope of the EQIA

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 the 'Consultation' section of this paper.

We have carried out a full impact assessment on the following provisions of the NCS bill:

- National Structures
- Local Care Boards
- NCS Charter
- Complaints and Putting Things Right
- Right to Breaks from Caring
- Right to Visit Care Home Residents
- Ethical Commissioning and Procurement

We have also carried out an impact assessment on the objectives of the National Social Work Agency, as set out in the Policy Memorandum.

Although a decision regarding the inclusion of children's services has not yet been made, early consideration has been given to the equality matters impacting children's services in this EQIA.

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
- Children's Rights and Wellbeing Impact Assessment
- Fairer Scotland Duty Assessment
- Data Protection Impact Assessment

The National Care Service (Scotland) Bill

The NCS Bill sets out the provisions necessary for the Scottish Ministers to establish a National Care Service to exercise responsibility for planning, commissioning and delivering social work and social care support services and for planning and commissioning of community health services, with Health Boards continuing to deliver community health services. The details of the design of the NCS will be established by working collaboratively with people with lived and living experience of the social care system to ensure that it operates in a way that supports those it is designed to help. The input of current delivery partners and stakeholders will be important to the co-design process. Many of the provisions in the Bill relating to the NCS are therefore powers to introduce secondary legislation, which will be based on the outcome of that further engagement and co-design with people with lived experience, delivery partners, and key stakeholders. Certain elements of the structures of the NCS, such as establishing the national structure as a directorate within the Scottish Government or an executive agency, do not require legislation and so provisions relating to these elements are not contained in the Bill, but are still addressed below.

In addition to setting out the provisions necessary to create the structures and governance arrangements for the NCS, the Bill also sets out provisions relating to: transfer of functions to the NCS; information standards and care records, complaints, breaks from caring, visiting rights in care homes, ethical commissioning, and the regulation of social services.

Key findings

Establishment of the National Care Service

The National Care Service will carry out the responsibilities for social care that are being transferred from local government to Scottish Ministers through the Bill. This will mean that Scottish Ministers are accountable for the delivery of social care and adult social work (with the power to include children's and justice social work should Ministers decide after further evidence gathering), as they are for healthcare at present.

It will in practice, comprise a part of Government to act at national level and the local care boards that will be set up to plan, commission and deliver services locally.

At a national level, the Scottish Government intends to establish the NCS either as an Executive Agency or as a part of the core Scottish Government, and it would be staffed by civil servants. As it will share the legal identity of the Scottish Ministers it does not need to be established in the Bill itself. This new part of Government will provide effective leadership, oversight, and accountability. 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 and improvement

The details of the way the NCS will be established will be developed in collaboration with people with lived and living experience of the community health, social work and social care system to ensure that it operates in a way that supports those it is designed to help. That process will determine the most appropriate governance mechanisms to ensure that local flexibility is maintained and community engagement is integrated into service planning and delivery within a national framework that ensures consistency and drives improvement. The National Care Service principles set out in the Bill will drive the way that the NCS works.

Evidence

The social care system includes people who receive or use social care and social work services, unpaid carers, young carers, social care workers, social workers, and those who work in the management of care services. Certain groups with protected characteristics are disproportionately represented, and may therefore be more impacted by changes made to the overarching structures and governance of the social care system. For example, recipients of social care services are more likely to be elderly (77.1% of social care recipients are aged 65 or older) and are likely to consider themselves to have a disability. Women are also over-represented among people who receive social care services (61.5% of social care recipients), social care workers (83% of social care workers), and unpaid carers (59% of unpaid carers).

Meeting the needs of the Public Sector Equality Duty (PSED)

The new part of Government that will form the NCS at national level will put in place the mechanisms necessary to deliver on improvement in social work and social care and address the shortcomings identified by the Independent Review of Adult Social Care. This will directly address the shortcoming identified in the review concerning the lack of national oversight and coordination by establishing structures to provide those functions, including by, but not limited to, providing strategic direction and national and regional planning of community health and social care. It will also make it easier to address inconsistency of access to care and quality of services, shift focus towards preventative care and early intervention, improve conditions for the social care workforce, and embed ethical commissioning and procurement of services. The Bill requires the NCS, at national and local levels, to produce strategic plans for the delivery of care, including ethical commissioning strategies. They must consult on these plans and make them publically available.

To ensure that the NCS operates in a way that supports those it is designed to help, we will continue to engage with key stakeholders and people with lived experience of social care, social work and community health services, including people with protected characteristics and their representative organisations, to design the detail of the way the NCS will work at national level. Once developed, we will ensure that the transition to the NCS is planned carefully and in conjunction with key stakeholders and local partners in order to minimise any potential disruption to existing service delivery and to ensure that the benefits of the NCS can be realised for all service users from the earliest opportunity.

Local Care Boards

Local care boards will be responsible for planning and commissioning services and, in some cases, delivering community health, social work and social care services for adults and possibly children.

By strengthening the voice of lived and living experience, we have an opportunity to embed diverse perspectives into the governance of health, social work and social care systems.

This will help to ensure services are planned in a way which is cognisant of users' needs, bringing in the spectrum of user experience to inform future delivery.

It will therefore affect all people using, planning and providing health, social work and social care services.

Evidence

Age

Due to Scotland's ageing population demand for, and use of, health and social care services are projected to increase.

There are lower rates of internet use among older adults than among younger adults. In 2019, almost all (99%) adults aged 16-24 reported using the internet compared to 43 per cent of those aged 75+.

Published evidence suggests that using a mix of methods, including digital and face to face, could be an effective way to engage different groups.

Barriers for successful transition for young people into adult services (and within children's services) include poor co-ordination between services, inadequate planning and young people's voices not being heard.

Disability

Disabled people are more likely to use health and social care services, they are also more likely than those with no disability to report less positive experiences with health services, particularly involving decision making about their care.

Around a third of people living in care homes aged under 65 have a physical disability and around a third have a learning disability.

Due to health issues disabled people may be prevented from engaging over a period of time - using groups or panels may prevent losing the voices of disabled people due to health crisis.

People with learning disabilities require inclusive approaches including extra time and easy read information in order to engage in decision-making.

71% of adults who have some form of limiting long-term physical or mental health condition or illness reported using the internet, lower than for those who have some form of non-limiting condition or illness (90%) and those who have none (94%).

Sex

A higher proportion of men than women report having developmental disorders or learning disabilities. A higher proportion of women than men report conditions relating to old age.

Unpaid carers are more likely to be female. This is particularly true within the working age group. This is likely to have an impact on income.

Gender Reassignment

While it is not possible to supply a precise estimate of the number of trans people in Scotland, a commonly used figure is 0.5% of the population, or just under 24,000 adults.

As trans people can be marginalised, specific and purposeful work will be important to ensure this group feel supported to engage in strategic decision making within health and social care including gender neutral facilities and gender neutral language.

Sexual Orientation

There is little information on the number of gay lesbian or bisexual health and social care service users, due to non-responses. It is difficult to be certain but current estimates suggest this sits at 1.6%.

The LGBTI population in Scotland is much younger than the heterosexual population. Around three in ten (29%) of LGBTI adults were young adults (aged 16-24) – compared to around a sixth (14%) of heterosexual adults. Only four percent of LGBTI adults were aged 75+ compared to a tenth of heterosexual adults.

LGBTI people are more likely to live in deprived areas and less likely to live in the least deprived areas than heterosexual people.

Race

Census data suggests that most ethnic groups in Scotland report better health than the 'White Scottish Group', although minority ethnic groups tend to have a younger age profile than the population as a whole.

Minority ethnic groups with poorer health than the 'White Scottish Groups' are Pakistani, Gypsy Traveller groups and Bangladeshi women. The impact of race on outcomes is often compounded by socio-economic status.

Pakistanis were the largest ethnic minority group, followed by Chinese, Indians and those of mixed ethnic backgrounds.

Due to limitations in the data it is not possible to draw conclusions on use of health and social care services by ethnic minority groups.

Evidence suggests that Gypsy traveller groups experience additional barriers to engagement with services due to lack of flexibility to response to the nomadic

lifestyle and specifically delays in assessment meaning the person has moved on before a package is put in place.

Language and literacy may be a barrier for this population with particular difficulties with professional jargon. This underpins the need not only to consider language and literacy when producing information, but also the complexity of the content and vocabulary used.

Religion or Belief

Published evidence suggested that being cognisant of religious holidays and providing facilities such as prayer rooms when setting engagement events would be helpful when engaging with people from a range of religions.

Meeting the needs of the PSED

Age

A move to digital platforms for engagement may have a negative impact on engagement with older age groups. We will need to ensure new structures support a mixed methodology of engagement to ensure digital platforms complement not replace face to face meetings.

It will be important to ensure that representation does not exclude or disadvantage people from a range of age groups.

We will work with stakeholders to inform the development of local engagement structures in advance of the establishment of the new local care boards.

We will set indicators to monitor progress and impact of the new engagement structures.

Disability

Proposed changes will aim to remove structural barriers for disabled people including improving access to information and support to engage and creating a more supportive environment.

We will work with stakeholders to inform the development of local engagement structures in advance of the establishment of the new local care boards.

We will set indicators to monitor progress and impact of the new engagement structures.

Sex

We will continue to engage with stakeholder groups to inform the development of engagement approaches.

We will explore ways to reduce the power imbalance in strategic meetings to ensure that women are able to engage and feel confident to share their perspectives in these settings.

Gender Reassignment

We will liaise with Stonewall/the Scottish Transgender Alliance and other representative organisations/groups. Training and awareness amongst staff within public services is a key issue.

Sexual Orientation

We recognise from some of the available data and research that LGBTI people report facing discrimination when accessing health care services and this is likely to be a barrier to engagement in strategic decision making.

We will liaise with relevant stakeholders and organisations to further explore ways to improve engagement and representation of LGBTI people.

Race

We recognise from some of the available data and research that groups are facing discrimination when accessing health care services and this is likely to be a barrier to engagement in strategic decision making.

We will liaise with relevant stakeholders and organisations to further explore ways to improve engagement and representation of minority ethnic groups.

Religion or Belief

There is very limited information available about religion or belief and how this might impact engagement in strategic decision making.

We will seek feedback from NHS Boards and Local Authorities regarding what training is available locally and will also need to consult with stakeholders on religion and belief in relation to their experience of social care.

NCS Charter

The NCS Bill will place 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 and complaints.

The content and reach of the NCS Charter will depend on and reflect the scope of the NCS. In broad terms however, it will affect all individuals receiving social care, social work and community health services, as well as all individuals providing social care and social work and community health services in Scotland.

As noted above, the principal aim of the NCS Charter will be to provide individuals accessing social care, social work and community health clarity as to what rights and responsibilities they, their families, and their carers can expect from the NCS.

It is therefore vital that in the course of designing the NCS its functions, structures, and governance are clearly established and articulated. It will be important to ensure that the NCS Charter is accessible so that individuals, families and carers are aware of, and are empowered to, claim their rights.

Evidence

Age

The disparity in access to internet services mentioned above will require consideration in the development of the Charter. Policy officials will work to ensure measures are taken to ensure that older people have parity of access to the Charter.

Older people are also more likely to face other barriers to accessing the Charter such as loss of sight and/or hearing as reported by the British Deaf Association, as well as conditions affecting cognition such as dementia. Policy officials will remain cognisant of these issues in the development of the policy and take steps to ensure that the Charter is as accessible and inclusive as possible.

The scope of the NCS may also include children's services. Young people's equality stakeholders highlighted the need for age appropriate formats to be made available.

Disability

The total number of adults with learning disabilities known to local authorities in Scotland in 2019 was 23,584 (Learning Disability Statistics Scotland, 2019).

To date, there is no data which accurately identifies the number of people in Scotland who have low vision. The best estimate is provided by Scottish Government registration data statistics last published in 2010 which show 34,492 people are registered blind or partially sighted.

Sex

In 2017 a clear majority of long stay care home residents (68%) were female, with this proportion unlikely to have significantly changed since. Consequently, the policy

may have a larger impact on women than men. Additionally, a majority (59%) of unpaid carers are women. As such, the Charter may support greater equality for these predominantly female groups by improving awareness of the care-specific rights they can expect from the NCS.

The Scottish Government's Gender Evidence review (2013) found that a larger proportion of women than men report that the practical support they receive meets their needs. Overall 48% of women respondents said this, compared with 39% of men. This data would therefore tend to suggest that men may benefit from a Charter which they could use to challenge care that does not meet the rights set out in the NCS Charter, thus potentially improving the metric set out above.

Research by Alliance/Self-Directed Support Scotland 'My Support, My Choice' project 2018-2022 and referenced by the EHRC in their response to the NCS consultation reported that women generally received less information about SDS options and budgets than men, and were less content with the quality of information that they received. The Charter will make clear what people can expect to receive from NCS and provide a mechanism for challenge when the rights under the Charter are not met.

The possible inclusion of Justice Social Work in the NCS will also require consideration in relation to advancing equality between sexes. In 2019/20, women made up 7.3% of the Scottish prison population, with men making up an overwhelming majority. Policy officials will consequently remain cognisant of this difference in impact in further development of the Charter.

Gender Reassignment

LGBT Health and Wellbeing reported that specialist, targeted community services offer an essential place of safety and acceptance, and can act as bridges to support engagement with other services. As we develop the NCS Charter, we will form partnerships with these specialist, targeted community groups to ensure that individuals covered by this protected characteristic have a means to access the Charter through them.

In addition, LGBT Health and Wellbeing reported that the LGBTI community has historically been poorly served by community health and social care services. An inclusive and accessibly designed NCS Charter will be a step towards addressing this, as the rights will be clearly articulated, allowing LGBTI people to assess NCS services against the Charter and claim their rights.

Sexual Orientation

As noted above, LGBT Health and Wellbeing reported that specialist, targeted community services offer an essential place of safety and acceptance, and can act as bridges to support engagement with other services. As we develop the NCS Charter, we will form partnerships with these specialist, targeted community groups to ensure that individuals covered by this protected characteristic have a means to access the Charter through them.

Race

We are cognisant of the linguistic barriers that some minority ethnic groups – who are less likely to have English as a first language – may face in terms of accessing the NCS Charter. Measures to mitigate these barriers to access will continue to be explored in the development of the Charter through co-design.

Religion or Belief

Stakeholders within this group stressed the importance of spiritual care and consideration of people's religious and philosophical beliefs within social care (Faith in Older People, Vegetarian For Life). As we develop the Charter, we will continue to work with stakeholders to ensure that it remains sensitive to individuals' religion or belief.

Meeting the needs of the PSED

Age

The Charter 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 equality stakeholders, including age equality stakeholders to ensure that the needs of the PSED are met in relation to the age protected characteristic.

Disability

Policy officials will remain cognisant that people with learning impairments may require additional supports to access and claim their rights under the NCS Charter in the course of its development through co-design.

Barriers to access faced by people with visual impairments – as well as any other sensory impairments – will be taken into consideration in the development of the Charter.

Sex

This policy will be developed through co-design with diverse voices with lived or living experience, including people of different sexes. In addition we are engaging with a range of equality stakeholders, including gender equality stakeholders to ensure that the needs of the PSED are met in relation to the sex protected characteristic.

Gender Reassignment

This policy will be developed through co-design with diverse voices with lived or living experience, including members of the trans community. In addition we are engaging with a range of equality stakeholders, including LGBTI equality stakeholders to ensure that the needs of the PSED are met in relation to the gender reassignment protected characteristic.

Sexual Orientation

This policy will be developed through co-design with diverse voices with lived or living experience, including people from the LGBTI community. In addition we are engaging with a range of LGBTI equality stakeholders to ensure that the needs of the PSED are met in relation to the sexual orientation protected characteristic.

Race

This policy will be developed through co-design with diverse voices with lived or living experience, including people of different ethnicities. In addition we are engaging with a range of race equality stakeholders to ensure that the needs of the PSED are met in relation to race protected characteristic.

Religion or Belief

This policy will be developed through co-design with diverse voices with lived or living experience, including people with different religions and beliefs. In addition we are engaging with a range of equality stakeholders to ensure that the needs of the PSED are met in relation to the religion and belief protected characteristic.

Complaints and Redress

The single point of access is intended to create a simplified system for people accessing NCS services in relation to complaints about NCS services. Scottish Ministers (through the NCS) will have responsibility for establishing and maintaining this system. The single point of access will therefore benefit individuals who wish to make complaints, but are unsure of how to make a complaint, and in particular, which body should deal with the complaint.

The policy is also intended to further strengthen rights under the international human rights framework - specifically, the right to an effective remedy under Article 13 European Convention on Human Rights. In its response to the NCS Consultation, the Scottish Human Rights Commission notes that accessibility is a key consideration in determining the adequacy or otherwise of a remedy. As noted above, the single point of access will aim to make it as easy as possible for individuals to make a complaint about NCS services.

Furthermore, General Comment 5 on Article 19 Convention on the Rights of Persons with Disabilities is clear that all decisions concerning living independently in the community must be appealable and enforceable as a right and an entitlement (para 81). It is considered that the single point of access will be an important step towards giving further effect to these rights.

Finally, this policy has the potential to provide a mechanism for a more effective complaint and improvement feedback loop. A process by which individuals are better enabled to articulate concerns about health, social work and social care services they are receiving could lead to improvements in redressing those complaints, as well as using them as a basis from which to improve health, social work and social care support in Scotland.

Evidence

Age

There are lower rates of internet use among older adults than among younger adults in Scotland. The disparity in access to online services will require consideration in the development of the single point of access.

In response to the National Care Service consultation stakeholders noted the power imbalance that often exists between providers and service users, with older peoples organisations reporting that older service users often express “fear” and “horror” at the prospect of making a complaint. Ways of eliminating this will be explored in the development of the single point of access.

Disability

Of the estimated 29,317 long stay residents in care homes for older people on 31 March 2021, it was estimated that 18,831 (64%) were living with dementia, whether medically or non-medically diagnosed (Public Health Scotland Care Home Census Report). Individuals living with dementia face additional barriers to accessing a single point of access complaint system. Work to address these barriers, as well as those

raised by other respondents to the NCS Consultation (sensory impairment; learning impairment; neurodiversity) will be ongoing to ensure that the single point of contact system is both accessible and inclusive.

Sex

In 2017 a clear majority of long stay care home residents (68%) were female, with this proportion unlikely to have significantly changed since. Consequently, the policy may have a larger effect on women than men. Additionally, a majority (59%) of unpaid carers are women. As such, more complaints may come from women, proportionate to their representation in these groups, either in their own right or on behalf of the person for whom they are providing care.

The Scottish Government's Gender Evidence review (2013) found that a larger proportion of women than men report that the practical support they receive meets their needs. Overall 48% of women respondents said this, compared with 39% of men. This data would therefore tend to suggest that men may be more likely to wish to make a complaint than women, and may consequently interact with the single point of access more frequently.

The potential inclusion of Justice Social Work in the NCS will also require consideration in relation to advancing equality between sexes. In 2019/20, women made up 7.3% of the Scottish prison population, with men making up an overwhelming majority. Policy officials will consequently remain cognisant of this difference in impact in further development of the single point of access.

Finally, respondents to the NCS consultation including Engender, Scottish Women's Aid and Scottish Women's Convention raised concerns about data sharing for women who are survivors of domestic abuse. Policy officials will work with stakeholders to ensure that any data provided as part of a complaint is handled securely and sensitively.

Pregnancy and Maternity

Individuals covered by this characteristic may engage with the single point of access in a whistleblowing capacity. Further EQIAs will be undertaken.

Gender Reassignment

As referred to previously specialist, targeted community services offer an essential place of safety and acceptance, and can act as bridges to support engagement with other services. There is the potential therefore that a single point of access for complaints may be used less frequently by this group – who may prefer to raise concerns with specialist, targeted community groups instead.

As we develop the single point of access, we will work with these specialist, targeted community groups to ensure that trans and non-binary people have options on how they access the complaints system to ensure equality of access.

LGBT Health and Wellbeing also noted that the LGBTI community has historically been poorly served by community health and social care services. The single point

of access will be a step towards addressing this, as LGBTI people will have a simplified pathway to making complaints about the care services they receive.

Sexual Orientation

As noted above, LGBT Health and Wellbeing reported that a single point of access for complaints may be used less frequently by this group – who may prefer to raise concerns with specialist, targeted community groups instead. Partnerships with stakeholders will be developed to ensure ease of access and discharge the Scottish Government’s Public Sector Equality Duty.

Race

In 2017/18, 99% of the people who received home care and provided their ethnicity for records, were of 'White' ethnicity (Social Care Services Scotland, 2017). Policy officials will continue to engage with stakeholders to identify any barriers (for instance linguistic or cultural) to individuals from minority ethnic communities utilising the NCS complaints and redress systems.

In the 2011 Scottish Census, the Black, Asian and Minority Ethnic population of Scotland stood at 4%, with the “White Polish” population at 1.16% and those identifying as “White Other” at 1.93%.

Policy officials are cognisant of the barriers some minority ethnic groups – who are less likely to have English as a first language and experience racial bias – may face in terms of using the single point of access. These issues will continue to be explored in the development of this policy.

Religion or Belief

Stakeholders within this protected characteristic were largely silent on the single point of contact in their responses to the NCS Consultation. The Christian Scientists however noted concerns about a “one size fits all” approach across the NCS. Further engagement with these groups will be conducted.

Meeting the needs of the PSED

Age

The complaints and redress processes for 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 equality stakeholders, including age equality stakeholders to ensure that the needs of the PSED are met in relation to the age protected characteristic.

Disability

Policy officials will remain cognisant that people with learning impairments may require additional supports to access the NCS complaints processes and will work to mitigate these barriers and advance equality through co-design with disabled people.

Barriers to access faced by people with visual impairments – as well as any other sensory impairments – will also be considered in the development of the complaints and redress processes.

Sex

This policy will be developed through co-design with diverse voices with lived or living experience, including people of different sexes. In addition we are engaging with a range of equality stakeholders, including gender equality stakeholders to ensure that the needs of the PSED are met in relation to the sex protected characteristic.

Gender Reassignment

Engagement with stakeholders will continue in order to enable a better understanding of the potential impacts of this policy, with co-design used to inform the service and ensure that the complaints system advances equality.

Sexual Orientation

We will continue to engage with LGBTI stakeholders to assess the impact of this policy on this group, with co-design used to inform the service and ensure that the complaints system advances equality.

Race

This policy will be developed through co-design with diverse voices with lived or living experience, including people of different ethnicities. In addition we are engaging with a range of race equality stakeholders to ensure that the needs of the PSED are met in relation to race protected characteristic.

Religion or Belief

This policy will be developed through co-design with diverse voices with lived or living experience, including people with different religions and beliefs. In addition we are engaging with a range of equality stakeholders to ensure that the needs of the PSED are met in relation to the religion and belief protected characteristic.

National Social Work Agency

A National Social Work Agency (NSWA) will be established as part of the NCS national structure, given the important link and function social work will have within the wider NCS structure.

Under current arrangements, the Scottish Government sets the overall strategic framework for social work delivery. There is no single national body which has oversight and leads social workers' professional development, education, improvement, data and workforce planning. Terms and conditions are set by individual employers. The majority of social workers are employed by councils, resulting in local variations in pay and grading. Therefore it is difficult to have an overview of the sector, and to report on and strategically plan the social work workforce.

The NSWA's objectives will be to support and invest in the social work profession by providing national leadership, and overseeing and supporting social work in the following areas:

- education (pre and post-qualifying)
- improvement (by establishing a Centre of Excellence) and scaling up good practice
- workforce planning
- training and development
- social work terms and conditions (including pay).

The Independent Review of Adult Social Care recommended, "Establishing a national organisation for training, development, recruitment and retention for adult social care support, including a specific Social Work Agency for oversight of professional development."

The Scottish Government's consultation asked questions about the benefits and risks of establishing a NSWA, whether the NSWA should be part of the NCS, and what areas and issues the NSWA should lead on. Consultation engagement events were organised in collaboration with frontline social workers to ensure their views were included. There will be ongoing collaboration and engagement with the sector, including frontline social workers, on the development of the NSWA.

- The analysis of NCS consultation responses showed high levels of agreement for the establishment of a NSWA and the proposed benefits including:
 - improving training and Continuous Professional Development
 - supporting workforce planning
 - raising the status of social work
 - greater consistency in social work standards across Scotland
 - greater empowerment of the profession
 - improving understanding and therefore the profile of social work
 - potential consistency in pay grades and scales
 - potential to deliver clear leadership for the sector.

Several key stakeholder responses to the NCS Consultation gave their support to the establishment of a NSW, including the Scottish Association of Social Work and Social Work Scotland.

Evidence

Age

In 2020, SSSC data showed there were 6,049 social workers working in all councils across Scotland and data showed:

Age Cohort

| 16-25 | 26-35 | 36-45 | 46-55 | 56-65 | 66+ | Total |
|-------|-------|-------|-------|-------|-----|-------|
| 5% | 24% | 27% | 26% | 18% | 1% | 100% |

Number of valid data returns 6041

Disability

In 2020, SSSC data showed there were 6,049 social workers working in all councils across Scotland and data showed:

Disability

| No | Yes | Not Disclosed/Not Known | Total |
|-----|-----|-------------------------|-------|
| 50% | 4% | 46% | 100% |

Number of valid data returns 6049

Sex

In 2020, SSSC data there were 6,049 social workers working in all councils across Scotland and data showed:

Sex

| Male | Female | Not Known | Total |
|------|--------|-----------|-------|
| 19% | 81% | 0% | 100% |

Number of valid data returns 6049

Race

In 2020, SSSC data showed there were 6,049 social workers working in all councils across Scotland and data showed:

Ethnicity

| Asian | Black | Mixed | Not known/ disclosed | Other ethnic group | White | Total |
|-------|-------|-------|-------------------------|-----------------------|-------|--------------|
| 1% | 1% | 0% | 25% | 0% | 73% | 100% |

Meeting the needs of the PSED

All protected characteristics

We believe there will be no impact on people due to protected characteristics for the following reasons:

This policy will apply to all social workers and provide support for undergraduates through to senior social workers.

Right to Breaks from Caring

The NCS aims to establish a statutory right to breaks from caring for all unpaid carers, adult and young carers. Possible barriers to this being achieved are:

- Carers not coming forward and not engaging with local support
- Carers not having the time to engage or prioritise themselves
- Availability and range of breaks and services, particularly for those with intense or specialist needs and those living in rural areas
- Resources/cost
- Availability of local support capacity to identify individual's needs and provide advice
- Availability of replacement care services, if required

Evidence

Age

There are an estimated 700,000 to 800,000 unpaid carers in Scotland, including 29,000 young carers.

The age group where someone is most likely to be a carer is 50-64 years old.

Those aged 65 and over are most likely to provide more intensive care (35+ hours per week) with over half of these carers doing so.

Disability

41% of carers, compared to 29% of non-carers have a long-term health condition.

16% were deaf or had partial hearing loss; 16% had a physical disability; 11% had a mental health condition; and 44% had another condition not listed.

Nearly 6% of carers report having a long-term mental health condition compared with 4% of non-carers.

The percentage of carers with one or more long-term health condition increases with the number of hours caring – from 36% of those caring for 1-19 hours to 50% of those caring for 35+ hours.

Poor carer health and wellbeing is concerning for both the carer and the cared-for person. It can result in greater use of health and social care services, particularly older people, for example: through admission and delayed discharge at hospital; referral to a day hospital or other unit; and admission to institutional care.

Sex

For carers aged 16 and over, 59% are women and 41% are men.

Working age women are most likely to be carers and the likelihood of caring increases for those in their late 40s and early 50s. Over a quarter of women in this age bracket are carers, balancing care and employment responsibilities.

Women are more likely to be carers than men until retirement age when equally 19% of both women and men are providing care. In the oldest age group (75+) more men than women (12% and 9% respectively) provide care.

62% of male carers providing care of 35+ hours a week are aged 25-64. This compares with 69% of women carers.

Women make up around 69% of Carer's Allowance/Carer's Allowance Supplement recipients who provide at least 35 hours of care a week.

Pregnancy and Maternity

No evidence has been identified of inequality, but as above carers are predominately female and aged late 40s and early 50s.

Gender Reassignment

No evidence of inequality has been identified. The policy focusses on personalisation and individual conversations to identify each person's specific needs. It is not specifically linked to people proposing to undergo, undergoing, or who have undergone a process for the purpose of reassigning their sex.

Sexual Orientation

Research published in 2007 by the Lesbian, Gay, Bisexual Transgender and Intersex (LGBTI) Centre for Health and Wellbeing reported that 0.8% of respondents from Edinburgh, the Lothians and the Borders provided full-time caring.

Some LGBTI parents/carers felt that reporting incidents affecting them would 'out' their children in the neighbourhood and make their children a target for bullying or harassment.

The LGBT Youth Scotland written response to the Carers (Scotland) Bill consultation provided further evidence of issues affecting LGBT carers:

- Many LGBT carers or the LGBT people they are caring for may have reduced social networks due to a lack of acceptance of their sexual orientation or gender identity. This can result in accessing less support than other carers.
- Many LGBT people fear potentially experiencing homophobia, biphobia and transphobia from services or have previous experience of discrimination from a service.
- There is often a lack of visibility of LGBT identities within services which are necessary to counter LGBT people's expectations of discrimination, or a lack of confidence that service services are able to meet their needs.

Race

The Pakistani community who make up 0.9% of Scotland's population is the largest BME group. This is followed by the Chinese community with 0.6% and then by the Indian community with 0.6%. The Gypsy/Traveller population account for 0.1% of the total population.

96% of carers are of a "White Scottish / British / Irish" ethnicity, while 4% are of "Other" ethnic backgrounds.

8.7% of the Pakistani population in Scotland provide some form of unpaid caring. This compares with 4.3% of the Chinese and 5.5% of the Indian communities.

People from older ethnic groups such as “White: Scottish” and “White: Other British” were the most likely to provide unpaid care. People from ethnic groups with younger age profiles, such as the “Arab” and “White: Polish” groups, were least likely to provide unpaid care.

There is evidence that Gypsy/Travellers experience significant health inequalities, high infant mortality rates, premature deaths and higher than average rates of major long-term conditions such as diabetes and cardiovascular disease.

Meeting the needs of the PSED

Age

We believe there will be positive impacts on people due to their age for the following reasons:

- Many carers are older and having a right to a break will have a positive impact on their health and wellbeing
- Young Carers will be able to have time away from their caring role to focus on other activities and education, in line with their peers.
- Breaks enable carers to have more time to pursue their own activities in line with their peer group.
- Many caring relationships are between different generations.

Disability

We believe there will be positive impacts on disabled people for the following reasons:

- Breaks will provide opportunities to maintain/improve the health and wellbeing, of both the unpaid carer and person with care needs who will often be disabled.
- Many caring relationships are between disabled and non-disabled people.

Sex

Caring disproportionately affects women, so a right to a break will help to address disadvantage and help improve health and wellbeing of more women than men. Men and women have equal access to breaks.

Many caring relationships are between people of different genders.

Pregnancy and Maternity

The policy focusses on personalisation and individual conversations to identify each person’s specific needs. It is not specifically linked to pregnancy or maternity.

As referred to previously, the majority of unpaid carers are female.

Sexual Orientation

We believe there will be no impacts on people due to sexual orientation as policy focusses on personalisation and individual conversations to identify each person's specific needs. It is not specifically linked to people's sexual orientation.

Race

We believe there will be some positive impacts on people due to race for the following reasons:

- The Scottish Government funds a network for local carer support staff involved in supporting BAME carers.
- The Carers (Scotland) Act 2016 and the preparation of an adult carer support plan - which will incorporate consideration of the new right to a break from caring - must consider issues for groups of carers with protected characteristics.
- Many older ethnic minority carers do not seek formal support out with the family unit, therefore framing breaks as a 'right' could encourage more carers to take up social care services.

Right to Visit Care Home Residents

The aim of this policy is to ensure that residents of adult care homes have the right to named visitors, even during an outbreak such as covid-19 or any other infection. In developing this policy the Scottish Government is mindful of the general equality duty as set out in section 149 of the Equality Act 2010 and has considered whether the measures could constitute direct and/or indirect discrimination.

The purpose of Anne's Law is to require care home service providers to comply with any visiting directions issued by the Ministers. The provisions in the Bill will be relatively focussed given the precise nature of legal wording legislation requires with the main policy drivers being contained in the Directions that follow the Bill. However, we intend to present a draft set of Directions alongside the Bill.

The focus for the Directions is for connections between care residents and their loved ones to be maintained even during an outbreak in a care home, such as covid-19, unless there are truly exceptional circumstances.

Anne's Law is aimed at residents of adult care homes registered with the Care Inspectorate.

Evidence

Age

As at March 2021 there were 33,353 residents aged 18 years and over. Although most residents (29,317 - 91%) are in homes for older people (according to the latest care home census,) there are many younger residents as well and so the impact is not restricted to one particular age demographic. Many older residents have dementia (64%) so the importance of familiar faces through contact with loved ones is essential. For younger adults too especially those with learning disabilities, family and friends play a critical role in supporting wellbeing.

For all residents, it has been noted in the consultation and wider stakeholder engagement that disrupting connections has a negative mental and physical impact on care home residents. There are numerous personal stories in the consultation responses that describe how residents' wellbeing deteriorated in the absence of visits and this is particularly the case where relatives act in support of care home staff to provide care to their loved ones.

The impacts of loneliness have been noted. Several respondents to the consultation have noted the impact of this on physical wellbeing and in particular linked it with a worsening of conditions such as dementia.

All care homes for adults: 31 March 2021 compared to 31 March 2011

- On 31 March 2021, there were 1,069 care homes for adults and 40,632 registered places – 20% and 5% fewer, respectively, compared with 31 March 2011.
- On 31 March 2021, there were an estimated 33,353 residents aged 18 years and over in care homes – 11% fewer than 31 March 2011 (37,511).

- On 31 March 2021, there were an estimated 29,317 long stay residents in care homes for older people. Of these, an estimated 18,831 (64%) had dementia (either medically or non-medically diagnosed).
- The estimated percentage occupancy on 31 March 2021 was 82%, compared with 88% on 31 March 2011.
- On 31 March 2021, residents in care homes for older people accounted for 91% of residents in all care homes for adults (30,502 out of 33,353).

Age profile residents (adult care homes)

| Age group | % |
|------------------------------|-----|
| Male and Female 18-64 | 10 |
| Male and Female 65-74 | 12 |
| Male and Female 75-84 | 29 |
| Male and Female 85-94 | 40 |
| Male and Female 95 and Older | 9 |
| Total Male and Female | 100 |

In 2018/19

- 41,635 people aged 65 and over were long stay residents in care homes, with support from a local authority (excluding Orkney and Comhairle nan Eilean Siar): 55.5% were aged 85 and over; 32.8% were aged 75-84; and 11.6% were aged 65-74.

There is a clear relationship between long-term health conditions or disability and increasing age:

- The prevalence of any long-term condition (limiting and/or non-limiting) increased with age, from 32% among those aged 16-44, to 68% among those aged 75 and over. This pattern by age was similar for men and women.
- The majority (59%) of people who reported that they were limited 'a lot' by a long-term health problem or disability were aged 60 or over.

Disability

A large proportion of care home residents across all ages will have a physical or mental impairment that has a 'substantial' and 'long-term' negative effect on their ability to do normal daily activities. This may relate to physical disability, cognitive impairment such as dementia, learning disability, sensory impairment or other disability. The content of the Bill will not directly impact on this protected characteristic but the details of the Directions that the Bill will provide for is expected to have a positive impact.

Young adults

The benefits of the proposals should be noted as extending beyond the age characteristic with many respondents keen to point out that adult care homes are home to more than just older people.

Connections with outside persons and groups will benefit all residents but in some cases younger people will be resident in a care home until their transition to living away from the care home can be supported. When visiting restrictions were in place this transition process was disrupted and many families fear that it will take some time to regain lost ground.

Supporting a resident's care arrangements

The important role relatives play in supporting the care of their loved ones was noted by many respondents to the consultation. Therefore the impact of Anne's Law on disabled residents whose relatives play a role in their care arrangements is expected to be significant as evidenced by the many consultation replies that pointed to the negative impacts of residents being separated from their loved ones.

Power of Attorney, guardianship etc.

Important points were noted in several consultation responses about the role of those with powers of welfare attorney or a welfare guardian. The Directions will first and foremost need to comply with relevant legislation such as the Adults with Incapacity (Scotland) Act 2000 and also the United Nations Convention on the Rights of Persons with Disabilities. Compliance involves making sure that, wherever possible, the residents will and preference with regards to who they would like to visit them should be recorded or, in cases where the resident is not able to make that determination, their welfare attorney or welfare guardian should be consulted.

There was some evidence of a conflict emerging where the named person was not always the same person as the welfare attorney or a welfare guardian. However, a separate update to the named person policy will allow more flexibility for more than one named person to be nominated, with one per day visiting. This will minimise the risk that a resident or their representative would have to choose between those with legal responsibilities on the resident's behalf and any other such as brothers and sisters etc.

Care home census 2021 noted that

1. On 31 March 2021, there were an estimated 29,317 long stay residents in care homes for older people. Of these, an estimated 18,831 (64%) had dementia (either medically or non-medically diagnosed).
2. Of the estimated 33,353 residents in care homes for adults on 31 March 2021, there were an estimated 31,882 long stay residents (96% of all residents).
3. On 31 March 2021, there were 1,069 care homes for adults in Scotland. Of these, 809 (76%) were for older people, 157 (15%) were for learning disabilities, 52 (5%) were for mental health problems, and 36 (3%) were for physical and sensory

impairment. The remaining 15 (1%) care homes for adults included those for acquired brain injury, alcohol and drug misuse, and blood borne virus

4. On 31 March 2021, there were 40,632 registered places in care homes for adults in Scotland. Of these, 37,252 (92%) were in care homes for older people, 1,542 (4%) were in care homes for learning disabilities, 930 (2%) were in care homes for mental health problems, and 600 (1%) were in care homes for physical and sensory impairment

Social care data is categorised in terms of client group; whilst this is not the same as disability (as defined in the equality act), it provides some insight into the needs of different groups.

In 2018/19:

- Nearly half (49.5%) of the people receiving social care were categorised as being in the 'elderly and frail' client group, and 36.4% were in the next largest client group 'physical and sensory disability'.

Sex

Nothing in the policy of Anne's Law is intended to impact on one gender more than the other but the latest care home census indicates that the majority of care home residents are female and so, according to that measure, the positive impacts of Anne's Law will be felt most by females.

Females accounted for approximately 71% of long stay residents (care homes for older people) overall and predominate especially in the older age groups. The split is roughly equal up until the 65-74 age group but in older age groups there are more women than men (see the table on page 20 of the care home census).

As at 31 March 2021:

- For people living as long stay care home residents, there are roughly equal men and women in the 65-74 age group, double the number of women in the 75-84 age group but in the 85 and over age group, there are three times more women than men.

Gender Reassignment

Neither the consultation or other stakeholder engagement has revealed any impacts on this characteristic.

Supporting data is not routinely recorded for care home residents.

Sexual Orientation

Neither the consultation or other stakeholder engagement has revealed any impacts on this characteristic.

This data is not routinely recorded for care home residents.

Race

Neither the consultation or other stakeholder engagement has revealed any impacts on this characteristic. However, it can be expected that language issues may emerge and the subsequent guidance in particular may need to address how some residents may need to be supported in order to fully understand their rights with regards to nominated named persons.

There is very limited data on ethnic group for people who access social care.

In 2018/19:

- 2,410 people identified as mixed, Asian, African, Caribbean, Arab or other ethnic groups.
- However, ethnic group was not known for 65,870 people.

NRS analysis of population data suggests that “Scotland is becoming more ethnically and religiously diverse, with an increasing number of people who live in Scotland being born outside of the UK”. However, this draws on data from the 2011 Census so should be used with caution.

Religion or Belief

Neither the consultation or other stakeholder engagement has revealed any impacts on this characteristic. It is possible that some care home residents would wish to remain connected to religious leaders for example but this is addressed through separate policies associated with essential care and would not be affected by this policy, although a resident could of course nominate additional persons from their congregation if they so wish.

Marriage and Civil Partnership

Neither the consultation or other stakeholder engagement has revealed any impacts on this characteristic. The resident would not, for example, be restricted to choosing their spouse or civil partner and could also choose to change the named persons as they wish.

Meeting the needs of the PSED

Age

This policy is intended to address the problems caused by visiting restrictions and the mental and physical harms caused by these restrictions and so there is a positive impact on all residents, noting that most will be elderly.

We believe there will be positive impacts on people due to age for the following reasons:

The policy is focussed on those adults living in care homes and, statistically, a significant percentage of such adults will be older people.

COVID-related restrictions to visiting therefore disproportionately affected older people and the implementation of Anne’s Law will help redress the imbalance in how many older people experience a future pandemic compared to others in society (i.e. those

who don't live in adult care homes) who will almost certainly find it easier to maintain their connections with family members.

However, some may feel that this policy does not go far enough and that visits should not be restricted at all.

Disability

We believe there will be positive impacts on disabled people for the following reasons:

Care home residents, including those with physical, mental or sensory impairments were disproportionately impacted by COVID-related visiting restrictions compared to those who do not live in care homes.

One of the major themes arising from the public consultation is how disruption to the regular connections and relations between residents and their relatives and friends impacted negatively on the mental and physical health of those involved, particularly the residents. Those with, for example, dementia or a learning disability were less able to understand why visits were restricted and also less able to manage without them.

This policy is a means to redress this, noting as well that those with physical, mental and sensory disabilities benefit significantly from visits.

During the public consultation relatives in particular have been keen to stress that they do not just visit but often play a key part in supporting staff to care for their loved ones, many of whom have a physical, mental or sensory impairment. This policy is expected to have a positive effect in maintaining visits and the wider support network that will often be in place.

Sex

We believe there will be no impact on people due to their sex for the following reasons:

This policy is intended to apply to all residents of adult care homes and there is no intention to differentiate between men and women.

However, to note that the latest available data shows that for people living as long stay care home residents, there are roughly equal males and females in the 65-74 age group, double the number of women in the 75-84 age group but in the 85 and over age group, there are three times more females than males. Therefore is the potential for a slightly disparity in the numbers of men and women who experience changes to visiting arrangements even though the policy intent is for Anne's Law to apply to all care home residents equally.

Gender Reassignment

There is no evidence that gender reassignment is an issue in the context of this policy but, where there were to be any issues, the right to a named visitors assist anyone where this characteristic is relevant.

Sexual Orientation

Neither the consultation or other stakeholder engagement has revealed any impacts on this characteristic.

This data is not routinely recorded for care home residents. However, we know that 2% of the Scottish population identified as LGBO in 2017 (see [Sexual orientation in Scotland 2017](#)) and should expect that some of this group will require social care.

Race

There is no evidence that race is an issue in the context of this policy but, where there were to be any issues, the right to named visitors would assist anyone where this characteristic is relevant.

Religion or Belief

There is no evidence that religion or belief is an issue in the context of Anne's Law but, where there were to be any issues, the right to named visitors would assist anyone where this characteristic is relevant.

Marriage and Civil Partnership

There is no evidence of any particular impact on people because of marriage or a civil partnership. Should it be the case that there are issues which have not come to light through the public consultation then the right to named visitors would no doubt help all those affected by any visiting restrictions.

Ethical Commissioning and Procurement

Background

The NCS Bill supports Scottish Ministers overall accountability for the National Care Service, which includes a remit to develop and manage a National Commissioning and Procurement Structure of Standards and Processes for ethical commissioning and procurement.

It is important to draw a distinction between how the NCS will consider equality and human rights issues in the way it responds to user needs, and the equalities requirements in relation to what is being procured. Public procurement policy and legislation is fundamentally non-discriminatory and requires public bodies to treat all bidders equally and without discrimination.

Consultation responses from key stakeholders with equality and human-rights interests supported the proposals on 'Commissioning for Services' and reinforced the need for the ethical procurement and commissioning standards to focus on and drive both human rights and equalities through decision making.

We propose that the NCS will develop and manage a National Commissioning and Procurement Structure of Standards and Processes for ethical commissioning and procuring of social work and social care services and supports.

The NCS Bill will set out Scottish Ministers' accountability for social care provision in the NCS and this will include the principles and high-level tenets of the system.

These principles will be applied 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 work and social care services, ensures fair work, promotes sustainability and ensures consistent implementation and equitable quality of service throughout Scotland.

Ethical commissioning

The Bill also sets out that each care board must have an ethical commissioning strategy included within their Strategic Plan, which sets out their arrangements for providing services and how those arrangements have been designed to ensure they best reflect the NCS principles. The Scottish Ministers must also have an ethical commissioning strategy for any services provided at the national level. Both the Scottish Ministers and care boards must consult publicly on their draft strategies, and make the latest version of the strategy public. Local care boards must also consult their community planning partners and neighbouring care boards.

Ethical commissioning strategies will enable the NCS to implement Fair Work and the other NCS principles. Ethical commissioning, in relation to social services, has a person-centred care first/human rights approach at its core, ensuring that strategies focus on high quality care. This includes Fair Work practices which encourage the development of a quality, sustainable, and appropriately valued work force; climate and circular economy considerations to support a just transition to net zero; financial transparency and commercial viability of any outsourced services; full involvement of people with living experiences throughout, putting the person at the centre of making

the choice; and a shared accountability between all partners and stakeholders involved in delivery.

Ethical procurement

Regulation 9 of The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 already places a duty on public bodies, requiring them to have due regard to whether they could include award criteria and contract performance conditions that will help them to better perform the equality duty.

The Scottish Government published Scottish Procurement Policy Note (SPPN 8/2012) about this issue in 2012, which confirms that the PSED applies whenever a public body awards a contract or framework agreement which is covered by the existing procurement legislation and in doing so public bodies must ensure that any provider complies with the PSED in performance of the contract.

This existing legislation and policy will therefore provide an established framework for the proposed remit for the NCS in respect of ethical procurement standards.

Reserving contracts to voluntary organisations

The Bill will allow contracting authorities to restrict participation in a procurement exercise to only those bidders who meet the definition of a mutual organisation.

The effect of this provision is to increase the opportunities for new voluntary organisations and the third sector to enter the market. The PSED as it applies to procurement decisions will apply in these circumstances and will not have an adverse effect on protected characteristics.

Emergency powers to intervene

The Bill will provide Scottish Ministers with emergency powers to intervene in an arrangement with a third party, in specific situations and where contractual remedies have been exhausted, or urgent action is required to protect and ensure NCS care recipients continue to receive the care that they require.

The effect of this provision is to provide Scottish Ministers with power to support their overall accountability for social care services, and will not have an adverse effect on protected characteristics.

Conclusion

Equality and human-rights issues were considered during the policy development process. No changes to the policy were considered necessary as a result of the EQIA process, which did not identify any group that would be adversely affected by new legislation or policy on commissioning or public procurement.

The Scottish Government will continue to work with key stakeholders to ensure full account is taken of equality issues and will ensure that any supporting statutory guidance produced under the Bill, where relevant, should refer NCS local bodies to relevant guidance materials, for example the Equality and Human Rights Commission's guide for public authorities (Scotland) on procurement and the public sector equality duty.

Children's services

Background

The current landscape in Scotland for delivering children's social work and social care and community health services is complex. A variety of approaches to the organisation of children's services can be found across Scotland. The Scottish Government's key objective for children's social work and social care services is Keeping The Promise and delivering a care system for children and young people which gives them what they need to thrive.

Conclusions from the Christie Commission and the Independent Care Review are that services should be experienced as joined-up support which wraps around the child and family when this is needed. This was the clear foundation for introduction of statutory Children's Services Plans in 2017, based on GIRFEC principles and values.

The Independent Review of Adult Social Care made recommendations which identified that change is needed to ensure greater collaboration and reduce the complexity of the current landscape of adult social care. The children's services landscape is even more complex. Including children's social work and social care services in the NCS may be an opportunity to better deliver on the Christie recommendations and to Keep The Promise.

The statutory requirements for joint working that were put in place prior to the Independent Care Review, aimed at achieving greater collaboration between agencies, have not achieved the degree of collaboration necessary.

From that starting point, in the context of reform required by the establishment of the National Care Service (NCS), consideration is required as to whether the integration of adult and children's services, and children's social and health services, in the NCS could provide a structure and system in which The Promise can be delivered and maintained more effectively than within existing arrangements. Consideration is also required as to whether services for children with disabilities and health issues could also be improved by the NCS's integrated model.

As the Independent Review of Adult Social Care did not consider children's services, the same evidence base as exists for adult services is not currently in place regarding children's social work and social care services.

To fully consider and better understand the benefits and potential challenges of locating children's social work and social care in the NCS a programme of work will be taken forward to gather evidence on the impact of integration. A final decision as to whether to include children's services within the NCS will be taken following consideration of the impact of integration of services to date, in contemplation of a changed landscape for children's services, how best to deliver improvements for children and families and how best to deliver The Promise. Consideration will continue regarding the potential impacts of including children's services within the NCS.

The Scottish Government commits to further public consultation as part of that decision-making process and to the involvement of those with lived and living experience, including children and young people accessing services, and those who work across the sector.

Evidence

Age

Children's social work and social care services are provided to children and young people from birth up to the age of 18. Aftercare services are also available up until the age of 26 for care experienced young people. As this policy primarily affects children, our statistical evidence gathering has focussed on the numbers of and ages of children receiving services.

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. This equates to 1.5% of children in Scotland. More children aged 5-11 started to be looked after than other groups with children aged 12-15 the next highest group. The age distribution of children becoming looked after has remained broadly stable since 2011. Proportionately, more younger children (aged 0-4) are on the child protection register compared to older children (aged 12-15).

A different pattern of child protection concerns recorded for younger and older children is evident. More concerns about parental mental health, parental drug use, and domestic abuse are recorded for younger children. Among older children, more concerns are recorded about emotional abuse, sexual abuse, physical abuse, non-engaging families and children placing themselves at risk (see table 4.4 in the Children's Social Work Statistics 2020-2021 Additional Tables).

The number of young people eligible for aftercare services was 7,323 as of 31 July 2021. The highest proportion of eligible young people in receipt of aftercare services were those aged 19-21 years (58%). The lowest proportion of children in receipt of aftercare services were those aged 16 years (46%). 54% of young people eligible for aftercare services were receiving services. Of those receiving aftercare services 54% were in employment, education or training (where information on economic activity was known). This is considerably lower than the population generally where 87.6% of young people aged 16 to 24 were participating in education, employment or training in 2020/21. Of the young people in secure care 51% were aged 16 or over; and 72% were aged 15 or older.

Disability

Disabled children receive social work and social care services.

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.

1,288 children with known disabilities were looked after at 31 July 2021. This represents 10% of the looked after population, which is consistent with the general child population (aged under 16). However, for 3,286 looked after children it is not known or not recorded whether they are disabled. 23% of young people in secure care accommodation (18 of 78) had at least one disability, defined as “a mental or physical impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities”. This figure is higher than in 2020 when the figure was 7 of 81, however it is lower than 2019 and 2018 when the figures were 27 of 84, and 39 of in 2018 it was 39 of 82. Whilst this is higher than the general child population 51% of the young people in secure care were aged 16 and over so this cannot be directly compared.

Responses to the NCS consultation from stakeholders which represent disabled people highlighted that transitions between children’s and adult services in both health and social care need to improve and should be seamless. There were also comments that transition processes and timeframes are managed differently in health services and social care services and that funding and resources are a major concern. Some responses considered it would be beneficial if a National Care Service incorporated children’s services with a view to providing greater consistency and making transitions easier.

In responses to the NCS consultation organisations which support disabled children also highlighted integration between health and social services as being beneficial. This was because it would support a continuous and consistent approach throughout children’s lives; would reduce siloed working and increase cohesion of services, improving coordination and movement of children and families between these. It was also suggested that this could help alleviate the stigma of asking for help.

Sex

Of the total number of children looked after by local authority on 31 July 2021 54% were male and 46% were female. This compares to 51% of children being male in Scotland as a whole in the same age group.

On 31 July 2021 56% of young people in secure care accommodation were male and 44% were female. At 31 July 2020 54% were male and 46% were female; at 31 July 2019 71% were male and 29% were female.

The Scottish Government is not aware of any particular issues in relation to sex for the potential transfer of children’s social work and social care services to the NCS.

Pregnancy and Maternity

It is estimated that a quarter of young women leaving care are pregnant or have a child and that the numbers of young women who give birth increases within 18-24 months of leaving care. This is considerably higher than the pregnancy rate for the general population of 28 per 1,000 women under 20 years of age (in 2019).

Gender Reassignment

The Scottish Government is not aware of any particular issues in relation to gender reassignment for the potential transfer of children's social work and social care services to the NCS.

Sexual Orientation

The Scottish Government is not aware of any particular issues in relation to sexual orientation for the potential transfer of children's social work and social care service to the NCS.

Race

Statistics are available on the ethnicity of children looked after by local authorities. The table below sets out the ethnicity of children looked after on 31 July 2021. The proportion of looked after children belonging to known minority ethnic groups does not differ substantially from national census data, however the scale of 'unknown' data recording makes it difficult to gauge whether this accurately reflects the full looked after population.

| Ethnic Group | Number | % of Looked After Children | % all children in Scotland (2011 Census) |
|--|---------------|-----------------------------------|---|
| White | 11,141 | 84% | 95% |
| Mixed Ethnicity | 171 | 1% | 1% |
| Asian, Asian Scottish or Asian British | 122 | 1% | 3% |
| Black, Black Scottish or Black British | 92 | 1% | 1% |
| Other Ethnic Background | 198 | 1% | 0% |
| Not known | 1,531 | 12% | 0% |
| Total Looked After Children | 13,255 | 100% | 100% |

The Scottish Government is not aware of any particular issues in relation to race for the potential transfer of children's social work and social care services to the NCS.

Religion or Belief

Statistics are available on the religion or belief of children looked after by local authorities and on the child protection register. However there are a considerable volume of 'unknowns' in existing data on religion of looked after children and children on the child protection register.

The Scottish Government is not aware of any particular issues in relation to religion or belief for the potential transfer of children's social work and social care services to the NCS.

Marriage and Civil Partnership

The Scottish Government is not aware of any particular issues in relation to race for the potential transfer of children's social work and social care services to the NCS.

Meeting the needs of the PSED

Age

It may be that improvements could be found through the integration of children's social work and social care services in the NCS and that the benefits of integrated health and social care services could achieve better outcomes for children and young people who access and receive these services. This would be through the provision of services delivering the fundamental changes identified in The Promise such as early intervention and whole family support. Better outcomes could mean improvements for these children and young people physically, socially, emotionally and in educational attainment.

Disability

The inclusion of children's services may assist the provision of equity in service provision across Scotland for disabled children and their families. It should improve transitions from children's to adult services with improved planning and better co-ordination. Families should begin to experience joined-up service (through strategic/operational delivery and frontline practice) and self-directed support will be available nationwide. Improved transitions and integrated child and adult services should mean that disabled young people do not lose the networks of support that they have built up when they reach 18. Self-directed support will also mean that young people can choose their own support rather than rely on services.

Pregnancy and Maternity

The inclusion of children's social work and social care services would integrate these services with child health services, including health visiting and family nurse partnership teams, if these services are also transferred to the NCS. This would ensure nationwide multi-disciplinary support is available in communities for young care experienced women throughout pregnancy and preparing for the birth of their child, assisting them to provide the very best start in life. Strengths based assessments, Family Group Decision Making and multidisciplinary working across health and social care can create the circumstances to help at the earliest stage, leading to meaningful change to support a good childhood. Integrated social work and health services which wrap around the family may help care experienced young mothers to access groups and support networks with other young mothers/parents.

Children's Services: Conclusion

Further engagement of key stakeholders will be conducted and our understanding of the potential impact of the transfer of children's social work and social care services to the NCS will be better informed as a result. Children and young people, including

disabled and care experienced children and young people will be involved the co-design phase for the NCS which will help ensure they are able to shape the NCS and that their views are heard in the process.

When considering the inclusion of children's services within the National Care Service Scottish Ministers will consider the respective issues for adults and children's services which are outlined in this EQIA.

Conclusion

This review has identified a range of potentially positive impacts arising from the establishment of the NCS.

The provisions of the NCS Bill have been considered for possible impacts on each of the protected characteristics.

A co-design approach must be taken throughout the creation and implementation of the NCS to ensure that any negative impacts arising as policy is developed is discussed with the people it will affect most. Further impact assessments will be conducted to address each developing strand of policy relating to the NCS.

This should provide ongoing feedback and information about how the NCS can function as inclusively as possible for protected characteristic groups. It will also allow the Scottish Government to learn how to best deal with and mitigate for any issues arising from the design affecting the identified groups.

There is no evidence, so far within this interim EQIA that the policy is directly or indirectly discriminatory under the Equality Act 2010.

Monitoring and Review

The National Care Service will be governed by a set of principles that will clarify that social care, social work and community health services are essential for the realisation of fundamental human rights and that the National Care Service has equality, non-discrimination and the dignity of the individual at its heart.

The design of the NCS will integrate equality impact monitoring and evaluation into its framework from the outset. We believe it is essential to ensure that any identified positive and negative impacts will be closely monitored and evaluated and relevant information and data gathered to continually assess the potential positive and negative impacts of the service.

Stage 5: Authorisation of EQIA

Declaration: I am satisfied with the equality impact assessment that has been undertaken for the National Care Service (Scotland) Bill and give my authorisation for the results of this interim assessment to be published on the Scottish Government's website.

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Position: Deputy Director, National Care Service Division

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