

National Care Service (Scotland) Bill

Fairer Scotland Duty Assessment

June 2022



Scottish Government
Riaghaltas na h-Alba
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Introduction

This is a summary of the Fairer Scotland Duty Assessment (FSDA) conducted on the National Care Service (Scotland) Bill. This FSDA has been carried out in accordance with Part 1 of the Equality Act 2010, which came into force in April 2018.

Scottish Ministers are required to actively consider what more can be done to reduce the inequalities of outcome caused by socio-economic disadvantage when making strategic decisions.

The findings in this summary are based on desk-based research, the formal analysis of the consultation on the National Care Service (NCS), and further stakeholder engagement and feedback that took place after the NCS consultation.

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.

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 (NSWA) 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.

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

Background

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, published on 3 February 2021. The Independent Review made 53 recommendations, including that the Scottish Ministers should have statutory responsibility for social care, a NCS should be established, a person-centred and human-rights based approach should

be taken to social care, and that Integration Joint Boards (IJB) 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.

Summary of evidence

A summary of the evidence sources is provided at the end of this part of the assessment. During our research it was apparent that there are gaps in the evidence, e.g. some of the findings are taken from the 2011 census as the findings from the 2022 census are not yet available. However, it is clear from the evidence that is available, and from the response to the NCS consultation, that change is needed to ensure consistent and high quality social care support is delivered across Scotland.

Overview of social care support in Scotland

The population receiving social care and support is diverse, with wide ranging needs and circumstances. An estimated 1 in 25 (232,000) people of all ages in Scotland were reported as receiving social services during 2020/21. There are also an estimated 700,000 to 800,000 unpaid carers in Scotland¹, and over 200,000 people employed in the social service sector. Overall this means that around one fifth of the population are affected by the quality of social services, including the conditions offered to the workforce.

Over many years, various issues have demonstrated that social services and the integration of health and social care services are not working as well as they should. The Scottish Government commissioned Derek Feeley (a former Scottish Government Director General for Health and Social Care and Chief Executive of NHS Scotland) to chair the Independent Review of Adult Social Care (IRASC) in September 2020 to consider the problems in a systematic way.

¹ The 2020 Scottish Health Survey telephone survey results suggest that there are around 839,000 people aged 18 and over providing unpaid care and support to people across Scotland. Around 3% of these unpaid carers are estimated to be receiving carer support.

In February 2021, the IRASC report was published. The IRASC report concluded that whilst there were strengths in Scotland's social care system, it needed revision and redesign to enable a step change in the outcomes for the people accessing care and support.

The changes needed were summarised by IRASC into three main challenges:

- Shift the paradigm - from viewing social care support as a burden to seeing it as an investment in society; moving from services that manage needs in a crisis to preventative support that enables people to flourish, and ensuring consistent and fair provision.
- Strengthen the foundations - to ensure consistent and effective implementation of the ambitious legislation already in place, strengthening and valuing the workforce, and giving unpaid carers the support they need to continue in their vital role.
- Redesign the system - creating a NCS “to drive national improvements, to ensure strategic integration with the National Health Service (NHS), to set national standards, terms and conditions, and to bring national oversight and accountability” to the sector; creating a commissioning and procurement system based on partnerships rather than competitions, and crucially, amplifying the voice of lived experience in the process of redesign.

People who access social care

The Scottish Government's Equalities Evidence Review found that overall, substantially higher proportions of people in the most deprived areas in Scotland receive home care support; 26% of people receiving home care lived in the most deprived areas, compared to 13.9% in the least deprived. However, this varies by age; 36.2% of those aged 16-64 receiving home care lived in the most deprived areas, compared to 7.5% in the least deprived, while there was little difference in the age 85 and over age group.

Analysis of the Health and Care Experience Survey data found that people living in the most deprived areas were amongst those most likely not to be receiving support but feeling they needed it in 2021-22.

The Scottish Health Survey 2019 found that those living in the most deprived areas were almost twice as likely than those in the least deprived areas to experience four or more Adverse Childhood Experiences (ACEs) – 20% compared to 11%.

The Health and Care Experience Survey found that when respondents were asked to rate their overall experience of help, care or support with everyday living 62% responded favourably.

The NCS proposals seek to increase the number of care and support services which focus on prevention and early intervention, including community based services

which can be accessed without a referral or full assessment. This approach will be set out in legislation, ensuring that there is not a postcode lottery of care.

Unpaid Carers

Scotland's health and social care systems rely heavily on the input of unpaid carers. There were 700,000 – 800,000 unpaid carers before the pandemic, including 30,000 young carers. Latest estimates suggest that there were 839,000 adult carers in September 2020.

Data from the 2011 census and the Scotland's Carers Report (2015) found little difference overall between the proportion of carers who live in the most and least deprived areas.

Unpaid carers living in the most deprived areas are much more likely to be caring for 35 hours a week or more compared to those living in the least deprived areas (47% and 24% respectively). This also applies to young carers (28% and 17% respectively).

Based on records where information on support provided to carers was available; the most common form of support provided to carers was advice and information. Young carers supported by local services were more likely to be provided with short breaks or respite than adult carers.

When carers responding to the Health and Care Experience Survey were asked if they feel supported to continue care, only 30% responded positively.

The NCS Bill proposes a right to breaks from caring that will function as part of the wider social care support system.

Unpaid carers already have rights under the Carers (Scotland) Act 2016 to a personalised plan to identify what is important to them and their needs for support. Carers also have the right to support to meet their eligible needs and authorities must consider whether that support should include a break from caring.

Despite the above rights, relatively few unpaid carers (around 3%) receive statutory support for breaks from caring.

The Bill makes changes to the Carers Act to deliver a right to personalised short breaks support for carers who need it. Existing powers can be used for Ministers to maintain a national short breaks fund to enable easy-access support for people in less intensive caring roles.

Social Care Workforce

There are over 209,000 workers in the social care sector - 83% are women, 11% are on zero hour contracts. Progressing Fair Work across social care, including increasing pay, would not only help social care staff but will also positively impact on

wider Scottish Government priorities on child poverty, Fair Work and post-Covid pandemic recovery.

In their 2019 report on 'Fair Work in Scotland's Social Care Sector', the Fair Work Convention highlighted poor terms and conditions and a lack of security for social care staff, although they acknowledged that progress was being made to address issues of low pay with the implementation of the Living Wage.

The Bill seeks to enable the NCS to support Fair Work in the sector, by including Fair Work within the guiding Principles of the NCS, thus giving Scottish Ministers the ability to ensure that Fair Work is embedded into the NCS as a founding principle, and to make the NCS an exemplar of Fair Work. The ethical commissioning strategies also need to reflect the Principles, and therefore be a key tool for ensuring Fair Work. This will also support Scottish Ministers to improve the way in which Fair Work is identified and considered as part of commissioning and procurement practices.

Consultation

Throughout the consultation period the Scottish Government engaged with stakeholders and organisations representing people with lived experience of homelessness, poverty and use of drug and alcohol services.

Feedback from those sessions and from consultation responses showed overall support for the Scottish Government's proposals for the NCS, and a view that it is essential that public services are delivered using an integrated approach.

The Scottish Recovery Consortium described hearing a wealth of negative experiences relating to care evidencing a clear need for significant change, and described a postcode lottery for the delivery of services.

Summary of assessment findings

As described previously, there are gaps in the evidence around the socio-economic factors relating to social care. It will be vital to continue to engage with groups representing people with lived experience of poverty and deprivation when developing policies around the NCS.

It is clear from the IRASC that change to the way social care is delivered in Scotland is needed. Over a quarter of the people in receipt of social care support live in the most deprived areas of the country; furthermore, people living in the most deprived areas are more likely not to be receiving support even when they believe they need it.

People living in the most deprived areas are more likely to experience adverse childhood experiences. Improvements to the way care is delivered may have an impact on this statistic, improving opportunities for people in later life.

Unpaid carers living in the most deprived areas are more likely to care for longer periods time, yet only 3% of unpaid carers benefit from the statutory right to breaks. The NCS Bill makes changes to the Carers (Scotland) Act 2016 to deliver a right to more personalised short breaks support for carers who need it.

Establishment of the NCS will result in Scottish Ministers being accountable for the delivery of social care across Scotland. The Scottish Government will set standards and frameworks at a national level. This will address the perception of a 'postcode lottery' that currently exists by ensuring that they are put into practice through performance monitoring and improvement.

The NCS proposes a single point of access for people who use its services to raise complaints. This simplified system will benefit individuals who wish to make a complaint but are less likely to because they are unsure how to, or are currently unsure which body should deal with the complaint. It is intended to make it as easy as possible for individuals to make a complaint.

The evidence referenced above shows that a higher proportion of people receiving home care support live in the most deprived areas. The Scottish Government's NCS consultation noted that although a great deal of social care data currently exists, it is not always easily accessible or used to best effect.

We propose the creation of a nationally-consistent, integrated and accessible electronic social care and health record that could be used and seen by all those who provide health and care support, with appropriate permissions put in place to control who can see what information. This would provide a national framework that allows for person-centred data and information to be shared safely and securely, benefitting those in deprived areas who are more likely to access services.

The NCS Bill will have a positive impact on low income staff in the sector by enabling Scottish Ministers to ensure that Fair Work is embedded into the NCS as a founding principle.

Throughout the creation of the NCS, the Scottish Government will actively engage with stakeholders to ensure that people with lived experience of poverty and disadvantage are included in the process. It is vital that their voices are heard as we develop policy.

Summary of Data Sources

Insights in social care: statistics for Scotland - Support provided or funded by health and social care partnerships in Scotland 2019/20 - 2020/21 - Insights in social care: statistics for Scotland - Publications - Public Health Scotland

[Foreword - Adult social care: independent review - gov.scot \(www.gov.scot\)](#)

Public Health Scotland (2022) [People supported - Insights in social care: statistics for Scotland - Support provided or funded by health and social care partnerships in Scotland 2019/20 - 2020/21](#)

Scottish Government (2022) [Experiences of Social Care and Caring in Scotland](#)

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

Scottish Health Survey, 2016-2019 (combined), Scottish Government:
www.gov.scot/collections/scottish-health-survey

Fair Work Convention (2019) [Fair Work in Scotland's Social Care Sector 2019](#)

Scotland's Carers (published 24 March 2015) www.gov.scot/publications/scotlands-carers/pages/2/

Young carers: review of research and data www.gov.scot/publications/young-carers-review-research-data/pages/1/

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This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at

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

ISBN: 978-1-80435-617-3 (web only)

Published by The Scottish Government, June 2022

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS1105502 (06/22)

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