

National Care Service (Scotland) Bill

Island Communities Impact Assessment

June 2022



Scottish Government
Riaghaltas na h-Alba
gov.scot

OFFICIAL

ISLAND COMMUNITIES IMPACT ASSESSMENT

Title of Policy	National Care Service (Scotland) Bill
Purpose	To provide the legislative framework necessary for the creation of a National Care Service
Scottish Government Directorate	Directorate for Social Care and National Care Service Development
Date	June 2022

Contents

INTRODUCTION.....	2
BACKGROUND	3
CONSULTATION	4
DATA AND EVIDENCE	5
FURTHER CO-DESIGN PROCESS	7
APPROACH TO BILL.....	8
KEY FINDINGS.....	9
NCS Structures and Governance	9
National Social Work Agency	11
Transfer of functions to the National Care Service	12
Charter of Rights.....	14
Single Point of Access for Complaints.....	15
Care Records and Information Standards	15
Ethical Commissioning	16
Breaks from Caring.....	17
Anne’s Law	18
Regulation	18
Reporting and Monitoring	19
CONCLUSION	19
AUTHORISATION OF ICIA.....	20

OFFICIAL

INTRODUCTION

This is a summary of the Island Communities Impact Assessment (ICIA) conducted on the National Care Service (Scotland) Bill. This ICIA has been carried out in accordance with the provisions of the Islands (Scotland) Act 2018. Section 13 of the 2018 Act obliges the Scottish Ministers to prepare an ICIA in relation to legislation which, in their opinion, is likely to have an effect on an island community which is significantly different from its effect on other communities in Scotland.

The findings in this summary are based on desk-based research, the formal analysis of the consultation on the 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.

The ICIA process demonstrates that the Bill, as introduced, will likely have a positive impact and that the impact on island communities will be similar to those living in mainland Scotland. However, it also highlights that most impacts from these reforms to social care will come from regulations developed on the basis of the provisions of the Bill. As set out in this impact assessment, these regulations will be developed in conjunction with further engagement with people with lived and living experience of social care alongside delivery partners and key stakeholders, including those in island communities, and will be subject to further impact assessment, where appropriate. This approach will allow for details of the NCS to be co-designed with those who access support and those who provide it in order to close the historic gap between legislative intent and delivery. This, in turn, will help to ensure that the actions needed to realise the benefits of the reforms and to mitigate potential negative impacts for island communities are identified.

OFFICIAL

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 Structure of Standards and Processes 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

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 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 National Care Service, officials have focused on addressing the above challenges.

OFFICIAL

CONSULTATION

The NCS consultation ran from 9 August to 2 November 2021 and received almost 1,300 responses. 54% of responses were from individuals and 45% were from organisations. These responses included 298 detailed responses that did not follow the structure of the consultation, most of which were in a report style. Over 100 engagement events and meetings were also held, in which around 3,000 people participated. The consultation contained 96 questions, split into chapters covering improving care, the National Care Service, the scope of the National Care Service, reforms to Integration Joint Boards, commissioning of services, regulation, and valuing people who work in social care.

An Easy Read version of the consultation was also produced. The Easy Read version contained 24 questions based on the full version of the consultation and covering all chapters. Additional Easy Read material to explain key concepts of the NCS was also produced to assist people to understand the proposals. 50 Easy Read responses were received.

The consultation engagement events included 3 public engagement sessions aimed specifically at island communities and 2 meetings with local authorities that encompass island communities. Since the close of the consultation, engagement with stakeholders has continued. Further engagement has included meetings with the Island Assessment Impact Group, which was formed to specifically consider the impact on islands, and engagement with the National Islands Delivery Plan Group and the Islands Strategic Group. This further engagement will continue as policy is developed on the basis of the powers introduced by the Bill.

The analysis of the NCS consultation was undertaken by an independent contractor and published on 10 February. The analysis report discussed key themes and opinions expressed in the consultation responses alongside numerical analysis of the closed questions. Where applicable, it highlighted differences in views between different kinds of respondent. It also included quotes to illustrate the spread of views received. The analysis of the consultation responses found broad agreements with the proposals for the NCS and also highlighted a number of island-specific concerns that had been raised.

Concerns which were specific to island communities included:

- the general need for flexibility to account for specific island and rural communities when developing a national approach to social care;
- barriers to accessing social care for island communities such as transport limitations and small and dispersed populations;
- barriers to portability of care packages between urban and rural/island areas;
- barriers to social worker and social care recruitment due to working age population decline and the need to attract workers to the islands;
- potential disruption to existing mature integration arrangements that have developed to account for island settings;
- economic and demographic constraints on establishing new public bodies due to small size of island communities;

OFFICIAL

- impact of any disruption on local authority provision of social care due to local authorities delivering a far greater share of social care on islands compared to mainland Scotland; and
- ensuring funding models for social care accurately reflect additional costs associated with delivery on islands.

During discussions at the Island Assessment Impact Group between November '21 and April '22 the above themes were explored further with attendees. This resulted in the following additional island specific considerations:

1. Increasing the numbers of public authorities or agencies will add to already cluttered governance landscape.
2. Distinctive challenges in relation to the availability of workforce for any new local care boards, as well as the social work and social care workforce more generally.
3. Housing availability is an issue in remote areas which exacerbates workplace pressures.
4. Enhanced sense of local democratic accountability in island communities which is considered a strong feature of current system.

As the Bill sets out the groundwork on which the NCS will be established, the above issues are not addressed in full. Further development is being undertaken on the basis of the powers introduced by the bill and it is through that process that these issues will be addressed in detail. For the purpose of the bill, officials have ensured that it contains the flexibility necessary to address the above issue as the details of the NCS and its policies are developed.

A separate public consultation was held on Anne's Law. It sought views on the Scottish Government's proposals to ensure that people who live in adult care homes have rights to see and spend time with the people who are important to them. The consultation was in two parts. Part 1, on strengthening the Health and Social Care Standards, was launched on 16 September and closed on 2 November 2021. This was followed by a consultation on delivering Anne's Law itself which launched on 24 September and closed on 5 November 2021. Part 1 received 157 responses and part 2 received 284 responses. There were also 8 events held in September and October 2021.

There was virtually unanimous support for the overall aim of both parts of the Anne's Law consultation, i.e. that people living in adult care homes should have the right to see and spend time with those who are important to them to support their health and wellbeing. Updated Health and Social Care Standards were published on 31 March 2022.

DATA AND EVIDENCE

The availability of data and evidence for social care and community health in island communities is mixed. A lot of information on social care is available at local authority (or Health and Social Care Partnership) level. This includes information on

OFFICIAL

overall social care recipients;ⁱ those receiving home care;ⁱⁱ care home residents;ⁱⁱⁱ people receiving direct payments;^{iv} people receiving free personal and nursing care;^v criminal justice social work;^{vi} looked after children, child protection registration, care leavers, and children in secure care;^{vii} and on workforce.^{viii} Information on mental health and other community health services is available at the Health Board level.^{ix} This data provides important background information on the state of social care across Scotland, but has some shortcomings. For local authorities or Health Boards that encompass islands only – Orkney Islands, Shetland Islands, and Western Isles – data at the local authority level covers all of the islands within those areas, but does not differentiate between larger settlements and more remote island communities. For those areas that contain islands alongside areas of mainland Scotland – Highlands, Argyll and Bute, and North Ayrshire – data are likely to be skewed by larger proportions of their population living on mainland Scotland.

The Health and Care Experience Survey also reports findings at Health and Social Care Partnership level. The latest survey, which provides insights into people's experiences of health and social care services, was published in May 2022.^x Question topics included: care, support, and help with everyday living; experiences of carers; GP practice; treatment or advice from the GP practices; and Out of Hours Healthcare. Respondents in island-only areas (Orkney Islands, Shetland Islands, and Western Isles) generally reported similar or higher positive responses than for Scotland as a whole.^{xi}

The National Islands Plan Survey 2020,^{xii} which was undertaken as part of the Scottish Government's National Islands Plan, provides more in-depth data on islands and allows some differentiation between larger and smaller island communities. Respondents are broken down into sub-regions covering: Argyll Islands; Arran, Bute, and Cumbraes; Skye and the Small Isles; Lewis and Harris; Uist and Barra; Orkney Mainland; Orkney outer isles; Shetland mainland; and Shetland outer isles. However, this is not a regular survey and covered a large variety of topics. As an island-only survey, it also does not allow direct comparisons to non-island communities. It asked a series of questions about access to health and social care, though only a few questions covered social care specifically.

Data on unpaid carers is more limited when it comes to island communities. The Scottish Health Survey^{xiii} provides the most up to date data on unpaid carers by local authority and Health Board, but only provides information on the proportion of people providing unpaid care and their sex at this level. Further information regarding people's experience of caring responsibilities is available at Health Board and Health and Social Care Partnership level in the Health and Social Care Survey, as highlighted above. There is also information available from Shared Care Scotland about funded short break projects^{xiv} and organisations providing Time to Live grants^{xv} for flexible breaks, including on the islands. There is also data available from Family Fund about the number of Take a Break Scotland^{xvi} grants (for flexible breaks) provided to carers looking after disabled or seriously ill children, broken down by local authority. Local authorities and Integration Authorities have responsibility for commissioning local short break services and for publishing a Short Breaks Services Statement, which detail services available locally.

OFFICIAL

There is also a lack of data when it comes to Personal Assistants (PAs), both across Scotland and in island communities. PAs are amongst the most disparate and difficult to reach workforces both in terms of geography and complexity. In April 2022, the Scottish Government completed the first ever annual PA survey and will publish the report providing analysis of the responses in summer 2022.

The above data provides key insights and background on community health and social care, but the gaps in data availability, particularly in relation to islands data at a more detailed level than local authority level, raise the importance of directly engaging with island communities. The responses to the NCS consultation and the further engagement that has taken place since have provided further insights into care in island communities and that engagement will continue as NCS policy is developed within the framework of this Bill. Consideration will also be given to ways to access more islands-level data on community health and social care, including the possibility of targeted questions in future islands surveys.

FURTHER CO-DESIGN PROCESS

The Scottish Government is committed to designing the NCS together with the people who access and deliver social care support and other relevant services to ensure that it embodies human rights principles and delivers for the needs of people and not the system. This co-design process will ensure that the secondary legislation developed on the basis of the NCS Bill as well as parts of the structure and operations that do not require further legislation fully take into consideration the issues people face in social care, including in island communities.

The Scottish Government has launched a series of NCS Design Investigations to begin the process of co-design. These events will involve a wide range of people with lived experience of using and delivering care services, including those who provide care to family or friends, to explore in greater detail some of the key themes that emerged in the NCS Consultation. Input from delivery partners and stakeholders will also be sought. The initial focus of this work will be on the Charter of Rights, national complaints process, and electronic social care and health records. As these investigations are held, the Scottish Government will take stock of how they contribute to the design of the NCS and seek to expand them onto other aspects of the NCS as it is developed.

The Scottish Government will also establish a Lived Experience Partner Panel. This panel will be open to all Scottish residents and places will be advertised via the Scottish Government website. It will provide an opportunity for people to register an interest in being involved in co-design activities and the Scottish Government will use it to coordinate opportunities for involvement. The Lived Experience Partner Panel will be established in summer 2022.

In order to ensure that the people who access and deliver social care support can engage effectively in the co-design process, the Scottish Government will establish a NCS Design School. It will offer training and support to the organisations and the people who access and deliver social care support to overcome barriers to participation and support them to work in partnership to design services. The NCS

OFFICIAL

Design School draws inspiration from the design school model developed and delivered by The Promise Scotland in partnership with the Scottish Government Office of the Chief Designer. The Design School is scheduled to be launched in summer 2022.

The Scottish Government will also organise an annual NCS Gathering involving a wide range of people with experience of social care support and other relevant services and elected representatives from political parties. This gathering will serve as a yearly check point in the development of the NCS, including of the national co-design process and as an opportunity to reflect on how engagement has worked and where it can be improved. Outputs from the NCS Design Investigations, the NCS Design School, and the Lived Experience Panel will feed into the NCS Gathering.

In addition to the annual NCS Gathering, the Social Covenant Steering Group will also consider on a more regular basis plans for co-design and consultation in order to ensure that lived experience and the views of people are central in the development of the National Care Service. The Social Covenant Steering Group was established within the first 100 days of the current session of Parliament to ensure that people with lived and living experience have oversight of the NCS programme. Its membership includes people from island communities.

APPROACH TO BILL

The NCS Bill sets out the overarching approach to reforming social care and creating a national care service. It makes Scottish Ministers accountable for social care support and makes provision for the establishment of local care boards to carry out Ministers' functions in relation to social care, social work and community health.

However, a key point made by the Independent Review of Adult Social Care (IRASC) is that reforms to social care support must be developed with the people who access that support including unpaid carers and those who provide it. The Scottish Government is committed to engaging with people with lived experience to co-design the detail of the new system, alongside delivery partners and key stakeholders. For that reason the Bill creates a framework for the National Care Service, but leaves space for more decisions to be made at later stages, and flexibility for the service to develop and evolve over time. Some of those future decisions will be implemented through secondary legislation, while others will be for policy and practice.

Secondary legislation will be produced to provide the detail of the local care boards and how they will function. These details will be developed in conjunction with stakeholders with lived and living experience of social care. That policy development process will also help design how the NCS operates at the national level, though as the Scottish Ministers already have the power to create a new directorate or executive agency, the details of this will not be contained in secondary legislation. Policy relating to the design and operation of the NCS and its local care boards will be subject to further impact assessments as it is developed to ensure all potential impacts on protected groups and communities are given due regard.

OFFICIAL

This assessment on impact on island communities is focused on the provisions within the Bill. The provisions within the Bill are mostly on creating powers for policies that will be subject to further development, a process that will include continued engagement with stakeholders and further assessments of impact. It should be noted that a number of aspects of the NCS highlighted in the consultation do not require legislation to establish or put into practice. Some of these aspects are highlighted below, where they are relevant to parts of the Bill. Policies that do not require legislation and are not addressed in this impact assessment will still be subject to further engagement and impact assessments, where appropriate.

KEY FINDINGS

NCS Structures and Governance

The NCS is intended to exercise the responsibility for social care that is being transferred to the Scottish Ministers. The NCS 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 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. In both cases, it would be staffed by civil servants and will share the legal identity of the Scottish Ministers. The local care boards will be separate public bodies of the Scottish Government and have their own legal identity. This new part of Government will provide effective leadership, oversight, and accountability for social care. It is also expected that the NCS, nationally and locally, will have a role in relation to the Scottish Ministers' existing responsibility for community health, in order to deliver effective integration at national as well as local level (the transfer of functions to the NCS is addressed separately, below).

The key change that the establishment of NCS will introduce is that Scottish Ministers will be accountable for the delivery of social care and social work in the same way as they are accountable for health care at present. Scottish Ministers will have to do this in line with the NCS Principles that are set out in the Bill. In practice, this means that the Scottish Government 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 Bill provides the powers necessary for the Scottish Ministers to establish and oversee local care boards, which will plan and commission services for their local area. Services will therefore continue to be designed and delivered locally. It is expected that community health services will continue to be delivered by the NHS, as commissioned by the local care boards.

Many social care services currently provided in-house by local authorities work well. For that reason social care services currently provided in-house by local authorities may continue under contractual, grant or alliance arrangements with the local care board, or the local care board may take over direct delivery, with staff

OFFICIAL

transferring to the local care board. These will be decisions to be taken locally as the local care boards are established.

The details of the way the NCS will be established nationally and locally will be developed in collaboration with people with lived and living experience of the community health and social care system, partners and stakeholders 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. These details will be designed within the overarching framework provided for by the Bill, including the NCS principles, and set out in the policy memorandum.

In particular, further consultation and co-design with people with lived experience, alongside key stakeholders and delivery partners will determine details relating to:

- The number of local care boards and the geographic areas they will cover
- The composition of the boards and their relationship with the national NCS structures
- The duties, functions and services they will provide, both directly and commissioned from other bodies
- Workforce, employment and contractual arrangements (including transfer of staff from local authorities as appropriate)
- The impact on other bodies, including local authorities and NHS Boards
- How to maintain and strengthen integration between NHS and NCS bodies.

The approach to the structures and governance of the NCS has been carefully designed to mitigate the concerns raised by island community stakeholders, particularly around maintaining local accountability and avoiding additional bureaucracy. The overarching framework for the NCS and its local care boards set out in the Bill is designed to ensure that local accountability is maintained while also providing for consistency and improvement to be led at the national level. This will be achieved by ensuring that local care boards have appropriate oversight and representation on their boards, including from local people with lived and living experience and by ensuring that the NCS at the national level is designed to be supportive rather than prescriptive.

One of the intentions of the NCS is to reduce bureaucracy and simplify the governance of community health and social care. Measures to improve care and ensure consistency across Scotland will inherently entail the creation of governance structures at the national level. These new structures will be focused on ensuring that all care standards and expectation are joined-up, consistent, and clear so that local care boards and social care providers are supported and have clarity on what is expected of them. By assuming responsibilities for community health and social care, the NCS can ensure that requirements in both of these areas are better aligned and that social care policies already set at the national level (including Self-directed Support and care standards) are integrated into an overarching framework for all of social care.

OFFICIAL

The new local care boards will replace existing Integrated Joint Boards (IJBs), taking over their roles in planning and commissioning community health and social care and taking on a more direct role in procuring and delivering social care services as appropriate. These new bodies will take on and benefit from the existing expertise of staff currently fulfilling these functions. The intention is therefore not to add a new layer of bureaucracy at the local level, but to replace an existing layer. Discussions with Island communities will continue throughout the design stage in acknowledgement of the specific circumstances they might face in supporting any new administrative bodies.

The key measure to ensuring that the governance of the NCS achieves its goals of maintaining local flexibility and minimising the impact of any new bureaucracy is the co-design process. The details of how the NCS will operate is being developed in conjunction with people with lived and living experience to ensure that the system is shaped by their needs, along with delivery partners and key stakeholders. As these proposals are developed, further impact assessments will be undertaken to ensure that the impacts of the new proposed structures and governance arrangements are fully accounted for.

National Social Work Agency

As part of the NCS, a National Social Work Agency (NSWA) will be established. 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)

These objectives will enable social workers to work more effectively with people to transform their lives and implement rights-based practice.

There will be ongoing collaboration and engagement with the sector, including frontline social workers, on the development of the NSWA. This process will allow further engagement with island communities. The intention is that the NSWA will set national standards that improve social work across Scotland while still allowing flexibility to account for local needs.

As part of the policy development process, there will be further engagement with island communities to consider how to mitigate potential barriers that may undermine the benefits of the NSWA in those communities. In particular, this may include consideration of barriers to training and development opportunities for social workers on islands, such as availability of physical space such as buildings and classrooms and access to online courses; how good practice sharing can take into consideration island demographics, such as smaller communities where people are more likely to know each other and scope for anonymity is reduced; and how workforce planning

OFFICIAL

can take into consideration the unique recruitment and retention issues faced by island communities.

Transfer of functions to the National Care Service

The IRASC's remit was to focus on adult social care, though its report also highlighted the interconnection between adult social care and other areas, particularly children's services and justice social work. Currently, integration authorities are responsible for planning and commissioning a range of health and social care services and one of their purposes is to ensure that these services are planned in an integrated manner so that care is joined up, consistent, and so that resources are more efficiently allocated and duplication is minimised. However, integration of health and social care is inconsistent across Scotland.

Following the Public Bodies (Joint Working) (Scotland) Act 2014, local authorities and Health Boards have integrated health and social care services through the creation of integration authorities. Two models of integration authority are used: an Integration Joint Board (IJB) or a lead agency model. Highland is the only area that has adopted the lead agency model, with all other areas in Scotland establishing the IJB model. Where the Health Board and Local Authority agree to establish an IJB, they must at a minimum delegate to it: adult social care, primary and community adult healthcare services, and unscheduled hospital care for adults. Further services which can be delegated but are not required to be include: children's health services, children's social services, and justice social work. In Highland, where the lead agency model has been adopted, the Health Board is responsible for adult services and the local authority is responsible for children's services.

The following table identifies where services beyond the minimum required have been delegated, with the relevant island IJBs highlighted in bold.

Integration Joint Board	Children's Health Services	Children's Social Services	Justice Social Work	All Acute Services
Argyll and Bute	Delegated	Delegated	Delegated	Delegated
Orkney, North Ayrshire, East Ayrshire, South Ayrshire, West Dunbartonshire, East Dunbartonshire, East Renfrewshire, Glasgow City, Inverclyde	Delegated	Delegated	Delegated	Minimum Services Delegated
Shetland, Eilean Siar, East Lothian	Delegated	Not Delegated	Delegated	Minimum Services Delegated
Dumfries and Galloway	Delegated	Not Delegated	Not Delegated	Delegated

OFFICIAL

Fife, Renfrewshire, North Lanarkshire, South Lanarkshire, Midlothian	Delegated	Not Delegated	Not Delegated	Minimum Services Delegated
Aberdeen City, Aberdeenshire	Not Delegated	Not Delegated	Delegated	Minimum Services Delegated
Scottish Borders, Clackmannanshire/Stirling, Falkirk, Moray, Edinburgh, Angus, Dundee City, Perth and Kinross, West Lothian	Not Delegated	Not Delegated	Not Delegated	Minimum Services Delegated

In developing the proposals for the NCS, the Scottish Government has sought to continue progress on the integration of health and social care and ensure that existing advanced areas of integration are supported. The NCS consultation sought views on a range of services beyond adult social care, including community health, nursing, children’s social work and social care services, justice social work, alcohol and drugs partnerships, mental health, and social care in prisons. Responses to the consultation were broadly supportive of the expanded scope of the NCS, but also raised some specific concerns. Concerns raised by island stakeholders in their responses were similar to non-island communities.

The NCS bill sets out powers for the Scottish Ministers to transfer functions relating to community health, social care, and social work to the NCS by secondary regulation. Details of the functions currently held by local authorities are set out in schedule 3. It covers legislation relating to adult social care, adult support and protection, mental health, alcohol and drugs support, children’s social work and social care, and justice social work.

The Bill itself does not transfer any functions. This approach has been taken to permit flexibility for the Scottish Ministers to phase in the transition to the NCS and undertake further consideration and engagement on the decision on inclusion of services beyond adult social care. This will allow the Scottish Government to take stock of existing integration arrangements and plan the transition to the NCS accordingly. The development of regulations to transfer functions from local authorities or Health Boards to the NCS will include further impact assessments to ensure that consideration of how these changes impact on island communities is given due regard.

The Bill also requires Scottish Ministers to consult publicly about any proposed transfer from local authorities relating to children’s or justice services using the enabling power before regulations are brought forward. When laying draft regulations to transfer functions, Scottish Ministers must also lay before Parliament a summary of the process by which they consulted in relation to the function transfer and the responses they received to that consultation.

Children’s social work and social care services were not considered as part of the IRASC, therefore to fully consider the potential benefits and challenges of locating

OFFICIAL

children's social work and social care services in the NCS, a programme of work will be taken forward to gather evidence on the impact of integration. A crucial aspect of this will be to assess implementation of The Promise in both integrated and non-integrated areas.

Any decision not to transfer children's services to the NCS would also have an impact, as children's services would remain the responsibility of local authorities while adult services would be the responsibility of the Scottish Ministers and the NCS. This could introduce the potential for a disconnect for child to adult transition planning and for whole family support. This would also be subject to further impact assessment to ensure that any such disconnect would be minimised and mitigated.

In relation to the inclusion of justice social work services, flexibility is particularly critical. Justice was not considered as part of the IRASC and any transfer may have significant implications for the statutory model of community justice. The NCS Bill provides flexibility to allow a revised community justice model to be designed with key stakeholders and implemented on a suitable timescale. 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 following a decision to implement the transfer, parliamentary scrutiny and approval before commencement.

One of the key concerns highlighted in the consultation responses from island communities, alongside other responses, was over the need to maintain local accountability of social care services and for local flexibility to ensure that service provision meets community needs. In the development of any regulations to transfer functions to the NCS, careful consideration will be given to these issues to ensure that local accountability and flexibility is maintained. Where functions are transferred to the local care boards, it is intended that these local care boards will be designed to ensure that they are accountable to local people and have the flexibility to provide services in a manner responsive to local needs within an overall national framework that supports them to improve. As set out above, the local care boards are being developed in a co-design process to ensure that they meet this ambition.

Charter of Rights

The NCS Bill places a duty on Scottish Ministers to prepare and publish a National Care Service Charter of Rights and Responsibilities (the NCS Charter). The NCS Charter will provide clarity as to what rights individuals, their families, and their carers can expect and outline clearly the process for complaints should those rights not be met.

The Charter is expected to have a positive impact on people who receive social care services, including in island communities, by providing clarity on their rights in relation to these services and a means for redress should things go wrong. However, it must also be designed carefully to ensure those benefits are also realised for people living in island communities. In particular, the Charter must be both accessible and inclusive and must therefore give consideration to issues around language and internet connectivity.

OFFICIAL

The development of the Charter will take place through co-design with people with lived and living experience, alongside delivery partners and key stakeholders. That co-design process will involve working with island communities to address any potential barriers. Consideration will also be given to ensure that the co-design process is accessible to those in island communities with lower rates of internet access, including those in more remote areas without broadband and older people who are less likely to use the internet.

Single Point of Access for Complaints

The single point of access for complaints is intended to create a simplified system for people accessing NCS services in relation to complaints about the NCS or local care boards. Scottish Ministers (through the NCS) will have responsibility for establishing and maintaining this system. This system will be designed to operate in addition to and to complement other complaints processes, for example those that exist within organisations or local care boards.

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 design of the single point of access system will determine its impact on different island communities. Specifically, the Scottish Government will continue to consider issues of accessibility in terms of connectivity, physical distance, and language as the complaints system is developed.

As with other parts of the NCS, the single point of access for complaints will be part of the co-design process to establish how the NCS will operate. This process will involve island communities to ensure that issues around remoteness, connectivity, and language are taken into consideration to ensure that the complaints process is accessible to all.

Care Records and Information Standards

Scottish Ministers will have a power to set up a statutory scheme through regulations to permit data sharing for the efficient and effective provision of services by, or on behalf of, the NCS and NHS. This is needed to facilitate the creation of a nationally-consistent, integrated and accessible electronic social care and health record which provides a significant opportunity to address the current issues around information sharing, and ensure professionals get timely and accurate information to enable them to safeguard people at risk of harm and provide the highest levels of care. It will also empower people around their own care and data and address the concerns in the IRASC around service users having to tell their story to multiple providers, which is not only frustrating, but can be traumatic. Scottish Ministers will also have the power to set information standards (covering data and digital) which will set out how certain information is to be processed and will be made publicly available. Setting out standards in this way will allow technical detail to be included and to be updated more flexibly as required compared to setting the standards themselves in legislation. Setting information standards is important to improve equality for service users, and also to improve the quality of data used for secondary purposes such as national and regional oversight, planning, commissioning and procurement, regulation, research and national reporting.

OFFICIAL

The NCS consultation found widespread support for the creation of nationally-consistent, integrated and accessible electronic social care and health record and for proposals that information on social care and health needs should be shared across services.

It is not anticipated that the care records and information standards provisions will have any unique or different impact on island communities than on mainland Scotland. However, decisions on the content of the record are still to be made and there may be unique requirements for people living on the islands in relation to service provision or requirements that do not exist elsewhere. It is also recognised that there may be specific issues related to connectivity, access to services and an ageing population in island communities that may lead to challenges for a digital record (in terms of internet access and digital literacy). This will be considered fully in terms of implementation, particularly for non-digital routes. The record may present the opportunity to analyse data at lower geographical levels and provide better understanding of challenges and requirements for those living on more remote islands, or those living on islands where the local authority is not an island-only local authority (as these islands are often represented at local authority level which may not truly reflect their unique situations).

Ethical Commissioning

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

The role of NCS is expected to include the ethical commissioning of care services on a national basis. Ethical commissioning and procurement standards will allow the Scottish Government to focus on those important issues that will affect how care is planned, designed, sourced, delivered, and monitored. It will allow the Scottish Government to spotlight critical areas that are reserved to the UK Government where there are limited legislative levers and enable us to take action through NCS accountability and governance structures. Ethical standards will ensure the Scottish Government values and recognises the workforce by developing minimum fair work standards, terms and conditions and will contribute to climate resilience/climate change adaptation in future by taking account of the irreversible impacts of climate change.

In developing the framework for ethical commissioning, further engagement with stakeholders, including island communities, will be undertaken to assess the impact

OFFICIAL

of these proposals as they are developed. That will include consideration of the framework for ethical commissioning in localities where the majority of provision of social care services is provided in-house by local authorities, such as in Na h-Eileanan Siar, Orkney Islands, and Shetland Islands, and how to support the continued mix of delivery in the island communities.

As part of its role around commissioning, the NCS will also be responsible for market oversight and shaping as part of its strategic planning. This role will be focused on ensuring that there is capacity within the social care system to meet demand by conducting market research, analysis, and oversight and working in conjunction with the Care Inspectorate and local care boards to understand the state of the social care system. The NCS will work closely with public, independent and third sector providers both nationally and locally to ensure a proactive and long term approach to social care provision. As this function is developed, its impact on island communities based on their local approaches to social care provision will be assessed.

The Bill also provides the facility or contracting authorities to reserve procurement processes for certain voluntary and third sector mutual organisations. This provision will allow organisations that have a history and expertise in providing community health and social care services and support and are a major part of the social care market to more easily access contracts. The details of the scope and definition of mutual organisations will be established in regulation following further consultation with stakeholders.

Breaks from Caring

Breaks from caring responsibilities are key to looking after carers' own health and wellbeing and their lives beyond caring. Currently, all unpaid carers have the right to an adult support plan or young carer statement to identify what is important to them and their needs for support. This can include identifying their need for breaks from caring and support from their local authority to access those breaks. The Bill proposes a statutory right for unpaid carers to breaks from caring in order to ensure that all unpaid carers with an identified need for breaks are able to access them.

By establishing a statutory right to breaks, the Bill aims to improve access to breaks from caring to unpaid carers across Scotland and so will have a positive impact. However, island communities can face additional barriers when accessing some breaks, which can arise from difficulties accessing replacement care due to staff availability and transport costs and availability when travelling to and from services. By integrating the right to breaks from caring into Carers Act rights to adult support plans and young carer statements, the process should allow barriers individual carers face to be identified and enable personalised support to suit their needs.

To ensure access to breaks from caring in practice, including overcoming unique barriers in island communities, the Scottish Government provides a Short Breaks Fund. The fund was £3 million per year up to 2021-22 and has been increased by £5 million in 2022-23 to expand easy-access short breaks support. Under this fund, the Time To Live and Take a Break Scotland grants and the Creative Break and Better Break projects are delivered. In addition to the Short Break Fund, the Promoting Variety in Short Breaks project, run by Shared Care Scotland and Health

OFFICIAL

Improvement Scotland, helps local authorities and integration authorities meet their responsibility to promote availability of different short break support services in their areas. These grants and projects take into consideration the additional costs of providing breaks to carers in rural and island communities and are designed to ensure the flexibility and creativity necessary are in place to ensure access to breaks from caring.

Anne's Law

Social connections and meaningful activity are vital for the wellbeing and quality of life of people living in a care home. Families and friends play an essential role in the health and wellbeing of people who live there, in terms of both practical and emotional support. For many residents, family members or friends also play a vital role in their care, complementing the support provided by care home staff. The Coronavirus pandemic has led to periods where care home residents and residents in adult social care settings were unable to receive visitors during lockdowns and outbreaks. These restrictions on visits during the lockdown periods are acknowledged to have negatively impacted the health and wellbeing of people living in care homes and their friends and family.

The NCS Bill provides for the Scottish Ministers to issue Directions to care home providers about social visits to residents in their accommodation. The objective is to ensure that providers and public health teams give effect to visiting rights and to remove variation in practice in the sector including the use of blanket visiting bans. In practice, this will mean that rights are underpinned by statute, so that visiting will always be supported in line with Directions issued from Scottish Ministers. These provisions have been widely welcomed by stakeholders and are expected to have a positive impact on visitation rights by providing a clear mechanism for Ministers to set out requirements. No specific issues with regards to island communities have been identified but this is being kept under review.

Regulation

The Scottish Government is already responsible for the regulation of social care services and the social care workforce. The Care Inspectorate (formally known as Social Care and Social Work Improvement Scotland) is responsible for registration, inspection, complaints investigation, and enforcement in relation to social care providers.

The Bill introduces new powers to strengthen enforcement action by the Care Inspectorate in order to enable the regulator to swiftly take action with poor performing services, better protect social care users, and drive up the consistency and quality of care expected across all social care services in Scotland. The focus of any enforcement action is always on the experiences, wellbeing and outcomes for people who use services. The new powers include:

- To set out further criteria to determine when the Care Inspectorate might propose to cancel a service's registration, including on the basis of previous enforcement action;

OFFICIAL

- Additional joint inspection powers to enable the Healthcare Improvement Scotland (HIS) and the Care Inspectorate to carry out joint inspections in relation to clinical care practice advice and infection prevention and control advice;

The impact of these changes is to improve enforcement action by the Care Inspectorate to raise standards of social care services. These powers have been designed with the sustainability of care services within rural communities in mind. They have balanced enabling effective regulation of care services while allowing flexibility and proportionality to account for local needs and ensuring that rural areas and islands are not negatively impacted.

Reporting and Monitoring

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

The Bill also sets out that Scottish Ministers will be responsible for monitoring and improving the quality of community health and social care services provided to people. This will involve the setting of standards and frameworks at national level and the effective use of data, evidence and lived experience to make sure that the national standards and expectations are being met. Local care boards will also be expected to make effective use of lived experience, data, and evidence to make sure they are continuously improving services at local level. The NCS will take a collaborative approach to driving improvement through effective use of lived experience, data and evidence to identify good practice and collaborative leadership to support good practice to be adopted right through the system. By taking this approach, the experiences of social care in island communities can be taken into consideration by the local care boards responsible for those communities.

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

CONCLUSION

Establishing the National Care Service will bring positive benefits to people in the social care and community health system by providing the means to address the inconsistency of people's experience of care and lead on improvement, establish consistent and clear governance arrangements, and provide for national oversight and strategic leadership of social care. The ICIA process has demonstrated that the Bill and the framework it puts in place to establish the NCS is designed to ensure the

OFFICIAL

benefits of the reforms are realised for those in island communities and account for and mitigate any potential adverse impacts, in particular by providing the flexibility and scope for co-design and further engagement with people with lived experience and with input from delivery partners and key stakeholders. As secondary legislation is developed on the basis of powers introduced in this Bill, further impact assessments, including on island communities, will be undertaken where appropriate.

As the Bill sets out the framework for establishing the NCS, this is far from the end of the process. Work will continue over this current session of Parliament to ensure the NCS is up and running by 2026 and beyond, after which point there will always be further opportunities for refinement and improvement, alongside the regular operation of the NCS. Going forward, the Scottish Government remains committed to continued close engagement with people with lived experience of care and delivery partners and stakeholders, including those from island communities, to close the gap between legislative intent and implementation and to ensure that people's experiences and voices are heard and contribute to change and improvement within the system.

AUTHORISATION OF ICIA

ICIA Completed by:	ICIA Authorised By:
Name: Robert Pye	Name: Anna Kynaston
Position: Senior Policy Officer, National Care Service Division	Position: Deputy Director, National Care Service Division
Date: 10 June 2022	Date: 10 June 2022

ⁱ [Social Care Insights \(shinyapps.io\)](https://shinyapps.io)

ⁱⁱ [Supporting documents - Social Care Services, Scotland, 2017 - gov.scot \(www.gov.scot\)](#)

ⁱⁱⁱ [Supporting documents - Free personal and nursing care, Scotland, 2017-18 - gov.scot \(www.gov.scot\)](#)

^{iv} [Supporting documents - Social Care Services, Scotland, 2017 - gov.scot \(www.gov.scot\)](#)

^v [Supporting documents - Free personal and nursing care, Scotland, 2017-18 - gov.scot \(www.gov.scot\)](#)

^{vi} [Criminal justice social work statistics: additional tables from 2004 – current - gov.scot \(www.gov.scot\)](#)

^{vii} [Supporting documents - Children's Social Work Statistics, Scotland 2020-21 - gov.scot \(www.gov.scot\)](#)

^{viii} [Supporting documents - Children's Social Work Statistics, Scotland 2020-21 - gov.scot \(www.gov.scot\)](#)

OFFICIAL

-
- ix [Child and Adolescent Mental Health Services \(CAMHS\) waiting times - Quarter ending 31 December 2021 - Child and Adolescent Mental Health Services \(CAMHS\) waiting times - Publications - Public Health Scotland](#)
- x [Detailed experience ratings - results \(side by side\) - Health and Care Experience survey - 2020 - Health and Care Experience survey - Publications - Public Health Scotland](#)
- xi Health and Social Care Survey, detailed experience ratings compared by health and social care partnership, [Detailed experience ratings - results \(side by side\) - Health and Care Experience survey - 2020 - Health and Care Experience survey - Publications - Public Health Scotland](#)
- xii [Scottish National Islands Plan Survey \(2020\): results explorer \(shinyapps.io\)](#)
- xiii <https://scotland.shinyapps.io/sg-scottish-health-survey/>
- xiv <https://www.sharedcarescotland.org.uk/funded-projects/>
- xv [Time to Live - Shared Care Scotland](#)
- xvi [Take a Break outcome report for 2020-21](#)



Scottish Government
Riaghaltas na h-Alba
gov.scot

© Crown copyright 2022

OGL

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

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

This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at

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

ISBN: 978-1-80435-619-7 (web only)

Published by The Scottish Government, June 2022

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS1105462 (06/22)

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