

Agenda Item	19
Report No	HC/30/22

HIGHLAND COUNCIL

Committee: The Highland Council

Date: 22 September 2022

Report Title: National Care Service for Scotland Consultation

Report By: Executive Chief Officer – Health & Social Care

1. Purpose/Executive Summary

1.1 This report provides details of the response to the Scottish Government's consultation, issued on 8 July 2022 in relation to the National Care Service (Scotland) Bill. Responses were required to be submitted by 2 September 2022 and the Council's response is detailed in **Appendix 1** to this report. A copy of the Bill and the Financial Memorandum consulted upon are included at **Appendix 2**.

A response to the consultation on the proposed National Care Service was issued in October 2021 and members will recall at that time that the consultation went significantly beyond the delivery of adult social care as envisaged in the Independent Review of Adult Social Care in Scotland (referred to as "The Feeley Report") and extended to the delivery of other social work and social care services including children's services, justice services and the work of alcohol and drugs partnerships. Other health and care functions were also included in the potential remit of the proposed National Care Service.

The consultation was widely circulated to public, private and third sector partners and stakeholder groups by the Council and the Council's social media channels encouraged as many people as possible to engage with the consultation and submit a response to the Scottish Government.

The Council's response in October was in 2 parts. There was an overview of the broad themes arising from the Scottish Government proposals, which was representative of the views of Members as expressed through 2 all-member seminars and focus groups held. The second part included responses to the specific questions put in the consultation document itself.

At that time the principle issues raised by the Council can be summarised as follows:-

1. The extent of the proposed National Care Service
2. The budget available to support the work required
3. The need for local governance and accountability

4. The role of the Chief Social Work officer and the management of the Social Work profession

The National Care Service (Scotland) Bill has dealt in part with the first of those bullet points in that it is clear that the initial remit of the proposed service will be limited to the delivery of adult social care and will not include children's service or justice albeit questions remain about the delivery model. Queries remain relation to the 2nd, 3rd and 4th bullet points above and the Council's response to the Bill refers to those.

2. Recommendations

Members are asked to consider the terms of the consultation and:

- i. Note and approve the terms of response which has been issued to the consultation;
- ii. Agree that there be continuing engagement with COSLA and SOLACE in terms of the impact the proposals may have on local authority functions going forward.

3. Implications

- 3.1 Resource – There is little detail within the draft bill and the accompanying financial memorandum about the resourcing impact of the proposed changes, beyond a commitment to additional funding. There are likely to be considerable wider budget and staffing implications for the Council and partners. At present it is unclear whether staff will remain with their current employer (public, private or third sector) and be commissioned by the new Boards or if some or all will transfer to the new national service or at what point such funding might become available. It is unknown if such funding is linked to the establishment of the National Care Service which is understood will be in place by 2026 or if new funding will be available before then. It is also not clear how much of the Council's current revenue or capital budgets will be transferred into the new Service, or what the intentions are with regard to buildings and other capital assets.
- 3.2 Legal – The NCS will require significant revisions and changes to existing legislation and will lead to change in the partnership arrangements currently in place with NHS Highland. There may be significant HR requirements in terms of TUPE legislation. The timescale set out by the Scottish Government is for new legislation to be presented to Parliament in summer 2022 with Royal Assent by summer 2023. The intention is for the new Care Service to be in place by 2026.
- 3.3 Risk/Impact – The proposals as envisaged by the consultation will, if enacted, lead to significant change in the way many of the services currently delivered by the Council, and by our public and third sector partners and as such are likely to have a significant impact on our communities. It is only once the Government's plans become clearer that those implications will become fully apparent. Staff recruitment and retention in adult social care is already very challenging, especially in remote and rural areas. The Scottish Government's recruiting to centralised posts for the new NCS is already impacting on the stability of the Council's workforce and this is likely to continue.
- 3.4 Community (Equality, Poverty & Rural) - Equity, fairness and equal access to services by all is key to the Highland's future prosperity. Local scrutiny, accountability and democratic oversight will all be an important aspect in reflecting the needs of local communities. The consultation has little detail on how local democratic scrutiny

and oversight will be discharged and so the consultation response seeks greater clarity on this aspect. The Government's proposals also do not appear to have been screened for rural, equality or island impacts but it is possible that this is intended once the final scope of the proposals is clearer.

- 3.5 Gaelic, Climate Change – It is not considered that there are any direct climate change or Gaelic implications at this time.

4. Background

4.1 On 1 September 2020 the First Minister announced that there would be an Independent Review of Adult Social Care in Scotland as part of the Programme for Government. The Review was chaired by Derek Feeley, a former Scottish Government Director General for Health and Social Care and Chief Executive of NHS Scotland. Mr Feeley was supported by an Advisory Panel of Scottish and international experts and published the report after carrying out consultation with stakeholders.

4.2 The Scottish Government stated that “the principal aim of the review was to recommend improvements to adult social care in Scotland, primarily in terms of the outcomes achieved by and with people who use services, their carers and families, and the experience of people who work in adult social care” The review took a human-rights based approach and indicated a change of direction in terms of future delivery of adult social care.

4.3 The Independent Review concluded at the end of January 2021 and its report was published on 3 February 2021, generating widespread support for the ethos and values expressed albeit there was some concern about how the proposed national care service would operate. A consultation on the detailed review's proposals had been anticipated since then but what was proposed was much broader than previously signalled and included the impact such proposals would have upon children's services, justice services, healthcare, social work and social care, nursing, prisons, alcohol and drug services, and mental health services. The core delivery of social work and health professional services would change as a result of the proposals envisaged by the consultation.

4.4 Since that consultation responses were published on line and the Scottish Government continued to engage with stakeholders in furtherance of the development of the proposed National Care Service. As a result of that engagement the National Care Service (Scotland) Bill was published in July and a consultation upon its terms commenced. The consultation closed on 2 September and the Council's response to that consultation is attached at **Appendix 1**.

5. Approach to the consultation

- 5.1 The Council's concerns as referred to in the initial consultation were broadly fourfold:-
1. The extent of the proposed National Care Service
 2. The budget available to support the work required
 3. The need for local governance and accountability
 4. The role of the Chief Social Work officer and the management of the Social Work profession

Those concerns are shared by Cosla and Social Work Scotland.

5.2 **Remit of the Proposed National Care Service**

In terms of the remit of the proposed service it is clear that the initial scope of the service will be limited to the delivery of adult care services. Queries do however remain in terms of how such a service will operate in practice given the role of the Chief Social Work Officer, the public protection processes and the interface in terms of service delivery which is particularly apparent when service users transition from children's services to adult care services.

There are also concerns about the proposal to consider the inclusion of other services at a later date and the reference to do so by the use of secondary legislation. The proposal to use such legislation is of concern and referenced in the Council's response as it can lead to a lack of scrutiny which is considered imperative for such vital services.

5.3 **Financial Context**

The Council's response to the financial memorandum which accompanies the draft bill highlights similar areas of concern to those identified by Cosla. Concerns include the lack of clarity and highlight particular areas where further detail is required including issues in relation to pensions, current Council assets (and how it is proposed that they will be dealt with), VAT and the impact on other Council budgets. It is understood that similar concerns have been raised by both Cosla and the CIPFA Directors of Finance and those concerns are supported by the Council in its response.

5.4 **Local Governance and Accountability**

Of most significance may be the potential loss of local accountability and governance in relation to what is a key service being the delivery of adult social care with the potential for the proposed National Care Service being extended to other services.

In terms of the response to the consultation on this point it is to be noted that the Council's position is such that in terms of the specific Highland context, the Council is seeking assurances that care will be provided as close as possible to where it is needed and for it to be person centred and community based. It is said that there requires to be a place-based focus and that it is not clear from the consultation document how this will be protected under a national care service and greater consideration and explanation needs to be given to this. There is a concern that the National Care Service will seek to deliver service on a one size fits all basis which is not appropriate in a Highland context.

5.5 **Professional Role of the Chief Social Work Officer**

It is not clear how the key role of the Chief Social Work Officer would sit within a revised framework and where that accountability will lie at a local level. This is a role that carries with it important and very specific legal duties. The bill gives no indication how these are to be discharged under the new service arrangements. There is also no mention of the MHO role. MHOs are subject to different governance structures in order to ensure the independence of the role and again it is unclear how they will operate within the proposed service. The Council's response underlines the key role of that officer in terms of public protection processes and support of the profession and queries in relation to how that will operate are set out in the Council's response.

6. Support for the Council's Position

- 6.1 The consultation in relation to the Bill has been debated at length by Cosla who have identified similar concerns to those set about above. Their clear position remains that local government staff and assets must remain within local government and stress the potential destabilisation that this legislation would have on the Council workforce. Notwithstanding those concerns it remains their position that reform of social care is required. Such reform was supported by the Council in their response to the original consultation in October 2021 and in the response to the Bill which is the subject of this report.

The response from the Highland Council is also consistent with the responses provided by Social Work Scotland and SOLACE. NHS Highland have also provided a response which is consistent with that submitted on behalf of the Council.

7. Next Steps

It is expected that given the consultation period has now closed that there will be further engagement by the Scottish Government in terms of the progress of the Bill.

Designation: Executive Chief Officer – Health & Social Care

Date: 7 September 2021

Author: Fiona Malcolm – Head of Integration Adult Social Care

Background Papers:

- National Care Service for Scotland Consultation <https://consult.gov.scot/health-and-social-care/a-national-care-service-for-scotland/>

National Care Service Consultation:-

Response issued by the Highland Council with questions per the consultation and responses as follows:-

The Policy Memorandum accompanying the Bill describes its purpose as being “to improve the quality and consistency of social work and social care services in Scotland”. Will the Bill, as introduced, be successful in achieving this purpose? If not, why not?

Please provide your response in the box provided.

The Highland Council is supportive of many of the findings of the Independent Review of Adult Social Care and agrees there is a need for change to deliver better outcomes in terms of care for older people and that care should be person-centred, human rights-based, and seen as an investment in society. Likewise, the Council agrees that the social care workforce should be strengthened, nurtured and properly rewarded; that unpaid carers need to be recognised and supported; and there needed to be an emphasis on early intervention and prevention. The Council also welcomes any commitment as previously set out by the Scottish Government to increase the budget available to deliver these essential services. The Highland Council is concerned that the bill as currently drafted will not improve the quality and consistency of social work and social care services whilst recognising that investment and further engagement is required to deliver change.

There is a fundamental distinction between the delivery of social care and social work which is not addressed by the bill which makes no reference to the protective elements of the social work task which include issues of adult protection and mental health/deprivation of liberty questions and how the proposed NCS will manage professionals holding these responsibilities. The Bill also does not make provision for what the implications may be of splitting the profession in terms of the delivery of adult and children’s services and the impact that may have on the delivery of those protective responsibilities.

Is the Bill the best way to improve the quality and consistency of social work and social care services? If not, what alternative approach should be taken?

Please provide your response in the box provided.

It is not yet clear from the consultation how the development of a National Care Service will improve services and ultimately the experiences of service users, or why this is the only or best way to achieve these goals. Indeed, there remains a strong view that if additional funding was given directly to Councils/NHS Partnerships then immediate and substantial improvements could be made without the need to change structures with the associated disruption and financial overhead that comes with it. This is particularly relevant given the current cost of living crisis which The Highland Council is managing on a partnership basis.

In terms of the specific Highland context, the Council is seeking assurances that care will be provided as close as possible to where it is needed and for it to be person centred and community based. There are sound clinical reasons why the NHS has specialist centres. However, people need care where they are. They cannot be sent away for indefinite periods if there is no local provision. There has to be a place-based focus. It is not clear from the consultation document how this will be protected under a national care service and greater consideration and explanation needs to be given to this. There is a concern that the National Care Service will seek to deliver service on a one size fits all basis.

Are there any specific aspects of the Bill which you disagree with or that you would like to see amended?

Please provide your response in the box provided.

It is apparent that there is still significant further detail to be provided in terms of the operation of the National Care Service at a local level and we look forward to receiving that detail. Whilst it is helpful to note that at present the remit is limited to the delivery of adult social care there are still questions in terms of local delivery - what the proposed boards will look like and where they will be situated and what mechanisms will be in place for local accountability. If the role of local authorities is limited as the provider or commissioner of service then the local knowledge which goes with that also risks being lost.

There are also questions about the interface with services which will remain local authority responsibilities in terms of the relationship to be developed for example between the proposed National Care Service and education/children's disability services in relation to transitions.

The role of the Chief Social Work Officer remains unclear. This is a role that carries with it important and very specific legal duties. The bill gives no indication how these are to be discharged under the new service arrangements. There is also no mention of the MHO role. MHOs are subject to different governance structures in order to ensure the independence of the role and again it is unclear how they will operate within the proposed service. They also have a role in terms of the delivery of children's service where young people meet the criteria for intervention. How that interface will work is not clear.

Is there anything additional you would like to see included in the Bill and is anything missing?
Please provide your response in the box provided.

We would refer per our commentary in the preceding question to the need to deal with both the proposed national social work agency and social work leadership and in particular the role

of the Chief Social Work Officer. That role has a specific and unique statutory role and accompanying responsibilities and duties and it is not clear how those will be addressed within a proposed NCS. The role of Mental Health Officers is also unclear and how they will fit into the proposed service.

Future secondary legislation

The Scottish Government proposes that the details of many aspects of the proposed National Care Service will be outlined in future secondary legislation rather than being included in the Bill itself.

- Do you have any comments on this approach?
- Are there any aspects of the Bill where you would like to have seen more detail in the Bill itself?

Please provide your response in the box provided

There are concerns about this approach. Primary legislation brings with it scrutiny and enquiry in relation to changes which are significant and in themselves deal with changes to what is currently enshrined within primary legislation. As such it is considered that in order to provide the necessary scrutiny and transparency that primary legislation is appropriate and essential.

If that is not accepted then there should be provision in the primary legislation for the use of the super affirmative procedure in relation to secondary legislation. This requires more scrutiny by Parliament and includes a necessary requirement to consult certain groups of people, to publish a draft and have regard to responses received and a power to make changes as a result of consultation responses.

Transfer of services to the National Care Service

The Bill proposes to give Scottish Ministers powers to transfer a broad range of social care, social work and community health functions to the National Care Service using future secondary legislation.

Do you have any views about the services that may or may not be included in the National Care Service, either now or in the future?

Please provide your response in the box provided

There is a fundamental concern that the well established public protection processes may be negatively impacted by separating adult and children's processes. This could have a serious impact on public safety and the protection of vulnerable people. It is also of note that the

current Care for People processes deliver across all sectors of the population at times of crisis/emergency.

The Consultation sought input on whether, in addition to adult care services, the NCS should include Adult Social Work (including Mental Health Officers), Social Work Agency, Children's Services, Criminal Justice Services, Community Justice, Alcohol and Drugs prevention, GP Contracts, Housing and Homelessness. This is a much broader remit that had been presented in the Independent Review of Adult Social Care in Scotland and the potential size and scope of the new service would have a significant impact on the front line, on council and partners budgets, and most importantly on service users. That remains the case albeit the initial scope extends to adult care services only. Nevertheless the budgetary impact is significant and is dealt with elsewhere within this response.

The implications for remaining Council services like education and welfare are not at all clear and the potential disconnect between Education and children's services more generally could be especially problematic. On the basis of the scope as currently provided for by the bill there may well be issues in relation to transitions which is an area of real concern that being a particularly vulnerable client group.

There are significant risks around the capacity for staff to make these fundamental changes whilst also delivering services, particularly in a post Covid context. Furthermore, local innovation, transformation and efficiency initiatives may slow down or stop altogether in the intervening period.

Do you have any general comments on financial implications of the Bill and the proposed creation of a National Care Service for the long-term funding of social care, social work and community healthcare?

Please provide your response in the box provided.

Given the current financial climate the Highland Council has significant concerns about the financial viability of the proposed National Care Service at the current time given the ongoing cost of living crisis and the pay deal negotiations. We expect that there will be detriment to other areas of public sector service provision in that there is likely to be less funding available for other key local authority services.

In Highland it is estimated there are potentially c900 staff who could be impacted by these proposals. Staffing implications include TUPE; harmonisation of pay and terms and conditions; pensions; job evaluation; CPD and training. This confusion about who is in and who is out is exacerbated by the interchangeable use of the terms social care and social work in the consultation document.

The potential costs associated with some of the suggested enhancements for staff would be substantial but it is not apparent that they have been costed and therefore are affordable alongside the proposals for enhanced payments for carers and service users. In Highland it is already difficult to recruit staff at all levels and across all services. Enhancements for staff moving into a national service without the ability for the Highland Council to offer equivalent enhancements to local authority staff could lead to significant difficulties in the Council being able to retain a stable workforce and would also devalue and disincentivise council staff coming so soon after they have played a critical role to keep the country going during Covid. Equivalence of pay is a particularly sensitive matter in the light of Government decisions to pay bonuses to some front line staff and not others for their work during the pandemic. The current workforce challenges and associated housing challenges cannot be underestimated. It is of note that the Highland Council is currently unable to provide safe levels of staffing across all social care services and is of the view that it is the limited resources – both in terms of available finance and crucially staffing – are the primary reason for the current challenge to deliver a social work and social care service.

The current lack of clarity means it is impossible to understand what the financial impact is likely to be for the Council or when this might be known. This undermines Councils' ability to deliver a medium term financial plan and so clarity is needed on what will happen and when. This is not just in terms of the scale and scope of the new service but also in operational terms including buildings and other capital assets and the financial commitments and liabilities that come with them. At present there are approximately 40 buildings owned by the Council but occupied by NHS for the delivery of adult social care and many more buildings used by children's and justice services were they to be included within the proposed service. However, what plans can and should be made over the next three years to continue to deliver services to people is unknown.

The potential scope of the new arrangements also calls into question how systems and processes are to be merged so that they provide the seamless service envisaged in the Government's proposals. Overhauling ICT systems is notoriously difficult and high risk even in established and settled organisations. Starting small and building up is likely to be a much less disruptive and lower risk approach. There is also a concern that there is a potential for disruption to ongoing work looking to streamline the Highland partnership's approach to IT services.

Impact assessments

The Bill is accompanied by the following impact assessments:

- [Equality impact assessment](#)

- Business and regulatory impact assessment
- Child rights and wellbeing impact assessment
- Data protection impact assessment
- Fairer Scotland duty assessment
- Island communities impact assessment

Do you have any comments on the contents and conclusions of these impact assessments or about the potential impact of the Bill on specific groups or sectors?

The Highland Council agrees that these impact assessments are key and note that there has no such consideration of the impact that the proposals may have on local authorities and health boards which are in a position to consider the local nature of service delivery. This is key in the view of the Highland Council as local communities do experience local challenges in relation to service delivery given the remote and rural challenges. The Highland Council is disappointed that these challenges have not been fully considered as those remote and rural challenges are likely to be exacerbated and destabilised by the set up of the National Care Service unless there is a clear local governance focus built in.

There also also unique workforce challenges arising from these factors. Some of this detail is contained within the Islands Assessment and that is supported.

Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?

Please provide your response in the box provided.

Not specifically. The response from the Highland Council was limited to the response to the consultation issued in August 2021 - " A National Care Service for Scotland" and at that time questions were raised about the affordability of the proposal and it was suggested that were funding to be provided to the local authorities to the extent required to deliver a NCS that significant improvements could be made.

If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the financial memorandum (FM)?

Please provide your response in the box provided.

N/A

If the Bill has any financial implications for you or your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.
Please provide your response in the box provided.

There are significant concerns about the financial implications for the Highland Council in the event of the proposed NCS. In terms of considering the proposed costs it appears that the memorandum takes account of current expenditure and funding rather than actual spend which is significantly higher. It is also expected that the actual spend will increase in terms of the demographics available in terms of those needing care.

The memorandum also does not include information about pensions and VAT. There is also a lack of clarity about how current assets will be dealt with. These factors lead to a significant risk for the Highland Council.

Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?
Please provide your response in the box provided.

No. Please see response above. There are concerns as follows:-

- Pensions and VAT are not included
- The figures do not reflect the actual expenditure nor what that expenditure is forecast to be
- It does not appear policy commitments in relation to the future delivery of care have been taken into account nor the costs of those commitments
- It is not clear how staffing costs have been dealt with

If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?
Please provide your response in the box provided.

It is not clear what those costs might be and whether given the current financial climate the National Care Service remains deliverable and affordable. The mass transfer of function and activity will have a broader impact on local authority services and given the lead agency model in place in Highland may also have an impact on NHS Highland who deliver adult social care functions. There are however likely to be a loss of economies of scale in terms of the various support services including dealing with pensions and assets (which remain in the ownership of The Highland Council)_

Does the FM accurately reflect the margins of uncertainty associated with the Bill's estimated costs and with the timescales over which they would be expected to arise?

Please provide your response in the box provided.

The large range of figures set out in the memorandum suggests that there remains significant uncertainty about the cost of delivery . It is also not clear what the costs are likely to be in terms of establishing the service itself in terms of the support services it will require as a stand alone organisation. It would be helpful to have details in relation to the proposed budget for the proposed service given the impact of the ongoing pay dispute, the cost of living crisis and inflation. It is considered that any estimate of costs needs to be revisited . .

Section 1 defines the **National Care Service principles**.

In providing comments on this section of the Bill, please consider:

- Whether you agree with these principles as drafted?
- Whether there is anything in the principles you would disagree with or wish to amend?
- Whether there is anything important missing from these principles?
- Whether an alternative approach would be preferable?

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Please provide your comments on the National Care Service principles in the box provided.

In general The Highland Council is supportive of the principles set out in section 1 of the draft bill and agrees there is a need for change to deliver better outcomes in terms of care for older people and that care should be person-centred, human rights-based, and seen as an investment in society. Likewise, the Council agrees that the social care workforce should be strengthened, nurtured and properly rewarded; that unpaid carers need to be recognised and supported; and there needed to be an emphasis on early intervention and prevention. The Council also welcomes the commitment to increase the budget available to deliver these essential services following many years of underfunding.

Although not noted specifically the understanding is that it is intended that in terms of delivery it is expected that consistency is a key goal and there is criticism of different areas adopting different approaches, whereas the Highland Council's view is that arrangements need to be flexible and adjust to local needs and contexts. Even within the Highland Council area, the needs of someone living in Inverness will be very different to someone in Knoydart.

This is why services should be designed and delivered as close as possible to the people that use them ensuring resources are allocated in a locally responsive and therefore most effective way to meet the needs of service users. There is insufficient recognition of these principles in the consultation and even less to the principle of subsidiarity.

Sections 2 and 3 establish Scottish Ministers' overarching responsibilities for the National Care Service, namely to "promote in Scotland a care service designed to secure improvement in the wellbeing of the people of Scotland" and to monitor and improve the quality of services provided by the National Care Service. These provisions have the effect that the National Care Service will be directly accountable to Scottish Ministers.

In providing comments on these sections of the Bill, please consider:

- Whether you agree with Scottish Ministers being given these overarching responsibilities?
- Whether there is anything important missing from these sections of the Bill?
- Whether there is anything you would disagree with or there are amendments you would wish to propose to these sections of the Bill?
- Whether an alternative approach would be preferable?

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Please provide your comments on Scottish Ministers' overarching responsibilities for the National Care Service in the box provide

The effectiveness of the role of local authorities in scrutinising local performance and agreeing local plans should be paramount and it is unclear how this will fit in with a proposed NCS with a remit for the delivery of adult social care.

There is a significant difference between social work and social care. Whilst they are interrelated, they are very different and distinct functions. Social work often helps those who can no longer care for themselves without support and assistance. Social work will often help bring about change by working alongside the individual whilst actively challenging discrimination, isolation, and inequality. This brings accountability. If adult social care moves to a NCS, ministers will need to take on this accountability and ensure that safeguards are in place to help protect rather than just be accountable for the delivery of services.

Whilst the delivery of adult social care within the NCS may be appropriate, accountability and statutory responsibilities – which currently sit with social work – will have to be transferred

over. This would require statutory changes and the terms of that remain unclear. It is not clear how the key role of the Chief Social Work Officer would sit within a revised framework and where that accountability will lie at a local level. If other areas of social work are not transferred over (ie justice and/or childrens), the splitting of the profession could well negatively impact on service delivery, lines of governance, accountability and leadership and may have consequent impact on people with lived experience.

There are concerns around some services being in the NCS and other not and this relates to how essential services are funded. It would be possible that services which ministers are responsible for (ie in the NCS) would receive additional funding – to the detriment of those not included. If you then add in geographical challenges – ie rural and remote – there is a real potential for disparity and inequity across the population. .

Sections 4 and 5 make provision for the establishment and abolition of **care boards** and for financial assistance for boards. As set out in the Policy Memorandum, the Bill “makes provision for the Scottish Ministers to establish and fund these boards, called “care boards” in the Bill, to plan and deliver NCS service locally, replacing current Integration Authorities”. The Policy Memorandum continues: “There is also provision for “special care boards” to deliver national functions if needed”.

Connected to Section 4 and annexed to the Bill, Schedule 1 sets out detailed provisions related to the constitution and operation of care boards while Schedule 2 makes consequential amendments to public authorities legislation.

In providing comments on these sections of the Bill, please consider:

- Whether you support the establishment of care boards as set out in these sections of the Bill and provisions on financial assistance for boards?
- Whether there is anything important missing from these sections of the Bill?
- Whether there is anything you would disagree with or there are amendments you would wish to propose to these sections of the Bill?
- Whether an alternative approach would be preferable?

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Please provide your comments on these sections of the Bill in the box provided.
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The creation of a new body does not automatically lead to less complexity. There will require to be detail re how the new service is structured and this is currently unknown as there will remain an interface between the proposed care board and local authorities/health boards and the potential for disconnects causes concern.

This question again raises issues about the extent to which service delivery is understood. Many of the adults involved in social work services have very complex lives and challenges often interlinked with trauma. Further, we work with people in a variety of different systems, but often with legalities attached.

It is not yet clear how many board there will be and how they will operate. At present Councillors have an electoral mandate and therefore should have an enhanced role. It is not clear if they will have a role going forward.

In term of learning from the model in use for police and fire services, it is noted that this model enables national boards to exist for accountability nationally, and places a legal duty on local authorities to scrutinise performance locally and to agree local plans. This provides benefits of local insight, for concerns expressed to Councillors to be considered by national service providers and enables connections with other public services operated locally and regionally.

It is also considered that given the current proposed remit that there is a clear need for a Director of Social Work to be on the board to have parity with other Board members. This would bring knowledge and experience that the Board would need to ensure it carried out its functions appropriately. It would also be consistent with the existing legal requirement on local authorities to appoint a CSWO with a professional responsibility for the delivery of SW services.

Once greater clarity is provided on how staff are to be employed across the Services, it will be possible to comment on the staffing structure of the Boards in terms of the associated costs with support staff, accommodation, etc which would mean an administrative and bureaucratic overhead - the costs of which may be better spent on front line service delivery.

TUPE would require to be considered to comply with legal requirements for this staff group and it is noted that this is provided for within the terms of the draft bill.

This Chapter of the Bill requires care boards to have a strategic plan setting out their vision, objectives and budgets for their care board area and incorporating an ethical commissioning strategy. Scottish Ministers must also have a strategic plan and an ethical commissioning strategy for any services provided at the national level.

The Policy Memorandum states that ethical commissioning strategies should set out “arrangements for providing services and how those arrangements have been designed to ensure they best reflect the NCS principles”.

In providing comments on this chapter of the Bill, please consider:

- Whether you agree with these provisions?
- Whether there is anything important missing from this chapter of the Bill?
- Whether there is anything you would disagree with or there are amendments you would wish to propose to this chapter of the Bill?
- Whether an alternative approach would be preferable?

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Please provide your comments on this part of the Bill in the box provided.
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At the present time there is a lack of clarity about who the providers will be and how commissioning will work. This has the potential to add a further layer of bureaucracy if service providers are as now, across a range of private/public and third sector organisations. Were the boards to commission from local authorities this adds another layer of bureaucracy which may not be helpful in terms of service delivery.

The Highland Council agrees that the need for a strategic plan agreed with all those involved in care provision including those with lived experience, unpaid carers is key and notes that such principles are currently enshrined within the Public Bodies legislation

Sections 11 and 12 of the Bill make provision for the Scottish Ministers to prepare and publish a National Care Service charter, to be co-designed with those with lived or living experience and reviewed on a five-yearly basis.

According to the Policy Memorandum, the Charter “will set out what people can expect from the NCS and provide a clear pathway to recourse should the rights in the Charter not be met”.

The first and subsequent versions of the charter must be subject to public consultation and a copy must be laid before the Scottish Parliament

In providing comments on these sections of the Bill, please consider:

- Whether you agree with provisions to create a National Care Service charter?
- Whether there is anything important missing from these provisions?

- Whether there is anything you would disagree with or there are amendments you would wish to propose to this chapter of the Bill?
- Whether an alternative approach would be preferable?

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Please provide your comments on these sections of the Bill in the box provided.

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It is not clear what the interface is between an individual care board's strategic plan and a national charter. Clearly they must sit together and one must be consistent with the other. It is assumed that such a Charter will be more high level and risks therefore being tokenistic. Equally it is worth noting that all Care boards having individual strategic plan drivers may lead to a lack of consistency which is understood to be one of the drivers behind the establishment of the NCS.

Section 13 of the Bill gives Scottish Ministers powers to make provision via secondary legislation for independent advocacy services in connection with services provided by the National Care Service.

The Policy Memorandum highlights the emphasis placed by the Independent Review of Adult Social Care on the importance of access to independent advocacy and brokerage services, including peer services, “in empowering people accessing support and unpaid carers” and ensuring “that their voices are heard”.

It goes on to state the Scottish Government’s intention to “develop and implement a coherent, consolidated and consistent approach to independent advocacy services across the range of NCS services” and to do this through co-design with people with lived or living experience of accessing services.

In providing comments on this section of the Bill, please consider:

- Whether you agree with these provisions?
- Whether there is anything important missing from this section of the Bill?
- Whether there is anything you would disagree with or there are amendments you would wish to propose to this section of the Bill?
- Whether an alternative approach would be preferable?

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The Highland Council recognises that the voices of those with lived experience ought to be heard and valued and as such welcomes these proposals and looks forward to receiving detail in terms of how such services will be provided nationally.

Sections 14 and 15 of the Bill make provision for a **complaints service** and for the handling of complaints.

The Policy Memorandum sets out the Scottish Government's intention to "co-design to develop and strengthen the complaints system with those with lived experience". The Scottish Government's own consultation sought views on potential measures to underpin these complaints and redress processes, including the possible development of a model for the role of National Care Service Commissioner.

In providing comments on these sections of the Bill, please consider:

- Whether you agree with these provisions?
- Whether there is anything important missing from these sections of the Bill?
- Whether there is anything you would disagree with or there are amendments you would wish to propose to these sections of the Bill?
- Whether an alternative approach would be preferable?

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The Highland Council notes that this is to be developed. It remains the view of the Council that there needs to be a consistent model of handling complaints across the public sector and that as such complaints should continue to be remitted to the Scottish Public Services Ombudsman (SPSO) as is the case with all other public services. This process is clear and robust. There would need to be clear justification why a separate Commissioner's office would need to be established. Clarity required as to whether this would be just for the Care Service or for all services within the NCS. By remitting to the SPSO it would be possible to measure how the Care Service ranks against other services in terms of complaints handling and against previous complaints levels when the services were separated.

Sections 16 to 22 of the Bill establish **powers for Ministers to intervene** with respect to care boards and contractors, for instance in case of an emergency or of service failure.

In providing comments on this chapter of the Bill, please consider:

- Whether you agree with these provisions?
- Whether there is anything important missing from this chapter of the Bill?
- Whether there is anything you would disagree with or there are amendments you would wish to propose to this chapter of the Bill?
- Whether an alternative approach would be preferable?

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These provisions go to the regulation and scrutiny of the proposed board and there is an interface with the accountability of ministers which will need to be explored by further statutory provisions. There is also appears to be an overlap with the current functions of the Care Inspectorate and that too would need to be expanded upon to allow more meaningful commentary.

It is the Highland Council's view that scrutiny and assurance should aim to reduce inequalities with an emphasis on people, prevention, partnership and performance - a clear commitment to transparency including data/information made available enabling all users to inform a clear understanding of performance and value for money across Scotland and how each area/region etc. compares for benchmarking purposes.

Chapter 5 of the Bill establishes certain functions connected to the provision of care, including enabling Scottish Ministers and care boards to:

- conduct, assist in conducting or give financial assistance in relation to research;
- to provide training or to provide financial support to undertake training;
- to provide financial assistance to undertake other activities connected to the services provided to individuals by the National Care Service;
- and to compulsorily purchase land required to exercise a relevant function.

In providing comments on this chapter of the Bill, please consider:

- Whether you agree with these provisions?
- Whether there is anything important missing from this chapter of the Bill?

- Whether there is anything you would disagree with or there are amendments you would wish to propose to this chapter of the Bill?
- Whether an alternative approach would be preferable?

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The Highland Council has no specific comment about these particular provisions and notes the need for training and financial support for both this and research in relation to the delivery of the proposed National Care Service. The provisions about proposed CPO powers are noted.

Chapter 6 confers powers on Scottish Ministers to transfer functions between institutions as part of the National Care Service, These powers include the power to transfer functions from local authorities, to bring aspects of healthcare into the National Care Service, to re-organise the National Care Service and to transfer staff, property and liabilities.

Items of **legislation conferring specific functions on a local authority** which may be transferred into the National Care Service are listed in Schedule 3, annexed to the Bill.

In providing comments on these sections of the Bill, please consider:

- Whether you agree with Scottish Ministers being given these powers?
- Whether there is anything important missing from these sections of the Bill?
- Whether there is anything you would disagree with or there are amendments you would wish to propose to these sections of the Bill?
- Whether an alternative approach would be preferable?

Click 'continue' at the bottom of the page to return to the main contents page.

Please provide your comments on these sections of the Bill in the box provided.

These proposed powers are significant and relation to the queries posed in relation to the accountability of ministers for service which are expressed elsewhere. It is THC's position that there is potential for a NCS initially to have an oversight role – taking responsibility for performance, regulation, inspection and workforce development. There are also potential benefits to be had from joining up of service providers into a

single body, thereby reducing the fragmentation that currently exists. Greater explanation of the role and remit of the Boards versus the NCS is required before proper consideration can be given to the relative merits of different models of delivery and how that will relate to the delivery of adult social care.

It is agreed that adult social care needs substantial increases in funding and any increase is to be welcomed given the forecast in terms of people likely to require a service.. However, there is no information on financial modelling and, in the context of the needs based approach outlined in the consultation, this additional funding may well fall some way short of what will be required. This is even more the case when the costs of establishing a new national service are taken into consideration - both in terms of the national body and also the 32 new Boards each with their own Chief Executives and associated administrative/bureaucratic overhead. Whereas existing services could be dramatically and immediately improved with an increase in funding direct to the current Council/NHS partnership.

The Highland Council consequently proposes that if the NCS must go ahead, it should be focused on improving Adult Social Care only, and that consideration ought be given in the first instance to limiting the scope of that to an oversight role as set out above. It is also not clear to the Highland Council why certain NHS roles which are important in terms of the integration agenda are excluded from the scope of the proposed NCS and it would thus appear that the proposals may be a retrospective step in terms of integration.

Chapter 6 also makes provision for the inclusion of **children's services and justice services** within the scope of the National Care Service at some point in the future, subject to a public consultation on the proposed inclusion of these services. It is proposed that any such inclusion of these services within the scope of the National Care Service would be achieved via secondary legislation.

In providing comments on this section of the Bill, please consider:

- Whether you agree with proposals to include children's services and justice services within the scope of the National Care Service, either now or in the future?
- Whether there is anything important missing from this section of the Bill?
- Whether there is anything you would disagree with or there are amendments you would wish to propose to this section of the Bill?
- Whether an alternative approach would be preferable?

Click 'continue' at the bottom of the page to return to the main contents page.

Please provide your comments on this section of the Bill in the box provided.
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As currently proposed it appears that the NCS will be limited to adult care services, and as such the NCS should include Adult Social Work (including Mental Health Officers), Social Work Agency. It will not include pending further consultation, Children's Services, Criminal Justice Services, Community Justice, Alcohol and Drugs prevention, GP Contracts, Housing and Homelessness. Notwithstanding this the transfer of adult care services will have a significant impact on the front line, on council and partners budgets, and most importantly on service users.

The implications for remaining Council services like education and welfare are not at all clear and the potential disconnect between those services which are not included could be especially problematic.

There are significant risks around the capacity for staff to make these fundamental changes whilst also delivering services, particularly in a post Covid context. Furthermore, local innovation, transformation and efficiency initiatives may slow down or stop altogether in the intervening period.

THC continues to have concerns about the inclusion of children and justice services and welcomes further consultation to establish an evidence base for such a transfer. In terms of the response above the Highland Council is of the view that any inclusion of such services requires to be by primary legislation to ensure the necessary scrutiny takes place. THC remains of the view that there are risks in relation to inclusion particularly in relation to adult protection and child protection. An evidence basis will be an essential requirement before changes to services, practice and legislation are made.

Whilst accepting change will happen, we have to consider how this can benefit the services – regardless of being in or out of the NCS. What works well; what should be encouraged; what needs to change. Looking at best practice, this involves strong and productive partnerships, working in local areas. Help and support is appropriate, timely, and results in positive outcomes for both the individual and the community. Children's social work services need to be working hand in hand with children's health services and education. Alongside this, there will need to be strong links with community services – whether it be housing; welfare benefits; employment; third sector. Knowing and understanding your local community will help shape services both in terms of what they need to do, and how they need to do it. This is the same for social work as it is for police, as it is for housing, etc.

THC has concern about transitions in particular in the event that the delivery of adult social care is provided by the NCS. Transitions are similar to hospital discharge – people try to find a process that will fix 'the problem' rather than looking at what is required or needed. Funding is a key issue in the area of transitions – who pays for what. What you see is ASC and children's social work, arguing over whether the young person is a child or an adult as this decides who is 'accountable'. Of note, many young people transitioning to adult care services are referred on by Education, not social work. This will remain an issue once a NCS is in place delivering a service to "adults" only.

Chapter 7 makes consequential modifications to the following legislation to reflect proposals set out in this part of the Bill (set out in Schedule 4, annexed to the Bill):

- Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947
- Local Government (Scotland) Act 1973
- Public Services Reform (Scotland) Act 2010

For the purposes of interpreting Part 1 of the Bill, Chapter 7 defines the National Care Service as comprising “care boards” and “the Scottish Ministers insofar as they are exercising a function” conferred on them by virtue of Part 1 of the Bill or an aspect of healthcare that has been “designated as a National Care Service function”.

In providing comments on this chapter of the Bill, please consider:

- Whether you agree with these provisions?
- Whether there is anything important missing from this chapter of the Bill?
- Whether there is anything you would disagree with or there are amendments you would wish to propose to this chapter of the Bill?
- Whether an alternative approach would be preferable?

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It is clear that in terms of the creation of a NCS that modifications to existing legislation will be required in order to allow the proposed boards to operate and have the necessary powers envisaged by the bill. THC expects such powers to be extensive given the extent of the (primary and secondary) legislation in place currently requiring service delivery to be provided by local authorities. Please also see THC's response to the fifth question at part 1 of this consultation.

Part 2 of the Bill gives the Scottish Ministers powers to establish a **scheme for care records to be shared** between the proposed National Care Service and the National Health Service. It also makes provision for Scottish Ministers to produce an information standard which will set out how certain information is to be processed.

In providing comments on this part of the Bill, please consider:

- Whether you agree with these provisions?
- Whether there is anything important missing from this part of the Bill?
- Whether there is anything you would disagree with or there are amendments you would wish to propose to this part of the Bill?
- Whether an alternative approach would be preferable?

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Please provide your comments on this section of the Bill in the box provided.

This is supported. THC does not underestimate the work that will be required to deliver a system which supports this and recognises the existing IT challenges in terms of the sharing of information on a multi agency basis which is however key for successful service delivery.

Sections 36 and 37 of the Bill propose amendments to the Carers (Scotland) Act 2016 and consequent changes to the Social Care (Self-directed Support) (Scotland) Act 2013, principally with a view to establishing a **right to breaks for carers**.

In providing comments on these sections of the Bill, please consider:

- Whether you agree with the proposed amendments to the Carers (Scotland) Act 2016?
- Whether there is anything important missing from these sections of the Bill?
- Whether there is anything you would disagree with or there are amendments you would wish to propose to these sections of the Bill?
- Whether an alternative approach would be preferable?

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THC supports the right for carers to have breaks as their role is key. That support should in the view of THC be personalised support for that particular carer and ought

be flexible and responsive recognising that needs can change. Such a right should also extend to young carers. It is the view of THC that such a right should be subject to qualifying criteria to ensure affordability and to ensure services are provided where they are needed most.

Section 40 of the Bill proposes amendments to the Public Services Reform (Scotland) Act 2010 with a view to supporting implementation of “Anne’s Law” related to visits to or by care home residents.

In providing comments on this section of the Bill, please consider:

- Whether you agree with the proposed amendments to the Public Services Reform (Scotland) Act 2010?
- Whether there is anything important missing from this section of the Bill?
- Whether there is anything you would disagree with or there are amendments you would wish to propose to this section of the Bill?
- Whether an alternative approach would be preferable?

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Please provide your comments on these sections of the Bill in the box provided.
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THC welcomes the inclusion of "Annie's law" into primary legislation which is rights driven and confirms the position developed during the covid and dealt with by guidance.

Section 41 of the Bill proposes amendments to the Public Contracts (Scotland) Regulations 2015 to allow the right to bid for **contracts for certain services to be reserved to certain types of organisation.**

In providing comments on this section of the Bill, please consider:

- Whether you agree with the proposed amendments to the Public Contracts (Scotland) Regulations 2015?
- Whether there is anything important missing from this section of the Bill?
- Whether there is anything you would disagree with or there are amendments you would wish to propose to this section of the Bill?

- Whether an alternative approach would be preferable?

Click 'continue' at the bottom of the page to return to the main contents page.

Please provide comments on this section of the Bill in the box provided.
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Reserved right to participate in certain contracts (Section 41)

THC recognised that by reserving a contract qualification criteria might narrow the number of potential bidders who could be considered. There may be a danger that preferred providers are created and might lead to lobbying. It is anticipated that this is to support not-for-profit organisations to bid to provide social care services if such support is required. Such a provision could impact on competition if the criteria were significantly reduced.

It is THC's position that the commissioning of social care services is best handled at a local level, driven by local contextual knowledge and an understanding of local economic and social circumstances. It is unclear the extent to which there will be genuine local democratic ownership over the commissioning of services pursuant to the draft Bill.

In a scenario where commissioning powers are centralised into a National Care Service, Section 41 raises additional questions for the future of Local Government's role in the provision of services. At this stage, it is not explicitly clear whether councils are likely to meet the criteria to qualify as a reserved organisation able to bid for contracts for certain services, but an initial reading would indicate they will not qualify. Should Local Government retain staff, but commissioning be centralised into a National Care service, this will inevitably result in uncertainty in relation to the sustainability of services, staff and service users. Councils would have to consider whether they can bear the potential financial risk should their tender bid be unsuccessful and face significant redundancy costs. Furthermore, forcing Local Government to potentially compete in a market with other providers may have the negative impact of driving down the pay, terms, and conditions of staff precisely at a time when efforts should be focused on improving support packages for the social care workforce which is under significant pressure at the current time.

There is also a need for clarity around the duration of a reserved contract. For example, if an organisation was successful in securing a reserved contract, and the contract term was 5 years, it is unclear whether the renewal contract could also be secured as a reserved contract. This is unclear as provision 41 (5)(d) states that an organisation is a qualifying organisation if they have "not been awarded... a contract for services concerned by the contracting authority concerned within the past 3 years." This system requires further clarity and explanation, not least whether it is open to Local Government participation.

Finally, if the Bill is passed as drafted, it is important these provisions are implemented in such ways which assist in tackling wider contextual challenges around system pressures, and do not exacerbate them.

Sections 42 and 43 of the Bill propose amendments to the Public Services Reform (Scotland) 2010 Act to stipulate additional circumstances in which **registration of a care service may be cancelled** and to authorise Healthcare Improvement Scotland to assist the Care Inspectorate in carrying out **investigations of care services**.

In providing comments on these sections of the Bill, please consider:

- Whether you agree with the proposed amendments to the Public Services Reform (Scotland) Act 2010?
- Whether there is anything important missing from these sections of the Bill?
- Whether there is anything you would disagree with or there are amendments you would wish to propose to these sections of the Bill?
- Whether an alternative approach would be preferable?

Click 'continue' at the bottom of the page to return to the main contents page.

Please provide comments on these sections of the Bill in the box provided.
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It is thought that these provisions are also included as a reaction to challenges faced by registered services and the Care Inspectorate during the pandemic. THC supports the inclusion of provisions which will support the safe and sustained delivery of care by registered providers which are transparent and proportionate.

As well as defining what is meant by “health board” and “special health board” for the purposes of interpreting the contents of the Bill, setting out ancillary provisions, defining the date of commencement of the legislation and setting out its short title, Part 4 of the Bill sets out **regulation-making powers** to be conferred on Scottish Ministers via secondary legislation.

In providing comments on this part of the Bill, please consider:

- Whether you agree with regulation-making powers conferred on Scottish Ministers by section 46 of the Bill?
- Whether there is anything important missing from this part of the Bill?
- Whether there is anything you would disagree with or there are amendments you would wish to propose to this part of the Bill?
- Whether an alternative approach would be preferable?

Click 'continue' at the bottom of the page to return to the main contents page.

Please provide comments on this part of the Bill in the box provided.
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THC has no comments about this aspect of the Bill and recognises that there will be a need for a power to make secondary legislation subject to those comments made in the third part of this consultation document.

On behalf of the Highland Council
5 September 2022

National Care Service (Scotland) Bill

[AS INTRODUCED]

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**THE FOLLOWING ACCOMPANYING DOCUMENTS ARE ALSO PUBLISHED:
Explanatory Notes (SP Bill 17-EN), a Financial Memorandum (SP Bill 17-FM), a Policy
Memorandum (SP Bill 17-PM), a Delegated Powers Memorandum (SP Bill 17-DPM) and
statements on legislative competence (SP Bill 17-LC).**

National Care Service (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to establish the National Care Service; to make provision about the processing of health and social care information; to make provision about the delivery and regulation of social care; and for connected purposes.

PART 1

THE NATIONAL CARE SERVICE

CHAPTER 1

THE PRINCIPLES AND INSTITUTIONS OF THE NATIONAL CARE SERVICE

Principles

1 The National Care Service principles

The National Care Service principles are—

- (a) the services provided by the National Care Service are to be regarded as an investment in society that—
 - (i) is essential to the realisation of human rights,
 - (ii) enables people to thrive and fulfil their potential, and
 - (iii) enables communities to flourish and prosper,
- (b) for them to be such an investment, the services provided by the National Care Service must be financially stable in order to give people long-term security,
- (c) services provided by the National Care Service are to be centred around early interventions that prevent or delay the development of care needs and reduce care needs that already exist,
- (d) services provided by the National Care Service are to be designed collaboratively with the people to whom they are provided and their carers,
- (e) opportunities are to be sought to continuously improve the services provided by the National Care Service in ways which—
 - (i) promote the dignity of the individual, and
 - (ii) advance equality and non-discrimination,

(f) the National Care Service, and those providing services on its behalf, are to communicate with people in an inclusive way, which means ensuring that individuals who have difficulty communicating (in relation to speech, language or otherwise) can receive information and express themselves in ways that best meet their individual needs,

(g) the National Care Service is to be an exemplar in its approach to fair work for the people who work for it and on its behalf, ensuring that they are recognised and valued for the critically important work that they do.

The Scottish Government

2 Responsibility for the National Care Service

- (1) It is the duty of the Scottish Ministers to promote in Scotland a care service designed to secure improvement in the wellbeing of the people of Scotland.
- (2) Everything that the Scottish Ministers do in discharging that duty is to be done in the way that seems to them to best reflect the National Care Service principles.

3 Responsibility for improvement

It is the duty of the Scottish Ministers to put and keep in place arrangements for the purpose of monitoring and improving the quality of the services that the National Care Service provides.

Care boards

4 Establishment and abolition of care boards

- (1) The Scottish Ministers may by regulations—
 - (a) establish bodies to be known as care boards,
 - (b) abolish a care board.
- (2) The power conferred by subsection (1) must be exercised so that—
 - (a) there are care boards with responsibility for particular geographical areas, and
 - (b) those boards' areas—
 - (i) together cover the whole of Scotland, and
 - (ii) do not coincide or overlap.
- (3) A care board that is—
 - (a) established in fulfilment of the duty under subsection (2) is a local care board,
 - (b) not established in fulfilment of that duty is a special care board.
- (4) Regulations establishing a care board must—
 - (a) in all cases—
 - (i) specify the name by which the board is to be known,
 - (ii) state whether it is a local or special care board,

(iii) specify the minimum and maximum number of ordinary members of the board,

(b) in the case of a local care board, identify the geographical area for which the board is responsible (which may be done by reference to another document).

5 (5) Further provision in connection with care boards is made by—

(a) schedule 1, which makes provision about their constitution and operation,

(b) schedule 2, which inserts references to them into other enactments which (amongst other things) impose duties on public bodies.

5 Financial assistance for care boards

10 (1) The Scottish Ministers may provide any financial assistance to care boards that they consider appropriate.

(2) For the purposes of subsection (1), “financial assistance” includes grants, loans, guarantees and indemnities.

15 (3) The Scottish Ministers may attach conditions (including conditions as to repayment and the payment of interest) in respect of any financial assistance provided under this section.

CHAPTER 2

STRATEGIC PLANNING

The Scottish Government

6 Strategic planning by the Scottish Ministers

20 (1) Subsection (2) applies if, by virtue of regulations under section 27, 28, or 29—

(a) the Scottish Ministers have the function of providing a service, or

(b) the function of their providing a service is designated as a National Care Service function.

(2) The Scottish Ministers must—

25 (a) have a strategic plan, and

(b) make their latest plan publicly available.

(3) The Scottish Ministers’ strategic plan is a document setting out, for the period of the plan, their—

(a) arrangements for providing the service referred to in subsection (1),

30 (b) vision for the service,

(c) objectives in relation to the service,

(d) budget projections in relation to the service,

(e) ethical commissioning strategy in relation to the service.

35 (4) The Scottish Ministers’ strategic plan may include any other information they consider appropriate.

- (5) Before making a strategic plan the Scottish Ministers must consult publicly on a draft of the plan.
- (6) The Scottish Ministers—
- (a) may make a new strategic plan at any time (having complied with subsection (5)),
 - (b) must ensure that there is no gap between the period of one plan ending and that of its successor beginning.
- (7) The period of a strategic plan—
- (a) must not exceed 3 years,
 - (b) begins on the date that the plan states it begins,
 - (c) ends on the earlier of—
 - (i) the date that the plan states it ends, or
 - (ii) the date that the period of the plan’s successor begins.

Care boards

7 Strategic planning by care boards

- (1) A care board must—
- (a) have a strategic plan, and
 - (b) make its latest plan publicly available.
- (2) A care board’s strategic plan is a document setting out, for the period of the plan (as defined in section 9(2)), the board’s—
- (a) vision,
 - (b) objectives,
 - (c) structure,
 - (d) budget projections,
 - (e) arrangements for providing services in exercise of the functions conferred on the board by virtue of regulations under section 27, 28, or 29,
 - (f) ethical commissioning strategy in relation to those services.
- (3) A care board’s strategic plan may include any other information the board considers appropriate.

8 Care boards’ planning process

- (1) Before making a strategic plan, a care board must—
- (a) consult in accordance with subsection (3), and
 - (b) then have a draft of the plan approved by the Scottish Ministers.
- (2) The Scottish Ministers may decline to approve a care board’s draft plan until any changes they consider appropriate have been made.

- (3) A care board must consult on a strategic plan in the following way—
- (a) the board must seek views on a draft of the plan from—
 - (i) its community planning partners, and
 - (ii) in the case of a local care board, any other local care board whose area of responsibility borders its own,
 - (b) then, having taken their views into account, the board must seek views on a draft of the plan from—
 - (i) in the case of a local care board, the residents of its area of responsibility,
 - (ii) in the case of a special care board, the public in Scotland.
- (4) Nothing in this section precludes a care board from seeking views on a proposal for a strategic plan from any person at any time.
- (5) In subsection (3)(a), the reference to a care board’s community planning partners is to any person who is in a community planning partnership with the board for the purposes of Part 2 of the Community Empowerment (Scotland) Act 2015.

9 Frequency of planning by care boards

- (1) A care board—
- (a) may make a new strategic plan at any time (having complied with section 8(1)),
 - (b) must seek to ensure that there is no gap between the period of one plan ending and that of its successor beginning.
- (2) The period of a care board’s strategic plan—
- (a) must not exceed 3 years,
 - (b) begins on the date that the plan states it begins,
 - (c) ends on the earlier of—
 - (i) the date that the plan states it ends, or
 - (ii) the date that the period of the plan’s successor begins.
- (3) A newly established care board must seek to make its strategic plan within 12 months of its establishment.

Interpretation

10 Meaning of ethical commissioning strategy

References in this Chapter to a person’s ethical commissioning strategy in relation to a service is to the person’s strategy for ensuring that the person’s arrangements for providing the service best reflect the National Care Service principles.

CHAPTER 3

INFORMATION AND SUPPORT

The National Care Service charter

11 The National Care Service charter

- 5 (1) The Scottish Ministers must—
- (a) prepare a charter (“the National Care Service charter”), and
 - (b) make it publicly available.
- (2) The charter is to contain—
- 10 (a) a summary of the rights and responsibilities in relation to the National Care Service of—
- (i) the individuals to whom the National Care Service provides services,
 - (ii) any individual who has a personal interest in the wellbeing of another individual to whom the National Care Service provides a service (for example a family member or a carer),
- 15 (iii) any other category of person whose rights and responsibilities in relation to the National Care Service the Scottish Ministers consider it appropriate to summarise in the charter,
- (b) a description of the processes available for upholding the rights in relation to the National Care Service of the persons whose rights and responsibilities the charter summarises.
- 20 (3) The charter may include any other information the Scottish Ministers consider appropriate.
- (4) Nothing in the charter is to—
- (a) give rise to any new rights,
 - (b) impose any new responsibilities, or
- 25 (c) alter in any way an existing right or responsibility.

12 Further provision about the charter

- (1) In preparing and reviewing the National Care Service charter, the Scottish Ministers must—
- (a) consult any person they consider appropriate,
- 30 (b) have particular regard to the importance of eliciting the views of—
- (i) the individuals to whom the National Care Service provides services, and
 - (ii) the persons who provide services on behalf of the National Care Service.
- (2) The Scottish Ministers must lay before the Scottish Parliament a copy of—
- (a) the first version of the charter, and
- 35 (b) any new version resulting from their making changes following a review.

- (3) The Scottish Ministers must—
- (a) first review the charter within 5 years of a copy of the first version being laid before the Scottish Parliament, and
 - (b) after that, review it within 5 years of the last review concluding.
- 5 (4) Following a review of the charter, the Scottish Ministers may make any changes to it that they consider appropriate.
- (5) In the period before any regulations under a section in Chapter 6 have come into force, references in this section and section 11 to individuals to whom the National Care Service provides services are to be read as references to the individuals to whom the
10 Scottish Ministers expect the National Care Service will provide services within 12 months.
- (6) For the purposes of subsection (1), it is immaterial that anything done by way of consultation was done before the Bill for this Act was passed or after that but before this section comes into force.

15

Advocacy

13 Independent advocacy

The Scottish Ministers may by regulations make provision about the provision of independent advocacy services in connection with the services that the National Care Service provides.

20

Complaints

14 Complaints service

- (1) The Scottish Ministers must provide a complaints service for—
- (a) receiving complaints about the services that the National Care Service provides, and
 - 25 (b) passing those complaints on to the appropriate person.
- (2) Nothing in subsection (1) precludes the complaints service from dealing with other kinds of complaint.
- (3) The appropriate person in relation to a complaint is the person who, in the opinion of the provider of the complaints service, is best placed to address the complaint.
- 30 (4) The Scottish Ministers—
- (a) must fulfil their duty under subsection (1) as soon as practicable, and
 - (b) may do so by having the complaints service assume responsibility for dealing with complaints about different services at different times.

15 Dealing with complaints

35

- (1) The Scottish Ministers may by regulations make provision about the handling of relevant complaints (including the remedies that are to be available).

- (2) A relevant complaint is a complaint about—
- (a) a service provided by the National Care Service,
 - (b) any other social service as defined by section 46 of the Public Services Reform (Scotland) Act 2010.
- 5 (3) Regulations under this section may in particular—
- (a) impose requirements (for example to produce documentation on request),
 - (b) create sanctions (civil or criminal) for those who fail to comply with the regulations’ requirements.
- 10 (4) The Scottish Ministers may only lay draft regulations to which subsection (5) applies before the Scottish Parliament for approval with the consent of the Scottish Parliamentary Corporate Body.
- (5) This subsection applies to draft regulations under this section that would—
- (a) confer a function on a person listed in schedule 6 of the Public Services Reform (Scotland) Act 2010, or
 - 15 (b) modify or remove one of those persons’ existing functions.

CHAPTER 4

SCOTTISH MINISTERS’ POWERS TO INTERVENE

Powers in relation to care boards

16 Directions to care boards

- 20 (1) A care board must comply with any direction issued to it by the Scottish Ministers.
- (2) A direction under subsection (1)—
- (a) may be general or specific,
 - (b) may modify or revoke an earlier direction under subsection (1).

17 Removal of care board members

- 25 (1) The Scottish Ministers may by regulations remove the members of a care board if the Ministers are satisfied that the board has failed to carry out any of its functions.
- (2) The Scottish Ministers may only be satisfied that a care board has failed to carry out a function if an inquiry has been held to determine the facts relating to the alleged failure.
- 30 (3) An inquiry for the purpose of subsection (2) is to be held in whatever manner the Scottish Ministers consider appropriate.
- (4) For the avoidance of doubt, a reference to a care board’s functions includes its function of complying with any direction issued to it under section 16.

18 Transfer of care board's functions in an emergency

- (1) The Scottish Ministers may direct that a function of a care board is to be performed by another person if the Ministers are of the opinion that—
- (a) an emergency exists, and
 - (b) having a person other than the board perform the function is necessary in order to secure the function's effective performance.
- (2) A direction under subsection (1) is to specify the person who is to perform the function (which may be the Scottish Ministers).
- (3) A person directed under subsection (1) to perform a function must comply with the direction.
- (4) The Scottish Ministers—
- (a) may revoke a direction under subsection (1) at any time, and
 - (b) must do so as soon as practicable after they form the opinion—
 - (i) that the emergency in connection with which the direction was issued no longer exists, or
 - (ii) that it never existed.
- (5) A direction under subsection (1) is revoked when the Scottish Ministers have given notice to that effect to—
- (a) the care board whose function is concerned, and
 - (b) if the person charged with performing the function by the direction is not the Scottish Ministers, that person too.

19 Transfer of care board's functions due to service failure

- (1) The Scottish Ministers may direct that a function of a care board is to be performed by another person if the Ministers are of the opinion that the board has failed, is failing or is likely to fail—
- (a) to perform the function, or
 - (b) to perform it to a standard which the Ministers regard as acceptable.
- (2) A direction under subsection (1) is to specify the person who is to perform the function, but may only specify—
- (a) another care board, or
 - (b) the Scottish Ministers.
- (3) A person directed under subsection (1) to perform a function must comply with the direction.
- (4) Where a care board's function is performed by another person in accordance with a direction under subsection (1)—
- (a) the board is liable to the person for any expenses that the person reasonably incurs in performing the function, unless the direction states otherwise,
 - (b) anything done, or omitted, by the person in performing the function is to be regarded as having been done or omitted by the board,

(c) a third party who deals with the person in good faith and for value is entitled to assume that anything the person purports to do within the powers conferred by the direction is properly done within those powers.

5 (5) For the purposes of subsection (4)(a), a person’s expenses in performing a function includes the cost of remunerating the person’s staff for periods they spent performing the function.

(6) The Scottish Ministers may revoke a direction under subsection (1) at any time.

(7) A direction under subsection (1) is revoked when the Scottish Ministers have given notice to that effect to—

10 (a) the care board whose function is concerned, and

(b) if the person charged with performing the function by the direction is not the Scottish Ministers, that person too.

Powers to intervene with contractors

20 Emergency intervention order

15 (1) The court may, on an application by the Scottish Ministers, make an emergency intervention order.

(2) An emergency intervention order is an order designed to ensure that goods or services that are to be provided by a person (“the provider”) to, or on behalf of, the National Care Service under an agreement are, so far as possible, provided without undue delay and to an appropriate standard.

(3) An emergency intervention order may—

(a) authorise a person nominated by the Scottish Ministers to—

(i) enter and occupy premises identified in the order,

25 (ii) direct and control the provider’s operations so far as they relate to the affected supply,

(iii) do anything that the person considers necessary to ensure that the affected supply is provided without undue delay and to an appropriate standard,

(b) require the provider to comply with any direction in relation to the affected supply given by the person nominated by the Scottish Ministers,

30 (c) confer any other powers, or impose any other duties or prohibitions, that the court considers appropriate (for example, a prohibition on the provider disposing of assets).

(4) The court may make an emergency intervention order only if it is satisfied that it is reasonable for the Scottish Ministers to hold the opinion described by section 21(1) in relation to the affected supply.

(5) The court may make an emergency intervention order in the absence of the provider.

35 (6) If it makes an emergency intervention order, the court must specify in the order the period for which it has effect, which must not exceed 12 months (but see section 22(2)).

(7) In this section—

“the affected supply” means the goods or services that the emergency intervention order in question is designed to ensure are provided without undue delay and to an appropriate standard,

5 “court” means the Court of Session or the sheriff.

21 Application for emergency intervention order

(1) The Scottish Ministers may apply for an emergency intervention order only if it is their opinion that—

10 (a) there is a failure, or an imminent risk of failure, in the provision of goods or services that are to be provided to, or on behalf of, the National Care Service under an agreement,

(b) that failure has caused, or is likely to cause, significant harm to the material wellbeing or safety of persons to whom the National Care Service provides services,

15 (c) the agreement under which the goods or services are to be provided offers no remedy that could effectively mitigate that harm.

(2) In subsection (1), reference to a failure in the provision of goods or services is to—

(a) their not being provided in accordance with the terms of the agreement under which they are to be provided, or

20 (b) their provision in accordance with the terms of that agreement no longer being adequate to fulfil the purpose for which the National Care Service entered into the agreement to have the goods or services provided.

22 Variation and revocation of emergency intervention order

(1) The court may on the application of the Scottish Ministers or the provider—

25 (a) vary the terms of an emergency intervention order,

(b) revoke an emergency intervention order.

(2) The court may vary an emergency intervention order to extend the period for which it has effect, but—

(a) may only do so once, and

30 (b) may not extend the period originally specified by more than 6 months.

(3) In this section, “court” and “provider” are to be construed in accordance with section 20.

CHAPTER 5

FUNCTIONS CONNECTED TO THE PROVISION OF CARE

23 Research

- 5 (1) The Scottish Ministers and care boards may do any of the following in relation to research relevant to the services that the National Care Service provides—
- (a) conduct it,
 - (b) assist others in conducting it,
 - (c) give financial assistance in relation to it.
- (2) For the purposes of subsection (1)(c), “financial assistance” means grants and loans.
- 10 (3) A person giving financial assistance under this section may attach conditions to it (including conditions as to repayment and the payment of interest).

24 Training

- (1) The Scottish Ministers and care boards may—
- 15 (a) provide training courses for individuals to equip them with knowledge and skills relevant to providing services on behalf of the National Care Service,
 - (b) give a person a grant towards expenses incurred by the person in providing training for the purpose mentioned in paragraph (a),
 - (c) give to an individual undertaking training for the purpose mentioned in paragraph (a) (whether or not by way of a course provided under that paragraph) a grant
20 towards any or all of the following—
 - (i) fees for the training,
 - (ii) expenses incurred in connection with the training,
 - (iii) living costs that arise during the training period.
- 25 (2) A person giving a grant under this section may attach conditions to it (including conditions as to repayment and the payment of interest).

25 Support for other activities

- (1) The Scottish Ministers and care boards may give financial assistance to any person who is engaged in an activity connected to the services provided to individuals by the National Care Service.
- 30 (2) Financial assistance may be given under subsection (1) in order that the recipient of it can, in turn, give financial assistance to another person engaged in an activity connected to the services provided to individuals by the National Care Service.
- (3) A person giving financial assistance under subsection (1) may attach conditions to it.
- 35 (4) Where financial assistance is given under subsection (1) for the purpose mentioned in subsection (2), the conditions attached to it may include requirements about the conditions that the recipient must attach when the recipient uses the financial assistance to give assistance to another person.

(5) References in this section to conditions include conditions as to repayment and the payment of interest.

(6) In this section, “financial assistance” means grants and loans.

26 Compulsory purchase

(1) The Scottish Ministers or a care board may compulsorily acquire land that they require for the purpose of exercising a relevant function.

(2) A compulsory acquisition by a care board under subsection (1) must be authorised by the Scottish Ministers.

(3) Land may not be compulsorily acquired by virtue of subsection (1) if it is held or used by a Minister of the Crown or a department of the Government of the United Kingdom.

(4) In this section—

(a) a relevant function—

(i) in the case of a care board, is any of its functions,

(ii) in the case of the Scottish Ministers, is any function conferred on them by virtue of this Part,

(b) references to acquiring land includes acquiring—

(i) any right or interest in or over land,

(ii) a servitude or other right in or over land by the creation of a new right.

CHAPTER 6

ALLOCATION OF CARE FUNCTIONS ETC.

Powers to transfer functions

27 Power to transfer functions from local authorities

For the purpose of fulfilling their duty under section 2, the Scottish Ministers may by regulations, wholly or partly, transfer to themselves or a care board a function conferred on a local authority by an enactment mentioned in schedule 3.

28 Power to bring aspects of healthcare into the National Care Service

For the purpose of fulfilling their duty under section 2, the Scottish Ministers may by regulations—

(a) designate as a National Care Service function the function of their providing, or securing the provision of, a particular service under the National Health Service (Scotland) Act 1978,

(b) wholly or partly transfer to themselves, or a care board, a function conferred on a health board or a special health board.

29 Power to re-organise the National Care Service

For the purpose of fulfilling their duty under section 2, the Scottish Ministers may by regulations wholly or partly transfer to—

- (a) themselves a function conferred on a care board,
- 5 (b) a care board a function conferred on themselves by virtue of section 27, 28 or this section,
- (c) a local care board a function conferred on a special care board,
- (d) a special care board a function conferred on a local care board.

Duties in relation to transferring functions

30 Consultation before bringing children’s and justice services into the National Care Service

- (1) This section applies in relation to regulations under section 27 that would transfer the function of providing—
 - 15 (a) a children’s service, or
 - (b) a justice service.
- (2) Before making regulations to which this section applies, the Scottish Ministers must consult publicly about the function transfer that the proposed regulations would effect.
- (3) When laying a draft Scottish statutory instrument containing regulations to which this section applies before the Scottish Parliament for approval by resolution, the Scottish Ministers must also lay before the Parliament a summary of—
 - 20 (a) the process by which they consulted in relation to the function transfer that would be effected by the regulations contained in the draft instrument, and
 - (b) the responses they received to that consultation.
- (4) In this section, “a children’s service” means a service that is provided to, or in relation to (either or both)—
 - 25 (a) persons under 18 years of age,
 - (b) persons 18 years of age or over on account of a local authority having provided a service to, or in relation to, them when they were under 18 years of age.
- (5) In this section, the reference to “a justice service” is to be construed as follows—
 - 30 (a) a justice service is a service that is provided only to, or in relation to, persons who are or have been—
 - (i) in police custody having been arrested in respect of an offence,
 - (ii) officially accused of committing an offence,
 - (iii) the accused in criminal proceedings,
 - 35 (iv) found guilty in criminal proceedings,
 - (b) despite paragraph (a), no service provided in exercise of a function conferred by virtue of the Mental Health (Care and Treatment) (Scotland) Act 2003 is a justice service.

- (6) In subsection (5), “officially accused” and “police custody” have the meanings given in (respectively) sections 63 and 64 of the Criminal Justice (Scotland) Act 2016.

Further provision about function transfers

31 Transfers of staff

- 5 (1) In connection with the transfer of a function from one person (“the original function holder”) to another (“the new function holder”), the Scottish Ministers may by regulations transfer individuals from the employment of the original function holder into the employment of the new function holder.
- 10 (2) But regulations under subsection (1) may not transfer a person from the employment of a health board or a special health board into the employment of another person.
- (3) Regulations under subsection (1) may identify the staff to be transferred by name or description.
- 15 (4) A transfer effected by virtue of subsection (1) is a relevant transfer for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246).
- (5) In this section, a reference to the transfer of a function is to a transfer by virtue of a section in this Chapter.

32 Transfers of property and liabilities etc.

- 20 (1) In connection with the transfer of a function from one person (“the original function holder”) to another (“the new function holder”), the Scottish Ministers may by regulations—
- (a) transfer to, and vest in, the new function holder any of the property (including rights) and liabilities of the original function holder,
- 25 (b) provide that anything done by, or on behalf of, the original function holder is to be treated as having been done by, or on behalf of, the new function holder,
- (c) provide that any reference to the original function holder in a contract, deed or other document giving rise to a legal obligation, is to be read as a reference to the new function holder,
- 30 (d) provide that any legal proceedings raised by, or against, the original function holder are to be continued by, or against the new function holder.
- (2) In this section, the reference to the transfer of a function is to a transfer by virtue of a section in this Chapter.

33 Interpretation of expressions about functional transfers

- (1) In this Chapter, a reference to—
- 35 (a) transferring a function wholly is to transferring it so that it ceases to be exercisable for any purpose by the person on whom it was conferred before the transfer,
- (b) transferring a function partly is to transferring it so that for some purposes it is exercisable by the Scottish Ministers or a care board while for others it remains exercisable by the person on whom it was conferred before the transfer,

(c) a function being conferred includes its being conferrable (for example by a court order),

(d) transferring a function from person A to person B includes making a function that is conferrable on person A conferrable on person B.

5 (2) In subsection (1)(a) and (b), a reference to a function's being exercisable for a purpose includes its being conferrable for a purpose.

CHAPTER 7

FINAL PROVISIONS FOR PART 1

34 Consequential modifications

10 Schedule 4 makes modifications in consequence of this Part.

35 Interpretation of Part 1

(1) This section makes provision for the purposes of interpreting this Part.

(2) The National Care Service is comprised by—

(a) care boards, and

15 (b) the Scottish Ministers insofar as they are exercising a function that is—

(i) conferred on them by virtue of this Part, or

(ii) designated as a National Care Service function by virtue of regulations under section 28.

20 (3) References (however expressed) to a service provided by the National Care Service are to a service that a person comprising the National Care Service provides in exercise of a function that is—

(a) conferred by virtue of regulations under section 27, 28, or 29, or

(b) designated as a National Care Service function by virtue of regulations under section 28.

25 (4) References (however expressed) to providing a service include securing its provision.

PART 2

HEALTH AND SOCIAL CARE INFORMATION

36 Care records

30 (1) The Scottish Ministers may by regulations provide for a scheme that allows information to be shared in order that services can be provided efficiently and effectively by and on behalf of—

(a) the National Care Service,

(b) the National Health Service.

(2) Regulations under subsection (1) may in particular—

35 (a) require one person to supply information to another person,

(b) create sanctions (civil or criminal) for those who fail to comply with the regulations' requirements.

(3) In this section—

“National Care Service” means—

- (a) a care board,
- (b) the Scottish Ministers exercising a function conferred on them by virtue of—
 - (i) Part 1,
 - (ii) section 58 of the Regulation of Care (Scotland) Act 2001,

“National Health Service” means—

- (a) a health board,
- (b) a special health board,
- (c) the Common Services Agency for the Scottish Health Service,
- (d) Healthcare Improvement Scotland,
- (e) the Scottish Ministers exercising a function conferred on them by virtue of the National Health Service (Scotland) Act 1978.

37 Information standard

(1) An information standard is a document, produced by the Scottish Ministers, setting out how certain information is to be processed.

(2) The Scottish Ministers must make any information standard they produce publicly available.

(3) A person to whom subsection (4) applies must—

- (a) comply with any information standard, and
- (b) include in any agreement for the provision of a service on the person's behalf a requirement that the other party comply with any information standard.

(4) This subsection applies to—

- (a) a care board,
- (b) a health board,
- (c) a special health board,
- (d) the Common Services Agency for the Scottish Health Service,
- (e) Healthcare Improvement Scotland,
- (f) the Scottish Ministers, but only insofar as they are exercising a function conferred on them by virtue of—
 - (i) Part 1,
 - (ii) section 58 of the Regulation of Care (Scotland) Act 2001,
 - (iii) the National Health Service (Scotland) Act 1978.

- (5) The references to an information standard in subsections (2) and (3) do not include an information standard that the Scottish Ministers have withdrawn.
- (6) In this section, “processed” includes doing any of the things referred to in paragraphs (a) to (f) of section 3(4) of the Data Protection Act 2018.

5

PART 3

REFORMS CONNECTED TO DELIVERY AND REGULATION OF CARE

Carers

38 Rights to breaks for carers

- (1) The Carers (Scotland) Act 2016 is modified by subsections (2) to (10).
- 10 (2) After section 8(2) (adult carers: identification of outcomes and needs for support) insert—
- “(1) A responsible local authority must identify, as a personal outcome that is relevant to an adult carer, the outcome that the adult carer is able to take sufficient breaks from providing care for the cared-for person.
- (2) Where an adult carer is not able to take sufficient breaks from providing care for the cared-for person, a responsible local authority must identify the need for support to enable the adult carer to take sufficient breaks from providing that care.”.
- 15 (3) In section 9(1) (content of adult carer support plan)—
- (a) after paragraph (h) insert—
- “(ha) if the adult carer’s identified needs include the need for support to enable the adult carer to take sufficient breaks from providing care by virtue of section 8(4), information about the support which the responsible local authority provides or intends to provide to the adult carer to meet that need,”,
- 20 (b) in paragraph (j), after “criteria” insert “(except in the case of an identified need as mentioned in paragraph (ha))”,
- (c) paragraph (k) is repealed.
- (4) After section 14(2) (young carers: identification of outcomes and needs for support) insert—
- 30 “(3) A responsible authority must identify, as a personal outcome that is relevant to a young carer, the outcome that the young carer is able to take sufficient breaks from providing care for the cared-for person.
- (4) Where a young carer is not able to take sufficient breaks from providing care for the cared-for person, a responsible authority must identify the need for support to enable the young carer to take sufficient breaks from providing that care.”.
- 35 (5) In section 15(1) (content of young carer statement)—
- (a) after paragraph (i) insert—

- 5 “(ia) if the young carer’s identified needs include the need for support to enable the young carer to take sufficient breaks from providing care by virtue of section 14(4), information about the support which the responsible local authority provides or intends to provide to the young carer to meet that need,”
- (b) in paragraph (k), after “criteria” insert “(except in the case of an identified need as mentioned in paragraph (ia))”,
- (c) paragraph (l) is repealed.
- 10 (6) In section 21 (duty to set local eligibility criteria)—
- (a) in subsection (2), for “identified” substitute “relevant”,
- (b) after subsection (4) insert—
- “(5) In subsection (2), “relevant needs” means identified needs other than any need for support to enable carers to take sufficient breaks from providing care that is identified by virtue of section 8(4) or 14(4).”
- 15 (7) In section 23 (national eligibility criteria)—
- (a) in subsection (2), for “identified” substitute “relevant”,
- (b) in subsection (3)(c), for “24(3)” substitute “24(2) and (4)”,
- (c) after subsection (4) insert—
- “(5) In subsection (2), “relevant needs” means identified needs other than any need for support to enable carers to take sufficient breaks from providing care that is identified by virtue of section 8(4) or 14(4).”
- 20 (8) In section 24 (duty to provide support)—
- (a) in subsection (1)(a), for the words from “section” to “caring” substitute “this section in order to enable the carer to take a break from providing care for the cared-for person”,
- 25 (b) in subsection (2), for “eligible needs” substitute “relevant needs that meet the local eligibility criteria”,
- (c) subsection (3) is repealed,
- (d) in subsection (4)—
- 30 (i) in paragraph (a), for “the carer’s eligible needs” substitute “any relevant needs of the carer that meet the local eligibility criteria”,
- (ii) in paragraph (b), for “the carer’s other identified needs” substitute “any relevant needs of the carer that do not meet the local eligibility criteria”,
- (e) after subsection (4) insert—
- 35 “(4A) The responsible local authority must also provide support to the carer to meet any need for support to enable the carer to take sufficient breaks from providing care for the cared-for person that is identified by virtue of section 8(4) or 14(4).”

(f) in subsection (5)—

(i) in the opening words, for “Subsection (4)(a) applies” substitute “Subsections (4)(a) and (4A) apply”,

(ii) in paragraph (a), for “eligible needs” substitute “identified needs in question”,

(iii) in paragraph (b), for “eligible needs” substitute “identified needs in question”,

(g) in subsection (6), for the words from “the”, in the first place where it occurs, to the end substitute ““relevant needs”, in relation to a carer, means the carer’s identified needs other than any need for support to enable the carer to take sufficient breaks from providing care that is identified by virtue of section 8(4) or 14(4)”.

(9) In section 25 (provision of support to carers: breaks from caring)—

(a) subsection (1) is repealed,

(b) for subsection (2) substitute—

“(2) The Scottish Ministers may by regulations make further provision in connection with the support to be provided to a carer under section 24(4A).

(3) Regulations under subsection (2) may in particular make provision about—

(a) the meaning of any reference to sufficient breaks in this Act,

(b) standards or criteria in relation to the sufficiency of such breaks (including the nature, frequency or duration of breaks),

(c) forms of support that may enable a carer to take such breaks,

(d) where the support is the provision of care for the cared-for person, the role of the cared-for person in relation to how the care is provided.”,

(c) in subsection (3), for “by virtue of subsection (1)” substitute “under section 24(4A)”,

(d) in subsection (4)—

(i) for “by virtue of subsection (1)” substitute “under section 24(4A)”,

(ii) for “caring” substitute “providing care”,

(e) in subsection (5), for “as a break from caring” substitute “to enable a carer to take a break from providing care for the cared-for person”.

(10) In section 31 (duty to prepare local carer strategy)—

(a) after subsection (2)(h) insert—

“(ha) plans to promote a variety of providers of support to relevant carers and to promote the variety of support provided,”,

(b) after subsection (2) insert—

“(2A) In subsection (2), references to support to relevant carers include references to support to enable carers to take a break from providing care for cared-for persons.”.

(11) The Social Care (Self-directed Support) (Scotland) Act 2013 is modified by subsection (12).

(12) In section 7(1) (choice of options: adult carers and young carers), after “24(4)” insert “or (4A)”.

(13) The Social Work (Scotland) Act 1968 is modified by subsection (14).

(14) In section 87 (charges that may be made for services and accommodation)—

(a) in subsection (1), after “24(4)” insert “or (4A)”,

(b) in subsection (1A)(a), after “24(4)” insert “or (4A)”.

39 Enactments relating to carers: minor modifications

(1) The Carers (Scotland) Act 2016 is modified by subsection (2).

(2) Sections 6(6) and 12(8) are repealed.

(3) The Social Care (Self-directed Support) (Scotland) Act 2013 is modified by subsection (4).

(4) In section 7(1), the words “an adult” in the first place where they occur are repealed.

Care homes

40 Visits to or by care home residents

(1) The Public Services Reform (Scotland) Act 2010 is modified as follows.

(2) In section 78 (regulations: care services), after subsection (2) insert—

“(2A) The Scottish Ministers must exercise the power under subsection (2) to require providers of care home services to comply with any direction (“visiting direction”) issued by the Ministers about either or both of—

(a) visits to residents of accommodation provided by a care home service,

(b) visits by residents of accommodation provided by a care home service.

(2B) The Scottish Ministers—

(a) must, before issuing a visiting direction, consult Public Health Scotland and any other person the Scottish Ministers consider appropriate,

(b) may vary or revoke a visiting direction.”.

Procurement

41 Reserving right to participate in procurement by type of organisation

(1) The Public Contracts (Scotland) Regulations 2015 (S.S.I. 2015/446) are modified as follows.

(2) After regulation 76 insert—

“Reserved contracts for certain services

76A—(1) Contracting authorities may reserve to qualifying organisations the right to participate in procedures for the award of reservable contracts.

(2) Where a contracting authority exercises the power of reservation conferred by paragraph (1), the call for competition must make reference to this regulation.

(3) The power of reservation conferred by paragraph (1) is without prejudice to the power conferred by regulation 21.

(4) A reservable contract is a contract that—

- (a) is to be awarded in accordance with this Section,
- (b) has a maximum duration of 5 years or less,
- (c) is for the provision of a service, or more than one service, to or on behalf of the National Care Service (as defined by section 35 of the National Care Service (Scotland) Act 2023), and
- (d) is exclusively for a service, or more than one service, covered by one of the following CPV codes: 75200000-8, 75231200-6, 75231240-8, 79611000-0, 79622000-0, 79624000-4, 79625000-1, a code in the range beginning with 85000000-9 and ending with 85323000-9, 98133100-5, 98133000-4, 98200000-5, 98500000-8 and a code in the range beginning with 98513000-2 and ending with 98514000-9.

(5) An organisation is a qualifying organisation if—

- (a) its objective is the pursuit of a public service mission linked to the delivery of services referred to in paragraph (4)(d),
- (b) profits are reinvested with a view to achieving the organisation's objective, and any distribution of profits is based on participatory considerations,
- (c) the structures of management or ownership of the organisation are (or will be if and when it performs the contract in question)—
 - (i) based on employee ownership or participatory principles, or
 - (ii) such that they require the active participation of employees, users or stakeholders, and
- (d) the organisation has not been awarded, pursuant to this regulation, a contract for the services concerned by the contracting authority concerned within the past 3 years.

(6) The Scottish Ministers may by regulations change—

- (a) the CPV codes specified in paragraph (4)(d),
- (b) the definition of qualifying organisation.

(7) The power conferred by paragraph (6) may be exercised to make different provision for different purposes.”.

Regulation of social services

42 Cancellation of care service registration

(1) The Public Services Reform (Scotland) Act 2010 is modified as follows.

(2) In section 64 (cancellation of registration)—

- (a) in subsection (1), the words “, at any time after the expiry of the period specified in an improvement notice given in respect of a care service,” are repealed,
- (b) after subsection (1) insert—

“(1A) The power in subsection (1) may be exercised—

- (a) at any time after the expiry of the period specified in an improvement notice given in respect of the care service, or
- (b) at any time in circumstances which may be prescribed.”.

5 **43 Assistance in inspections from Healthcare Improvement Scotland**

- (1) The Public Services Reform (Scotland) Act 2010 is modified as follows.
- (2) After section 57 insert—

“**57A Assistance in inspections from Healthcare Improvement Scotland**

- 10
- (1) Healthcare Improvement Scotland may assist SCSWIS in carrying out an inspection under this Part.
 - (2) Healthcare Improvement Scotland may charge a reasonable fee determined by it for any assistance provided by virtue of subsection (1).”.

PART 4

FINAL PROVISIONS

15 **44 Interpretation**

In this Act—

“health board” means a board constituted under section 2(1)(a) of the National Health Service (Scotland) Act 1978,

20 “special health board” means a board constituted under section 2(1)(b) of that Act.

45 Ancillary provision

25 The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, or in connection with, or for giving full effect to this Act or any provision made under it.

46 Regulation-making powers

- (1) A power to make regulations conferred by this Act includes the power to make different provision for different purposes and areas.
- (2) Regulations under—
 - 30 (a) the following provisions may modify any enactment other than this Act—
 - (i) section 13,
 - (ii) section 15,
 - (iii) any section in Chapter 6 of Part 1,
 - (b) section 45 may modify any enactment including this Act.

- (3) Regulations under any of the following provisions are subject to the affirmative procedure: sections 4, 13, 15, 27, 28, 29 and 36.
- (4) Regulations under any of the following provisions are subject to the negative procedure—
- 5 (a) sections 31 and 32,
 (b) paragraph 15 of schedule 1.
- (5) Regulations under section 45—
- (a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act, but
- (b) otherwise, are subject to the negative procedure.
- 10 (6) Regulations under paragraph 11 of schedule 1—
- (a) are subject to the affirmative procedure if no regulations have previously been made in exercise of the power, but
- (b) otherwise, are subject to the negative procedure.

47 Commencement

- 15 (1) This Part comes into force on the day after Royal Assent.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.

48 Short title

The short title of this Act is the National Care Service (Scotland) Act 2023.

SCHEDULE 1
(introduced by section 4(5)(a))

CARE BOARDS: CONSTITUTION AND OPERATION

PART 1

STATUS

Incorporation

1 A care board is a body corporate.

Exclusion of Crown status

2 A care board—

- (a) is not a servant or agent of the Crown, and
- (b) does not enjoy any status, immunity or privilege of the Crown.

PART 2

POWERS

General powers

3 A care board may do anything which appears to it to be—

- (a) necessary or expedient for the purposes of, or in connection with, the performance of its functions, or
- (b) otherwise conducive to the performance of its functions.

PART 3

PROCEDURE

Committees

4 (1) A care board may establish committees and sub-committees.

(2) The membership of a committee or sub-committee of a care board may include persons who are not members of the board.

(3) A care board may, in accordance with a determination by the Scottish Ministers—

- (a) pay each member of a committee or sub-committee remuneration and allowances (including expenses), and
- (b) pay, or make arrangements for the payment of, allowances and gratuities to, or in respect of, any person who is or has been a member of a committee or sub-committee.

(4) The arrangements referred to in sub-paragraph (3)(b) may include—

- (a) making payments towards the provision of those allowances and gratuities,

(b) providing and maintaining schemes for the payment of those allowances and gratuities to, or in respect of, any person who is or has been a member of a committee or sub-committee.

5 (5) The reference in sub-paragraph (3) to allowances and gratuities includes allowances and gratuities by way of compensation for loss of office as a member of a committee or sub-committee.

Regulation of procedure

5 A care board may regulate its own procedure (including quorum) and that of its committees and sub-committees.

10 *Authority to perform functions*

6 (1) A care board may authorise any of its—

- (a) members,
- (b) committees,
- (c) sub-committees, or
- 15 (d) staff,

to perform such of its functions, and to such extent, as it may determine.

- (2) The giving of authority under sub-paragraph (1) by a care board does not—
- (a) affect the board's responsibility for the performance of its functions, or
 - (b) prevent the board from performing the function itself.

20 *Validity of things done*

7 The validity of anything done by a care board, its committees or sub-committees is not affected by—

- (a) a vacancy in its membership,
- (b) a defect in the appointment of a member,
- 25 (c) the disqualification of a member after appointment.

PART 4

ACCOUNTABILITY

Accounts and audit

8 A care board must—

- 30 (a) keep proper accounts and accounting records,
- (b) prepare in respect of each financial year a statement of accounts, and
- (c) send a copy of the statement to the Auditor General for Scotland for auditing.

Annual report

- 9 A care board must, after each financial year—
- (a) prepare and make publicly available a report of its activities during the year, and
 - (b) send a copy of the report to the Scottish Ministers.

5

PART 5

MEMBERS

Board composition

- 10 A care board is to consist of—
- (a) a member to chair it, and
 - 10 (b) not fewer than the minimum, and not more than the maximum, number of ordinary members (see section 4(4)(a)(iii)).

Appointment of members

- 11 (1) The Scottish Ministers are to appoint for each care board—
- (a) the chairing member, and
 - 15 (b) the ordinary members.
- (2) Appointments are to be made in accordance with regulations made by the Scottish Ministers.
- (3) A person may be appointed more than once.
- (4) A person who is disqualified from being a member may not be appointed (see paragraph
- 20 15).
- (5) Regulations under sub-paragraph (2) may in particular—
- (a) specify qualifications and experience that a person must have in order to be appointed,
 - 25 (b) require appointments to be made so that a board includes a member who fulfils criteria specified in the regulations,
 - (c) require that regard is had when making appointments to the desirability of a board including a member who fulfils criteria specified in the regulations.
- (6) Criteria, for the purpose of sub-paragraph (5)(b) and (c), may include criteria about a person's—
- 30 (a) having certain qualifications or experience,
 - (b) holding a certain office,
 - (c) being representative of certain interests.

Members' tenure and other terms and conditions

- 12 (1) A person's membership of a care board continues until the end of the period of
- 35 appointment (subject to paragraph 14).

- (2) In sub-paragraph (1), “the period of appointment” means the period specified by the Scottish Ministers on appointing the person as a member.
- (3) The Scottish Ministers may determine other terms and conditions of membership, in relation to matters not covered by this schedule.

5 *Members’ remuneration, allowances and pensions*

- 13 (1) The Scottish Ministers may—
- (a) pay members of a care board remuneration and allowances (including expenses),
 - (b) pay, or make arrangements for the payment of, pensions, allowances and gratuities to, or in respect of, any person who is or has been a member of a care board.
- 10 (2) The arrangements referred to in sub-paragraph (1)(b) may include—
- (a) making payments towards the provision of those pensions, allowances and gratuities,
 - (b) providing and maintaining schemes for the payment of those pensions, allowances and gratuities.
- 15 (3) The reference in sub-paragraph (1)(b) to pensions, allowances and gratuities includes pensions, allowances and gratuities by way of compensation for loss of office.

Early termination of membership

- 14 (1) A person’s membership of a care board ends if—
- (a) the person resigns by written notice given to the Scottish Ministers,
 - 20 (b) the person becomes disqualified from being a member (see paragraph 15),
 - (c) the Scottish Ministers give the person written notice that the person is removed from the board, or
 - (d) the Scottish Ministers remove the person as a member by virtue of section 17.
- (2) The Scottish Ministers may remove a board member by virtue of sub-paragraph (1)(c) only if they consider that the member is—
- 25 (a) unfit to continue to be a member, or
 - (b) unable to perform the member’s functions.

Disqualification from membership

- 15 (1) A person is disqualified from being a member of a care board if the person is—
- 30 (a) disqualified from being a member by virtue of section 19 of the Ethical Standards in Public Life etc. (Scotland) Act 2000,
 - (b) disqualified from being the director of a company registered under the Companies Act 2006 in Great Britain.
- (2) The Scottish Ministers may by regulations modify this paragraph to add or remove descriptions of persons disqualified from being a member of a care board.
- 35 (3) Regulations under sub-paragraph (2) may not repeal sub-paragraph (1)(a).

PART 6

STAFF

Chief executive

- 16 (1) A care board is to have a chief executive.
- 5 (2) The chief executive is a member of the board's staff.
- (3) The Scottish Ministers are to appoint the chief executive of each board.

Other staff

- 17 A care board may appoint staff.

Staff terms and conditions

- 10 18 Staff appointed by a care board are appointed on such terms and conditions as the Scottish Ministers determine.

Staff pensions, allowances and gratuities

- 19 (1) A care board may pay, or make arrangements for the payment of, pensions, allowances and gratuities to, or in respect of, any person who is or has been a member of its staff.
- 15 (2) But a care board may not make those payments or arrangements without the Scottish Ministers' approval.
- (3) The arrangements referred to in sub-paragraph (1) may include—
- (a) making payments toward the provision of pensions, allowances and gratuities,
- (b) providing and maintaining schemes for the payment of pensions, allowances and gratuities.
- 20 (4) The reference in sub-paragraph (1) to pensions, allowances and gratuities includes pensions, allowances and gratuities by way of compensation for loss of office.

SCHEDULE 2

(introduced by section 4(5)(b))

CARE BOARDS: APPLICATION OF PUBLIC AUTHORITIES LEGISLATION

Ethical Standards in Public Life etc. (Scotland) Act 2000

- 25 1 (1) The Ethical Standards in Public Life etc. (Scotland) Act 2000 is modified as follows.
- (2) In schedule 3, after the entry relating to the British Waterways Board insert—
- “a care board”.

Scottish Public Services Ombudsman Act 2002

- 30 2 (1) The Scottish Public Services Ombudsman Act 2002 is modified as follows.
- (2) In schedule 2, after paragraph 6 insert—

“Care service

6A Any care board.”.

Freedom of Information (Scotland) Act 2002

3 (1) The Freedom of Information (Scotland) Act 2002 is modified as follows.

5 (2) In schedule 1, after paragraph 61B insert—

“61C A care board.”.

Public Appointments and Public Bodies etc. (Scotland) Act 2003

4 (1) The Public Appointments and Public Bodies etc. (Scotland) Act 2003 is modified as follows.

10 (2) In schedule 2, after the entry relating to the Skills Development Scotland Co. Limited insert—

“any care board”.

Public Services Reform (Scotland) Act 2010

5 (1) The Public Services Reform (Scotland) Act 2010 is modified as follows.

15 (2) In schedule 5, after the entry relating to Caledonian Maritime Assets Ltd insert—

“any care board”.

(3) In schedule 8, after the entry relating to Caledonian Maritime Assets Ltd insert—

“any care board”.

Public Records (Scotland) Act 2011

20 6 (1) The Public Records (Scotland) Act 2011 is modified as follows.

(2) In the schedule, after the entry relating to Caledonian Maritime Assets Ltd insert—

“15A Care boards”.

Procurement Reform (Scotland) Act 2014

7 (1) The Procurement Reform (Scotland) Act 2014 is modified as follows.

25 (2) In the schedule, before paragraph 16 insert—

“A care board”.

Community Empowerment (Scotland) Act 2015

8 (1) The Community Empowerment (Scotland) Act 2015 is modified as follows.

(2) In section 13(2), after paragraph (a) insert—

30 “(aa) any local care board (as defined in section 4(3) of the National Care Service (Scotland) Act 2023) the area of responsibility of which is the

same as, or to any extent either includes or is included by, the area of the local authority.”.

(3) In schedule 1—

(a) after the entry beginning “Any integration joint board” insert—

“Any local care board (as defined in section 4(3) of the National Care Service (Scotland) Act 2023) the area of responsibility of which is the same as, or to any extent either includes or is included by, the area of the local authority”.

(b) after the entry relating to the Skills Development Scotland Co. Limited insert—

“Any special care board (as defined in section 4(3) of the National Care Service (Scotland) Act 2023) that provides services, or on behalf of which services are provided, within the area of the local authority”.

(4) In schedule 3, after the entry relating to British Waterways Board insert—

“A care board”.

British Sign Language (Scotland) Act 2015

(1) The British Sign Language (Scotland) Act 2015 is modified as follows.

(2) In the schedule, after the entry relating to Audit Scotland insert—

“A care board.”.

Gender Representation on Public Boards (Scotland) Act 2018

(1) The Gender Representation on Public Boards (Scotland) Act 2018 is modified as follows.

(2) In schedule 1, after the entry relating to Caledonian Maritime Assets Limited insert—

“A care board”.

SCHEDULE 3
(introduced by section 27)

ENACTMENTS GIVING RISE TO TRANSFERABLE LOCAL AUTHORITY FUNCTIONS

National Assistance Act 1948

Matrimonial Proceedings (Children) Act 1958

Social Work (Scotland) Act 1968

Children Act 1975

Local Government and Planning (Scotland) Act 1982, section 24

Health and Social Services and Social Security Adjudications Act 1983, Part 7

Foster Children (Scotland) Act 1984

Children (Scotland) Act 1995

Criminal Procedure (Scotland) Act 1995

Adults with Incapacity (Scotland) Act 2000
 Mental Health (Care and Treatment) (Scotland) Act 2003
 Management of Offenders etc. (Scotland) Act 2005
 Adoption and Children (Scotland) Act 2007
 5 Adult Support and Protection (Scotland) Act 2007
 Children’s Hearings (Scotland) Act 2011
 Social Care (Self-directed Support) (Scotland) Act 2013
 Children and Young People (Scotland) Act 2014
 Human Trafficking and Exploitation (Scotland) Act 2015
 10 Criminal Justice (Scotland) Act 2016
 Carers (Scotland) Act 2016
 Age of Criminal Responsibility (Scotland) Act 2019
 Management of Offenders (Scotland) Act 2019

SCHEDULE 4
(introduced by section 34)

MODIFICATIONS IN CONNECTION WITH PART 1

Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947

- 1 (1) The Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 is modified as follows.
- 20 (2) In section 1—
- (a) in subsection (1), after paragraph (f) insert—
- “(g) by the Scottish Ministers or a care board under section 26(1) of the National Care Service (Scotland) Act 2023.”,
- (b) in subsection (2A), after “Water” insert “or a care board”.

25 *Local Government (Scotland) Act 1973*

- 2 (1) The Local Government (Scotland) Act 1973 is modified as follows.
- (2) After section 82 insert—

“Social care

82A Power to provide services for National Care Service

- 30 (1) A local authority may enter into a contract to provide, or assist in providing a relevant service.
- (2) A relevant service is a service provided in exercise of a function transferred, wholly or partly, from a local authority by virtue of section 27 of the National Care Service (Scotland) Act 2023.”.

Public Services Reform (Scotland) Act 2010

3 (1) The Public Services Reform (Scotland) Act 2010 is modified as follows.

(2) In section 14, after subsection (5) insert—

“(5A) An order under this section may not transfer a function that may be transferred by regulations under section 28 of the National Care Service (Scotland) Act 2023.”.

5

National Care Service (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to establish the National Care Service; to make provision about the processing of health and social care information; to make provision about the delivery and regulation of social care; and for connected purposes.

Introduced by: Humza Yousaf
On: 20 June 2022
Bill type: Government Bill

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This document relates to the National Care Service (Scotland) Bill (SP Bill 17) as introduced in the Scottish Parliament on 20 June 2022

NATIONAL CARE SERVICE (SCOTLAND) BILL

FINANCIAL MEMORANDUM

INTRODUCTION

1. As required under Rule 9.3.2 of the Parliament’s Standing Orders, this Financial Memorandum is published to accompany the National Care Service (Scotland) Bill, introduced in the Scottish Parliament on 20 June 2022.

2. The following other accompanying documents are published separately:

- Explanatory Notes (SP Bill 17-EN);
- a Policy Memorandum (SP Bill 17-PM);
- a Delegated Powers Memorandum (SP Bill 17-DPM);
- statements on legislative competence by the Presiding Officer and the Scottish Government (SP Bill 17-LC).

3. This Financial Memorandum has been prepared by the Scottish Government to set out the costs associated with the measures introduced by the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

4. The Policy Memorandum explains in detail the background to the Bill and the policy intention behind the Bill. It also sets out the current system for the delivery of integrated health and social care services. This Financial Memorandum should be read in conjunction with the Bill and the other accompanying documents.

5. This Financial Memorandum is structured as follows:

	From paragraph
Background	8
Summary of total costs of the Bill	After 23 (Table 1)
Establishment of a National Care Service and Care Boards	24
Care boards	46
Health and Social Care Information	58
Right to Breaks from Caring	60
“Anne’s Law” – Visits to or by care home residents	76
Changes to powers and functions of the Care Inspectorate	91

6. Each part will examine the estimated costs and savings for the different sectors involved, including, as appropriate, the Scottish Administration, Local Authorities, Health Boards, other public bodies, businesses and third sector organisations, and individuals. Each part will set out:

- the best estimates of the administrative, compliance and other costs to which the provisions of the Bill will give rise, as well as likely efficiency savings
- the best estimates of the timescales over which the costs and savings are expected to arise, and
- an indication of the margins of uncertainty in these estimates.

7. The figures set out in this Financial Memorandum represent the Scottish Government's best estimates of the costs of the activities affected by the provisions of the Bill. These figures are not spending commitments and should not be used as a tool for future budgeting, as costs may be affected by other factors in addition to the changes made by the Bill. Funding for the organisations involved will be negotiated in the usual way taking into account the projected costs of their functions at the time.

BACKGROUND

8. The purpose of the National Care Service (Scotland) Bill is to improve the quality and consistency of social services in Scotland. Part 1 gives the Scottish Ministers a duty to promote a comprehensive and integrated care service, and gives them the powers they need to achieve that, including making provision for the establishment of care boards to carry out Ministers' functions in relation to social care and community health. Part 1, Chapter 6 gives the Scottish Ministers powers to transfer relevant functions from local authorities or from health boards. "The National Care Service" (NCS) means the Scottish Ministers and care boards working together to deliver those functions.

9. Part 2 of the Bill allows for information sharing and information standards and is intended to underpin the creation of the nationally-consistent, integrated and accessible electronic social care and health record. This will help professionals to support individuals in a more co-ordinated way, and support national and local planning and commissioning.

10. Part 3 makes additional reforms to the delivery and regulation of care. It introduces a right to breaks from unpaid caring, and Anne's Law, to give people living in care homes a right to maintain contact with family and friends. It makes changes to the powers of the Care Inspectorate, and Health Improvement Scotland. These are all changes that can be implemented to improve the lives of people who access social care support and their carers before the NCS is established. Some of them take the framework approach to allow for further engagement and flexibility; others are more detailed where they address specific points in existing legislation.

Framework and Co-design approach

11. It is essential that reforms to social care support must be developed with the people who access that support, including unpaid carers, and with those who provide it. The Scottish Government is committed to engaging with people with experience to co-design the detail of the new system, to finalise new structures and approaches to minimise the historic gap between legislative intent and delivery. For that reason the bill creates a framework for the NCS, but leaves space for more decisions to be made at later stages through co-design with those who have lived experience of the social care system, and flexibility for the service to develop and evolve over

time. Some of those future decisions will be implemented through secondary legislation, others will be for policy and practice.

12. As a result of this framework and co-design approach, there are increased uncertainties surrounding the cost estimates, and the timing of those costs. Estimates for a range of possible options have been included in this Financial Memorandum where possible and the costs have been timed to deliver an operational NCS and reform of local delivery by the end of this Parliament. Future decisions about the implementation and phasing of the NCS will take into account rigorous, evidence-based options appraisals, value for money, where benefits and quality are paramount, and the resources available to ensure affordability. Where those decisions are implemented through secondary legislation (under this Bill or through pre-existing powers), financial and regulatory impact assessments will be provided. The Parliament will, therefore, have further opportunities to examine the cost implications of the Scottish Government's proposed reforms to the social care system.

Other planned reforms

13. The costs set out in this Financial Memorandum reflect community health and social care services as they are currently delivered, and estimates the changes to those costs that will result from the provisions of this Bill. However, the creation of the NCS and other changes made by the Bill are only part of a wider programme of social care reform. Other elements of those reforms, that do not require primary legislation and could go forward irrespective of the Bill, are likely to have an impact on the overall cost and expenditure on community health and social care support during the time period covered by this Financial Memorandum. In order to focus only on the impact of the Bill, the estimates provided here do not include the effect on the NCS of the following Scottish Government commitments:

- To increase pay and improve terms and conditions for adult social care staff in commissioned services, including establishing appropriate channels for workforce and trade union representation
- To bring Free Personal Nursing Care rates in line with National Care Home Contract rates
- To remove charging for non-residential care
- To increase investment in social work services
- To increase provision of services focusing on early intervention and prevention
- To invest in data and digital solutions to improve social care support.

14. Overall the Government has committed to increase public investment in social care by 25% over this Parliamentary session (2021-26).

15. Creation of the NCS will support many of these reforms; for example, it is intended that it will support greater consistency in the provision of services focusing on early intervention and prevention, and in ethical commissioning which will promote Fair Work standards for staff. However, these are policy decisions to be made or sustained under the new framework, not necessary consequences of the Bill provisions.

Economic benefits of establishing the NCS

16. The purpose of creating the NCS is to improve the delivery of community health and social services. Social services have a significant economic impact, and therefore investments in improving their quality and consistency can have a positive effect on the economy.

17. Making Scottish Ministers responsible for social care with local care boards commissioning community health and social care together enables:

- the development of a system based on and driven by shared principles which enshrine human rights and person-centred care with opportunities for the voice of lived experience to be embedded in all levels of decision making
- opportunities to build on health and social care integration and to bring together different services with a focus on outcomes and to help smooth transitions for people - noting that there needs to be further evidence gathering to see if children's services and justice social work should be brought in scope of the NCS
- strengthening of ethical commissioning of care
- the development of clear and consistent standards and to support the delivery of high quality and improve consistency
- market oversight to promote the financial sustainability of social care providers and, where necessary inform service design and market shaping to help ensure the market for social care as a whole remains vibrant and stable which will ensure continuity of quality social care provision.

18. This in turn, is expected to lead to the benefits for people and for Scotland's wider society and economy through improved community health and social care support for people who need it and their families, with people being able to access services when they are needed. It is also expected to lead to improved experiences for those who work in social services through strengthening fair work in the sector and improved support and recognition for social work and social care. This will help with workforce retention and recruitment.

19. In 2020 social services directly employed 209,690 people, approximately 8% of the workforce, with a whole time equivalent (WTE) of 159,260¹. A 2018 report commissioned by the Scottish Social Services Council (SSSC)² quantified the direct, indirect and induced contributions that the adult social care sector makes to the Scottish economy:

- The direct economic value of social care activity is estimated at £2.3 billion - £2.6 billion (dependent on measurement method used).
- The indirect economic value of goods and services in the sector's supply chain is estimated at £0.5 billion - £0.6 billion.

¹ [Scottish Social Service Sector: Report on 2020 Workforce Data | Scottish Social Services Workforce Data \(sssc.uk.com\)](https://www.sssc.uk.com/data-news/15-announcements/175-the-economic-value-of-adult-social-care#:~:text=The%20adult%20social%20care%20sector,and%20Wales%20published%20similar%20reports.)

² The Economic Value of Adult Social Care (<https://data.sssc.uk.com/data-news/15-announcements/175-the-economic-value-of-adult-social-care#:~:text=The%20adult%20social%20care%20sector,and%20Wales%20published%20similar%20reports.>)

- The induced impact associated with goods and services bought by those directly or indirectly employed by the sector are estimated at £0.7 billion.
- The indirect and induced impacts resulted in an additional 50,800 jobs.
- The total estimated economic value of the sector is therefore in the range £3.5 billion - £3.9 billion (excluding harder to quantify catalytic effects).

20. A report by the Women’s Budget Group (WBG) of the International Trade Union Congress (ITUC) identified that for every £1 spent on social care, more than £2 is generated in other sectors³. The same group⁴ estimates that the majority of new jobs created by investment in social care will be taken by women. Investment in social care can therefore help to reduce the gender pay gap. The large reach of the sector also has an important contribution to make to tackling inequalities, including child poverty, and meeting Scotland’s climate change and sustainability goals through more efficient use of estates, travel, and waste.

21. The social care sector has an important role in supporting local economies across the country. Social care employment and investment is present in every area of Scotland; in areas of economic disadvantage the sector can be a critical employer, particularly in areas with high youth unemployment. The sector is also an important procurer and purchaser of goods and services and this can have important local benefits. The sector can direct spending towards local small businesses, voluntary, and community organisations rather than national corporations, and can also lead through setting importance on quality non-financial standards in procurement processes.

22. Investment in social care support generates social value in terms of people’s emotional wellbeing and better health. A study of the Independent Living Fund in Northern Ireland estimates that every £1 spent generates £11 of social value⁵. Both for people who use social care support, and equally importantly for unpaid carers, the availability of high quality adult social care support can help people to engage in and remain in education and also to enter and remain in work.

23. Improving social care support, particularly increasing early intervention and prevention and supporting unpaid carers to protect their health and wellbeing, also reduces costs which would otherwise fall on other parts of the public sector. This can include unplanned hospital admissions, additional residential care needs, and family breakdown. It is difficult to estimate the size of these wider savings and benefits in total but the Scottish Government expects these to be considerable. Some estimates relating to the benefits of improving support for unpaid carers are provided in paragraphs 72-75.

³ [Investing in the Care Economy - Womens Budget Group \(wbg.org.uk\)](https://www.wbg.org.uk/investing-in-the-care-economy/)

⁴ [Investing in the Care Economy - Womens Budget Group \(wbg.org.uk\)](https://www.wbg.org.uk/investing-in-the-care-economy/)

⁵ [44188-ILF-NI-Impact-Evaluation-Report.pdf](https://www.independentlivingfund.org.uk/wp-content/uploads/2018/04/44188-ILF-NI-Impact-Evaluation-Report.pdf)

SUMMARY OF ESTIMATED COSTS OF THE BILL

Table 1: Total estimated costs of Bill provisions

Note: in all tables, there may be small discrepancies in totals due to rounding

Sector	2022-23	2023-24	2024-25	2025-26	2026-27
	£ millions	£ millions	£ millions	£ millions	£ millions
Total estimated costs of Bill provisions	24-36	63-95	84-126	232-477	241-527
Establishment and running of NCS national organisation – table 6					
Scottish Administration	24-36	60-90	72-108	92-138	83-124
Establishment and running of care boards – table 7					
Scottish Administration	0	4-6	12-18		
Care boards				132 -326	142-376
Total NCS costs	24-36	63-95	84-126	216-452	216-488
Right to breaks from caring* - table 11					
Care boards	-	-	-	8-13	16-27
Anne’s Law – table 14					
Care Inspectorate	0.186	0.09	0	0	0

*Note that tables 10-14 show costs to 2034-35

ESTABLISHMENT OF A NATIONAL CARE SERVICE AND CARE BOARDS

Current costs of social care support and community health

24. Part 1, Chapter 6 of the Bill provides powers to allow for the transfer of social services functions from local authorities to the Scottish Ministers or to care boards. The functions covered by these powers include adult social care and social work, children's social work and social care, and justice social work. In relation to services for children and justice, further work will be undertaken with stakeholders to consider the risks and opportunities, and to rigorously assess the costs and benefits, before decisions are made about implementing the transfer and how it might be phased. Section 30 makes provision requiring the Scottish Ministers to consult publicly about any proposed transfer relating to children's or justice services before regulations are brought forward. A summary of the process and responses received to the consultation must be laid before Parliament at the same time as the draft regulations. Ministers will also have powers to transfer functions from health boards to the new care boards, and to delegate their own health functions as NCS functions, in order to maintain the integration of community health and social care functions.

25. The figures for the costs of delivering services which may transfer, set out in table 2, provide a range of estimates in which the lower figure would cover only the transfer of adult social care, and the upper figure would include the transfer of all the services mentioned in paragraph 24 above. These are not additional costs to the system therefore have not been included in table 1.

26. Care boards will have the statutory duty to carry out the transferred functions in their local area, and will hold the funding for them. Care boards will plan and commission local services. Social work and social care support will continue to be delivered by a range of public, private and third sector partners. For services currently provided in-house by local authorities, that may continue under a procurement arrangement with the care board, or the care board may take over direct delivery, with staff transferring to the care board. These will be decisions to be taken locally as the care boards are established, following careful options appraisals. It is expected that health services will continue to be delivered by the NHS, as commissioned by the care board.

27. It is anticipated that the Scottish Ministers may transfer some functions, at least in part, to themselves, and the NCS at national level may plan, commission and procure social care services for people with complex and specialist needs across Scotland. Further decisions will need to be taken, in discussion with those accessing and providing such services, about which services may be treated in this way, before any estimate can be made of what proportion of costs they will represent.

28. Table 2 sets out the approximate current and projected costs of the services that could be transferred to care boards and to the Scottish Ministers. In terms of the total costs to the public purse, it is assumed the transfer of services itself has no effect: the costs of providing these services will simply transfer from local authorities and health boards to the NCS. Any policy decisions between now and the date of transfer would be taken into account in rebasing the transfer value. Subsequent sections of this Financial Memorandum set out the additional costs relating to setting up the new bodies, and to issues such as aligning terms and conditions for staff transferring from different organisations.

29. The transfer of functions may take place immediately on establishment of care boards in 2025-26, or may be phased with different functions transferring gradually over a number of years. A phased approach may result in a period of double running costs or transfer costs in addition to the costs set out below. Decisions on the timing of transfers will be subject to rigorous readiness and financial assessment to ensure value for money and affordability, as well as ensuring there is no disruption to the provision of support to people.

30. The costs set out in table 2 are based on a range of caveats and assumptions as follows:

- Figures are based on 2019-20 actual costs from publicly available data:
 - [Local government finance statistics - gov.scot \(www.gov.scot\)](http://www.gov.scot) based on Local Financial Return on Social Work (LFR03)
 - [Scottish health service costs - CostsBook 2020 \(April 2019 to March 2020\) – Public Health Scotland.](#)
- They do not account for any impact of Covid on services, to avoid extrapolating forward any non-recurring expenditure.
- Figures given here are illustrative to show a scale of the services in scope. Figures represent the Scotland-wide costs of functions which are expected to be transferred to care boards. Currently, the range of functions delegated to Integration Authorities is different in each area, therefore the costs of future NCS functions cannot be extracted from integration budgets.
- The LFR03 captures actual total expenditure by local authorities on Social Work services as reported in their published annual accounts and is therefore the most accurate data on costs available at this time. This will not necessarily agree with specific funding allocations, such as for justice social work services, as local authorities will utilise additional resources to meet expenditure commitments (Block grant, Council Tax and Non-Domestic Rates).
- The exact list of health functions that may be transferred to care boards is yet to be determined, therefore the costs of health functions are indicative at this stage.
- These figures have been projected forward using inflation (see table below) plus a standard 3% increase on all years and services to show growth in activity and any pressures above inflation e.g. pay, prescribing and energy prices. This is net of any savings made. Inflation figures have been obtained from the Office of National Statistics.

2020-21	2021-22	2022-23	2023-24	2024-25	2025-26	2026-27
2.3%	2.5%	6.2%	6.2%	2.0%	2.0%	2.0%

31. Work will continue through the period of developing the NCS to understand demand and activity trends, as well as the exact services to be transferred, to provide robust cost forecasts for the NCS and inform future budget and funding negotiations. Figures given here are illustrative to show a scale of the services in scope.

Table 2: Costs of providing services that could be transferred to care boards

Cost Category	2019-20	2020-20	2021-22	2022-23	2023-24	2024-25	2025-26	2026-27
	£m	£m	£m	£m	£m	£m	£m	£m
Social Care services								
Adult social care	3,517	3,659	3,844	4,205	4,600	4,833	5,077	5,334
Children’s and families	992	1032	1084	1186	1298	1363	1432	1505
Justice social work	137	143	150	164	180	189	198	208
Service Strategy	52	54	57	63	68	72	76	79
Total	4,699	4,889	5,136	5,618	6,146	6,457	6,783	7,127
Community Health services								
Primary care	2,690	2,799	2,941	3,217	3,518	3,696	3,884	4,080
Community Health	3,135	3,261	3,427	3,748	4,100	4,307	4,525	4,754
Mental health services (apart from inpatient and state hospital)	70	73	76	84	92	96	101	106
Total	5,895	6,133	6,444	7,048	7,710	8,100	8,510	8,940

Establishment of the National Care Service

32. Section 35 of the Bill sets out that “the National Care Service” means local care boards and the Scottish Ministers exercising their functions in relation to social services. At national level there will not be a new body; the Scottish Ministers’ new responsibilities for social work and social care support will be managed and overseen by civil servants directly accountable to Scottish Ministers, in the same way that the National Health Service is managed by the Health Directorates of the Scottish Government. This will include the proposed National Social Work Agency, which will be established as a unit within the NCS to provide national leadership and support for the social work profession.

33. Staff currently engaged in policy development and oversight of public bodies relating to social services will transition to become part of the NCS structure. However the increased responsibilities will require additional staff to be recruited, with associated costs such as premises, equipment and IT. Those increased responsibilities include:

- providing leadership, oversight, and accountability for community health, social work and social care support, including by providing strategic direction and planning at the national and regional levels

- creating, managing and promoting national community health and social services policies, setting national standards and developing practice standards, models and guidance to improve access to care
- creating and overseeing a framework for ethical commissioning, including Fair Work requirements, and carry out workforce planning
- developing and maintaining a national complaints system
- design and delivery of the integrated social care and health record and NCS digital services.

National costs – establishment phase

34. The Scottish Government is committed to establishing the NCS by the end of this Parliamentary term, i.e., in financial year 2025-26. Costs for an additional year have been provided to allow for the transition to steady operating costs. Work is already underway to begin preparatory work for the NCS. This includes policy development and co-design, Programme and Project Management (PPM), recruitment costs, financial forecasting, data and digital discovery work and workforce planning. Costs include staff and non-staff costs with a transition into running costs once a NCS is fully established in 2025-26. These costs cannot therefore be thought of as ‘one off’ set up costs, they are the foundation of an NCS, with the staff and skills transferring into the running of the organisation. This allows investment into public sector staff, to upskill on data and digital capabilities, PPM methodologies and financial qualifications.

35. The staff set up costs shown in table 3 are based on a headcount profile currently assumed for the length of the establishment phase, as above these staff would then in the main move to the running of the NCS, hence this drops to 0 in 2026-27. It is expected a significant amount of staff costs will be in the data and digital space, some of which will be shorter term contractors with specific skills for set periods of time. This causes a spike in the latter part of 2023-24 based on current phasing of programmes.

36. Current assumptions of staff headcount and costs have been based on management estimates of resource need for the various elements of the programme. As the scope, scale and timeline for the NCS is still to be fully developed through co-design and evidence-based options appraisal, this headcount profile is likely to change significantly as more detail is known.

Table 3: NCS National establishment phase headcount and staff costs

	2022-23	2023-24	2024-25	2025-26	2026-27
Headcount	200-300	440-660	440-660	60-90	0
Staff costs (£m)	18-27	47-71	48-72	5-7	0

37. Non-staff costs relate to areas such as IT systems, consultancy costs and training and premises costs. This is estimated in table 4.

Table 4: NCS National establishment phase non-staff costs

	2022/23	2023/24	2024/25	2025/26	2026/27
	£m	£m	£m	£m	£m
Systems and IT	0	0-1	9-13	2-4	0
Training and other staff costs	0	2	2	0	0
Premises costs	0	1	2-4	2	0
Third part advice (legal / consulting)	6-9	10-14	10-14	2	0
Total	6-9	13-19	22-34	6-8	0

National ongoing running costs

38. The Bill provides for the Scottish Ministers to become responsible for social work and social care support for adults, for children, and relating to the justice system. As set out in the policy memorandum, further work is required to consider the risks and opportunities, costs and benefits of the transfer of services for children and justice, and the transfer may be phased over a longer period. However, since no decisions have yet been taken on such phasing, the figures in tables 5 and 6 assume that the NCS will take on the full range of services from the start. As the Scottish Ministers already have responsibility for primary care and community health, and teams in the Scottish Government managing those areas, it is assumed there will be no change in costs relating to that work.

39. Running costs for the NCS have been estimated based on this full range of functions. This includes staff costs across various different teams, the majority being the existing staff from the establishment phase. Total headcount is expected to grow to the region of 500 – 700 people, which is in line with other large areas within government, such as social security. These are not all additional posts compared to current headcount profile, and as per the headcount profile for the establishment phase, the staff base for the NCS will be built over the next 3-4 years.

40. The estimated set up and running costs have been established by comparison to the existing costs of national management of the National Health Service and other large scale transformation programmes in the public sector, such as the creation of Social Security Scotland.

41. The range of functions has been considered that would need to be developed to support the NCS – quality improvement, performance and delivery, workforce planning, policy development, finance (for example) and how these might be delivered most efficiently. The costs of national management of the NHS have been referenced while considering the drive for public sector reform and increased efficiency.

42. Non-staff costs are set out in table 5 below. As above, these are high level ranges based on current estimates, and further work is required to refine these estimates.

Table 5: NCS National running costs - non-staff costs

	2022/23	2023/24	2024/25	2025/26	2026/27
	£m	£m	£m	£m	£m
Systems and IT	0	0	2	11-16	10-16
Training and other staff costs	0	0	0	3-5	3-5
Premises costs	0	0	0	5-7	5-7
Third part advice (legal / consulting)	0	0	0	4-6	4-6
Total			2	23-34	22-34

43. Social Security Scotland set out in their Outline Business Case [Social security agency in Scotland: outline business case - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/outline-business-case-2022-23/pages/100-109-social-security-scotland.aspx) potential running costs of £150m per annum. Whilst this is for the delivery agency, therefore not directly comparable to the NCS, it is included to give a sense of scale of other large transformation areas.

44. All the costs of the national management of the NCS will fall to the Scottish Administration.

National Social Work Agency

45. The Scottish Government is committed to establishing a National Social Work Agency, to support and provide national leadership to the social work profession. This would be part of the NCS national management. It is currently estimated that this will contribute costs of £8-12 million annually, which are included in the figures in table 6. The NSWA will support and invest in the social work profession, enabling social workers to work with people to transform their lives and implement rights-based practice as part of the overall objectives on the NCS.

Table 6: Costs for NCS National (Costs on the Scottish Administration)

Cost Category	2022-23	2023-24	2024-25	2025-26	2026-27
	£m	£m	£m	£m	£m
Establishment phase					
<i>Staff costs</i>	18-27	47-71	48-72	5-7	0
<i>Non-staff costs</i>	6-9	13-19	22-34	6-8	0
Totals	24-36	60-90	70-106	10-16	0
Ongoing running costs					
<i>Staff costs</i>	0	0	0	59-88	60-91
<i>Non-staff costs</i>	0	0	2	23-34	22-34
Totals	0	0	2	82-122	83-124
Overall Total	24-36	60-90	72-108	92-138	83-124

Care Boards

45. The Bill gives the Scottish Ministers powers to establish care boards, which are expected to carry out the delivery functions of the NCS and replace the current Integrated Joint Boards (creating an additional body in Highland). Care boards will be accountable to the Scottish Ministers and directly funded by them, and they will employ their own staff. Summary costs for these boards are set out in table 7.

Table 7: Summary costs of establishment and running costs of care boards

Sector	2022-23	2023-24	2024-25	2025-26	2026-27
	£m	£m	£m	£m	£m
Scottish Administration	-	4-6	12-18	0	0
Care Boards	-	-	-	132-326	142-376

46. Section 4 gives the Scottish Ministers power to determine the number of local care boards and the areas they will cover. Decisions on the number of care boards will require rigorous assessment to ensure value for money, while also considering the best approach to ensure services are designed to meet local needs and circumstances. While the number of local care boards has yet to be decided, the figures in table 7 assume at the top end of the range there will be 32, one for each local authority area.

47. The Scottish Ministers will also have powers to create special care boards, which could provide central functions in a similar way to the Special Health Boards. Any decisions to create such special care boards would take account of the costs of setting up a new board balanced against the benefits and any savings to be gained from providing central services. The cost of creating any special boards, should they be formed, will be calculated based on the function and size of the board. Of the current eight Special Health Boards, in 2019/20 budgets ranged from £18 million - £425 million.

48. Set up costs such as recruiting board members and acquiring premises prior to establishment of the boards will fall to the Scottish Administration, while ongoing running costs will be allocated to the boards themselves as public bodies. The figures in table 7 include an assumed impact from existing supporting services across the health boards and local authorities, and from the abolition of Integration Joint Boards, which is set against the additional costs of the new boards. The range of costs which have been offset as assumed to already exist are between £25 - £40 million per year.

49. The timing and phasing of establishing care boards and transferring functions to them will be subject to further discussion through the co-design process and the production of business cases. These will need to consider local tests of change, implementation plans tailored to individual areas and a delivery readiness assessment to ensure no detriment to services while change takes place. The top end of the range of costs in table 7 is based on all care boards having their first year of operation in 2025-26, and assuming that all social workers and care workers will transfer to the NCS. The lower end reflects the possibility that decisions may be taken to start the transfer in a

small number of areas, building up over time, to allow appropriate planning, consultation and impact assessment.

50. The core management costs of care boards shown in table 8 will include the following. As noted above, these are all high-level estimates which will be refined as proposals are further developed through the co-design and options appraisal process.

- Governance and Executive Team – the Bill gives the Scottish Ministers powers to determine in secondary legislation how many members each care board must have and how they provide representation for people with experience of accessing support, workforce and service providers, carers, and partner organisations.
- Premises and digital set up – high level assumptions are included on costs for digital and premises set up, assuming staff would need digital devices, software licences and access to systems, existing and potentially new. As Integration Joint Boards currently use premises from either the local authority or the health board, it is assumed there will be some need for additional office space, although the current premises will then be freed up for alternative use. Further work will be required to refine this, as the number and size of care boards becomes clearer.
- Support functions – it is assumed that a number of support functions will be required to assist care boards, such as finance, HR, analytics, business support etc. The Scottish Government is considering the opportunity for shared services and what functions the National NCS structure could provide and which need to be held by care boards at the local level.
- Communications and administration costs of establishment and running – the set up and communications to staff and service users will require staff time to carry out these tasks.
- Pay and terms and conditions – this currently assumes a phased approach to the movement of local authority staff into care boards. As this will depend on future discussions between the Scottish Government and local authorities, costs are estimated here to show the quantum of the potential impact. Costs rise from 2025/26 to 2026/27 at the top end of the estimate as it is assumed a varying percentage of staff would transfer each year. The lower end of the estimate assumes that no staff would transfer. These costs have been baselined against current pay and terms and conditions costs as far as is possible with existing data, compared to the future direction of travel of public sector terms and conditions. Much of the overall costs of care boards reported here are therefore for front line delivery services.

51. It is expected professional expert support will be required to identify costs further in a number of areas including VAT, assets and pensions.

- For pensions, a number of options for the provision and ongoing management of pensions have been initially considered for staff who may be affected by any changes. More work and engagement will be required to determine the most suitable and affordable design, as decisions are made on the scope of the NCS. A standard pension contribution rate of 20.9% is currently assumed in the care board costs, based on expected future direction of travel of public sector terms and conditions.

- Currently Integration Joint Boards are established in a similar way to a local authority body, and can therefore reclaim VAT on services. If care boards are not able to reclaim VAT in a similar way, there could be a significant financial impact. This could reduce the overall funds available to spend directly on social care support. Work is underway to understand this potential cost and how it might be mitigated to ensure maximum support for front line services. VAT costs are not assumed in table 7 or 8 at present.
- Assets directly linked to care delivery will also have to be considered, as to whether ownership or leases will be transferred to new care boards. Data does not currently exist in one place on market value of social care properties, backlog maintenance or other associated costs. This will be further investigated. No capital costs of any asset transfer, or revenue costs of any asset maintenance, are assumed in table 7 or 8.

Transfer of functions

52. Where local authorities deliver social care services directly, that delivery may in future transfer to care boards, together with the staff who provide those services. This could involve up to 75,000 employees across social work and social care. Costing of this is difficult as all local authorities may have different pay rates and terms and conditions for their staff, which will need to be rationalised within a single service. The figures for pay and terms and conditions set out in table 8 have been baselined against current assumptions on Fair Work. Decisions will require further assessment and engagement with local authorities and with the workforce, to determine how many staff are likely to transfer and on what conditions. “Pay” represents the additional cost of increased basic pay rates, while “terms and conditions” represents the cost of other issues, for example increased sick pay or covering increased holiday entitlements.

Table 8: Additional costs for Care Boards

Cost Category	Costs to Scottish Administration			Costs to care boards	
	2022-23	2023-24	2024-25	2025-26	2026-27
	£m	£m	£m	£m	£m
<i>Governance and Board costs</i>	0	0	0	22-33	23-34
<i>Premises and digital</i>	0	2-4	10-15	63-94	69-103
<i>Support services</i>	0	0	0	45-67	46-69
<i>Administration and communications</i>	0	1-2	2	2-4	4-6
<i>Pay</i>	0	0	0	0-43	0-43
<i>Terms and Conditions</i>	0	0	0	0-84	0-120
Totals	0	4-6	12-18	132- 326	142-376

Costs to local authorities and health boards

53. The transfer of functions from local authorities in particular may have additional financial implications. These may include, for example, costs for the transition process, but there may also be potential savings on central services such as finance, digital systems and premises, if a significant number of staff move to the NCS. These costs and savings will depend on what services are to be included in the NCS, when the transfer is to take place and how the transition process will be staged. The Scottish Government will carry out thorough options appraisal, working with COSLA, to identify these financial implications at the appropriate time and inform the approach taken. Further information will be provided to the Scottish Parliament when the relevant secondary legislation is brought forward.

54. The financial implications for health boards are expected to be less significant, because of the expectation that they will continue to deliver services commissioned by the NCS. As with local authorities, those implications will be considered when more detail of the arrangements is known.

Costs on other bodies, businesses or individuals

55. It is not anticipated that the establishment of the NCS and care boards, and the transfer of functions to those bodies, will have any financial implications for any other public bodies, businesses or third sector organisations, or for individuals.

56. When social care functions are transferred from local authorities to care boards, it is assumed that in the first instance, all contracts and arrangements with external organisations for the provision of social care support services will also transfer. Over time, changes to policies on ethical procurement and Fair Work may lead to changes in the requirements on potential providers. While the Bill will enable the Scottish Ministers to promote such policies more effectively, the detail is not set out in the Bill and will be subject to separate financial and regulatory impact assessment.

HEALTH AND SOCIAL CARE INFORMATION

57. Part 2 of the Bill gives the Scottish Ministers the 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, and to produce information standards to ensure information is processed in a consistent way. This will enable the creation of the nationally-consistent, integrated and accessible electronic social care and health record. The NCS consultation noted that improvements to data and digital would require additional investment in data and digital systems locally and nationally. This is expected to cover infrastructure, staffing, training and development costs. The Scottish Government will work closely with people who access support, carers, providers and front line staff to develop the social care and health record.

58. The development of the electronic social care and health record will require a full process of discovery and design, which includes co-design with those stakeholders. Work has been initiated on discovery and alpha phases of the electronic social care and health record to develop detailed requirements which will inform the development work ahead. At this early stage it is not possible to provide an exact position on the total cost of investment or how the costs will be phased. Through this co-design process and wider work to develop the evidence base it will be possible to

robustly estimate costs. Supporting business cases and appropriate assurance will be created where significant investment will be required. The final costs will depend on user engagement to finalise scope and specification, and the outcomes of any future competitive tender processes to deliver those requirements to ensure optimal public value. There will also be work to develop digital services to underpin and enable the NCS as well as investment in people to make sure they have the right skills to use digital platforms and analyse data. Again, more investigation and co-design is required to define this. All options will be subject to rigorous assessment to ensure value for money and affordability.

REFORMS CONNECTED TO DELIVERY AND REGULATION OF CARE

Right to Breaks from Caring

59. Section 38 of the Bill makes changes to the Carers (Scotland) Act 2016 (“the Carers Act”) to establish a right to personalised short breaks support for carers who have an identified need for that support, through an adult carer support plan (ACSP) or young carer statement (YCS). These changes will adjust and extend the duties of Local Authorities and Integration Authorities, which are expected to pass to care boards when the NCS is established. These duties will lead to additional costs in providing breaks from caring.

60. The Scottish Government also intends to maintain a national short breaks fund, using existing powers⁶, to enable easy-access support for people in less intensive caring roles. This will build on existing non-statutory voluntary sector short breaks funding. These schemes provide micro grants schemes for unpaid carers to help them take short breaks that meet their needs. Individual grants can be used flexibly, e.g. for a weekend away, entertainment subscription or sporting or hobby equipment. [Time To Live](#) grants are delivered locally, usually by local carer centres. [Take a Break Scotland](#) grants for carers of disabled children and young people and their families are delivered nationally by the Family Fund. The Scottish Government is committed to increasing this funding to provide easy access to breaks for carers without the need for a support plan or statement. While this fund does not require new legislation, it will have an impact on the costs of providing the personalised support required by the provisions of the Bill, depending on the balance of whether carers access personalised support or easy access breaks.

61. The cost of these measures has been estimated using data on the following:

- Number of carers by intensity of caring⁷
- Balance of replacement care between residential and home based
- Unit costs for replacement care, carer breaks and easy access support
- Cost and Whole Time Equivalent for young carer support workers.

62. There are number of areas of uncertainty, for which information is incomplete or missing, where assumptions have had to be made, in particular:

- the number of carers who will seek to exercise their right to breaks

⁶ Social Work (Scotland) Act 1968, section 10

⁷ Intensity of caring based on the bands of number of hours per week, as per table 9.

- the average amount of replacement care required for personalised support
- the balance of breaks between personalised support and easy access support
- current levels of local authority and Integration Authority expenditure on breaks and replacement care, for which local authority systems do not generally differentiate short breaks support from other services, and
- the rate at which demand and available provision will build over time.

63. The full set of assumptions for all groups is extensive, the following example is provided for illustration: For adult carers providing over 50 hours of care per week, it is assumed that 50% of those with an ACSP will take up replacement care, and that this will average 4 weeks per carer per year, of which 65% is assumed to be residential care and the remainder intensive homecare at 22 hours per week. Additionally, it is assumed that 60% of this group will take up a carer break (additional support to help them recharge during their time away from caring), averaging 3 breaks per year. These figures can then be combined with the numbers of carers set out in table 10 and the costs of breaks⁸ identified above and netted against estimates of existing expenditure to estimate the total net cost of implementing breaks for carers.

64. Table 9 shows how a selection of the assumptions vary for different intensity groups.

Table 9: Assumptions used in calculating costs of breaks from caring

	<20 hours a week	20 - 34 hours a week	35 - 49 hours a week	50 or more hours
Proportion of adult carers with ACSP that receive replacement care (%)	5%	10%	20%	50%
Number of weeks replacement care per carer (Adult carers)	1	2	3	4
Proportion of adult carers with ACSP that receive carer break (%)	10%	20%	40%	60%
Number of carer breaks per adult carer	1.0	2.0	2.0	3.0
Proportion of young carers with YCS with activity enabling break	100%	100%	100%	100%
Easy access payment (per carer) ⁹	£300.00			
Uptake of easy access support by adult carers who do not receive personalised support	10%	40%	40%	40%
Uptake of easy access support by young carers	10%	40%	40%	40%

65. The calculations produce estimates for a future steady state of support in which the proportion of carers with an ACSP and or a YCS has reached the same proportions as those

⁸ Care home respite at weighted average of cost of £981 per week and homecare at £21 per hour. Carer breaks costed at £300 per break. All at 2022/23 prices.

⁹ Estimate based on feedback from providers of Time to Live and Take a Break Scotland grants.

assumed in the Financial Memorandum for the Carers (Scotland) Bill¹⁰, specifically 34% of adult carers and 64% of young carers (see table 10, rows 2 and 5 for steady state number of carers with ACSP and YCS respectively). The estimates for personalised support are based on the number of carers with plans and statements, and those for easy access support are based on the balance of carers who do not have plans/statements.

66. Table 10 shows the number of carers by intensity of caring and our estimate for how many will have ACSP/YCS in the steady state. The distributions assume that 80% of carers in the 50+ hours per week band will have plans/statements, with reducing proportions for less intensive bands and with the balance in the <20 hours per week band to give total proportions of 34% and 64%.

Table 10: Number of carers and proportion expected to have ACSP / YCS in steady state

	<20 hours per week	20 - 34 hours per week	35 - 49 hours per week	50+ hours per week	Total
Number of adult carers	624,864	59,280	29,640	125,215	839,000
Number of carers with ACSP	143,592	23,712	17,784	100,172	285,260
Proportion of carers with ACSP	23%	40%	60%	80%	34%
Number of young carers	27,900	900	300	900	30,000
Number of carers with YCS	17,670	585	225	720	19,200
Proportion of carers with YCS	63%	65%	75%	80%	64%

67. Based on Carers Census¹¹ data on the numbers of such plans and statements, the Scottish Government estimates that it will take approximately ten years to reach the steady state number of carers with plans and statements, increasing on average by approximately 27,000 plans and 1,600 statements per year from 2025/26 to 2034/35. This assumes the right to personalised short breaks support under the Carers Act, established by the Bill, is implemented from April 2025, although the implementation date is yet to be decided. Table 11 shows estimated additional costs of the Carers Act personalised breaks element of the proposed right to breaks established by the Bill. (Note that the summary table (Table 1) only shows costs to 2026-27).

¹⁰ [https://archive2021.parliament.scot/S4_Bills/Carers%20\(Scotland\)%20Bill/b61s4-introd-en.pdf](https://archive2021.parliament.scot/S4_Bills/Carers%20(Scotland)%20Bill/b61s4-introd-en.pdf)

¹¹ [Carers Census, Scotland, 2019-20 and 2020-21 - gov.scot \(www.gov.scot\)](http://www.gov.scot)

Table 11: Costs of Carers Act breaks (£m) – costs to local authorities / Integration Authorities, transferring to Care Boards

	2023-24	24-25	25-26	26-27	27-28	28-29	29-30	30-31	31-32	32-33	33-34	34-35
	£m	£m	£m	£m	£m	£m	£m	£m	£m	£m	£m	£m
Upper Estimate	0	0	13	27	40	53	66	80	93	106	120	133
Lower Estimate	0	0	8	16	25	33	41	49	58	66	74	82

68. Table 12 on the costs of easy access breaks is included to show the balance of funding, although this is not a consequence of the Bill (and is not included in the total costs of the Bill in Table 1). Table 12 includes estimated costs from 2023-24 as this support does not require new legislation and can therefore be implemented immediately. The model assumes this support builds over time allowing the sector to expand its staffing and provision while growing the numbers of unpaid carers being supported. These figures are predicted to reach a steady state towards the middle of the period as higher numbers of carers are expected to be receiving personalised breaks under the Carers Act.

Table 12: Costs of easy access breaks (£m) – costs to the Scottish Administration

	2023-24	24-25	25-26	26-27	27-28	28-29	29-30	30-31	31-32	32-33	33-34	34-35
	£m	£m	£m	£m	£m	£m	£m	£m	£m	£m	£m	£m
Upper Estimate	10	15	20	25	30	35	37	37	37	37	37	37
Lower Estimate	10	15	20	25	30	34	34	34	34	34	34	34

69. Combining the estimates for personalised breaks under the Carers Act (as a consequence of the Bill) and easy access breaks, the cost of the steady state is estimated to be between £116m and £170m by 2034/35, with the central estimate being a cost of £143m.

Table 13: Total additional cost of rights to breaks (£m)

	2023-24	24-25	25-26	26-27	27-28	28-29	29-30	30-31	31-32	32-33	33-34	34-35
	£m	£m	£m	£m	£m	£m	£m	£m	£m	£m	£m	£m
Upper Estimate	10	15	33	52	70	88	103	117	130	143	157	170
Lower Estimate	10	15	28	41	55	67	75	83	92	100	108	116
Central Estimate	10	15	31	47	62	78	90	101	111	122	133	143

70. Recognising the considerable uncertainty inherent in these estimates, it will be important to continue to monitor the rate of growth in provision of breaks from caring as implementation progresses and refine estimates accordingly. Decisions on funding will also be dependent on future government spending reviews. The Carers Census already aims to collect information about breaks provided under the existing Carers Act. However, this information has proven challenging for organisations to return and so the data available is largely incomplete. The Carers Census is currently being reviewed and work is ongoing to support local areas to improve the collection.

Savings due to rights to breaks

71. The Scottish Government estimates unpaid care is currently saving Scotland £12.8 billion per year in social care costs, plus £320 million in health care costs – a total saving of £13.1 billion per year¹².

72. The measures in the Bill are designed to protect carers' health and wellbeing, helping sustain caring relationships. This will reduce costs which would otherwise arise for the NHS, Local Authorities and Integration Authorities, and subsequently the NCS, through unplanned hospital admissions, failed hospital discharge and additional residential care when caring relationships break down. There are around 156,000 people in Scotland providing 35 hours of unpaid care or more per week¹³. If the right to breaks helps prevent 1% of these intensive caring relationships breaking down, that will save £68 million per year in health and social care costs. If the right protects 5% of these intensive caring relationships, the saving will be £318 million per year¹⁴.

¹² Scottish government calculation of replacement care and hospital days avoided (April 2022) using results in Weaver et al: Does availability of informal care within the household impact hospitalisation? Health Econ Policy Law. 2014 Jan; 9(1):71-93.

¹³ The number of adult carers is based on the Scottish Health Survey (SHeS) 2020 (published at: Scotland's carers: update release - gov.scot (www.gov.scot), Scottish Government 2021) and the profile is based on Scottish Surveys Core Questions (SSQC) data (2016-19).

¹⁴ Scottish government analysis of replacement care and hospitalisation (April 2022)

73. Research suggests that unpaid carers have on average 11¹⁵ fewer days of full health per year compared with non-carers. For Scotland's unpaid carers this is 9.6 million days per year. If these measures reduce carer ill health by 1%, that will avoid 96,000 days of ill health valued £8 million per year. If they reduce days of carer ill health by 5%, that will result in 478,000 fewer days of ill health, valued at £39 million per year¹⁶.

74. There are around 268,000 people in Scotland balancing paid work with an unpaid caring role¹⁷. Women make up 61% of unpaid carers of working age¹⁸. Protecting carer health and wellbeing should also lead to wider benefits to the Scottish economy by enabling more carers to remain economically active, reducing the gender pay gap and social security costs. It is not possible to precisely estimate the size of these wider savings and benefits but they are expected to be considerable. Additional breaks can make the difference to help people remain in work or return to work. If the right to breaks helps 1% more carers to remain in work, the benefit to them and to Scotland's economy would be worth £71 million¹⁹. If it means an extra 5% are working, the benefit would be £353 million per year. This would also reduce the current £340 million per year expenditure on Carer's Allowance (DWP) and on Carer's Allowance Supplement (Social Security Scotland).

“Anne’s Law” – Visits to or by care home residents

75. Section 39 makes provision for “Anne’s Law”, which gives rights to people living in adult care homes to see the people important to them even during outbreaks of infectious disease. The financial cost of these measures should be viewed in the context of the progress made since 2021 in maximising meaningful social connections and visiting in adult care homes, effectively readying the care home sector for the implementation of the statutory requirements provided for in the Bill.

76. In September 2021, the Scottish Government in collaboration with Public Health Scotland, the Adult Social Care Clinical and Professional Advisory Group and groups representing families and care home provider published updated “Open with Care” visiting guidance. This allowed for people living in care homes being able to nominate “named visitors” to see them - even in a COVID-19 outbreak situation. The guidance promotes and encourages care homes to maximise opportunities for meaningful contact both in and away from the home. It has been adopted in the most part and serves to practicably and financially prepare the sector for Anne’s Law.

77. On 31 March 2022, the Scottish Government utilised powers conferred by section 50 of the Public Services Reform (Scotland) Act 2010 and introduced two new statutory Health and Social Care Standards relating to visiting. The Health and Social Care Standards set out what people should expect when experiencing health, social care or social work services in Scotland. As with the current “Open with Care” guidance, the Care Inspectorate is required, by law to

¹⁵ Informal carers' health-related quality of life and patient experience in primary care: evidence from 195,364 carers in England responding to a national survey. Thomas et al. BMC Family Practice (2015) 16:62

¹⁶ Scottish government calculation of unpaid carer days of ill health (April 2022)

¹⁷ Scotland's Carers report, Scottish Government, 2015: www.gov.scot/publications/scotlands-carers based on Scotland's Census 2011.

¹⁸ Scotland's Carers report, Scottish Government, 2015: www.gov.scot/publications/scotlands-carers

¹⁹ Scottish government calculation using data from Annual Analysis of Hours and Earnings (ASHE) 2021, ONS

consider how care service providers are upholding the Standards both in relation to registering and inspecting care services.

78. The Bill will enable the Scottish Ministers to exercise a new power under subsection 2 of the Public Services Reform (Scotland) Act 2010 to require care home service providers to comply with any direction issued by the Ministers about visits to residents, and visits by residents, of accommodation provided by a care home service (“a visiting direction”). The use of Directions will allow the Scottish Ministers to respond quickly to what may be a rapidly developing situation and impose requirements on care homes to remove any barriers to full and normalised visits that may have emerged. This will build further on the principles established through the guidance and Health and Social Care Standards and ensure that Anne’s Law is enshrined in legislation.

79. As a result of this incremental approach, the costs of implementing visiting rights in care homes fall to both the introduction of the new Standards and to the Bill, and it is not possible to precisely separate them.

Costs to other bodies and businesses

80. Representatives from care home service providers, local care home oversight teams, Care Inspectorate and Public Health form part of the Scottish Government’s expert reference groups, along with families of care home residents, and help shape and promote the guidance. It is expected that there will be some costs to these groups to promote and champion Anne’s Law in their awareness sessions, formal training, updating visiting policies and for printing leaflets and other administration. However, no specific costs have been highlighted, and it is anticipated that the new requirements will be absorbed within the usual costs of updating training and other materials.

81. The Scottish Government will continue to consult widely on the anticipated practical application of Anne’s Law within the expected provisions of the legislation and make note in any divergence from current guidance and potential costs. While this process is ongoing, it has not highlighted additional costs to the sector.

Costs to the Care Inspectorate

82. Currently, complaints regarding visiting can be made to registered services, or directly to the Care Inspectorate and for individual staff via the Scottish Social Services Council (SSSC). Less commonly complaints can also go via the local authority, the Health and Social Care Partnership (HSCP), or the individual NHS health board. If individuals are not happy with the decision relating to their complaint, from any of these bodies, they can approach the Public Sector Ombudsman for Scotland.

83. The Scottish Government estimates that there will be heightened public interest in the new legislation, and this may result in adults living in care homes, or their friends and families, exercising their right to complain. Complaints to the Care Inspectorate are expected to increase in the short term, while improvements to visiting become embedded in the sector, but to fall away within 2 years. This is reflected in part in the additional costs below. Any increase in complaints via other routes is not expected to be significant.

Additional costs

84. The Care Inspectorate will also incur costs in the lead up to and following the introduction of Anne’s Law, as there is a need to promote the guidance, the new Standards and prepare the sector for Anne’s Law with the aim of building capacity and capability within the sector for improvement.

85. We have worked with the Care Inspectorate to determine the work over and above their core responsibilities. We have agreed a package of additional measures, materials and resources to support “Open with Care” guidance including support for care homes to develop new policies reflecting the Health and Social Care Standards; staff induction and internal and external training; self-evaluation improvement support for services; and developing capacity to enable the immediate resolution of complaints through direct engagement with providers and services.

86. In the year 2022/23, total Care Inspectorate costs to support the introduction of Anne’s Law are estimated to be £186,000, and £90,000 in 2023-24, as shown in table 14. Thereafter, improvements to visiting will become embedded in the sector and we estimate that costs will fall away from year 2024/25 onwards.

Table 14: Costs to the Care Inspectorate of implementing Anne’s Law

Cost Category	2022-23	2023-24	2024-25	2025-26	2026-27
	£m	£m	£m	£m	£m
Other public bodies (Care Inspectorate)	£0.186	£0.090	0	0	0

Benefits

87. The financial cost of Anne’s Law should also be viewed in the context of the benefits to the health and wellbeing of adult care home residents and their friends and families, with a case to be made that that there will be savings realised in other aspects of the Health and Social Care system.

88. A consultation was launched on 24 September 2021 to seek views on the Scottish Government’s proposals for delivering Anne’s Law in primary legislation. Analysis of the consultation showed that there is considerable support for the approach of introducing Anne’s Law. Many respondents commented on their own experiences of family members being isolated in care homes over the course of the pandemic and the lasting harm this has caused.

89. Reference to the potential individual and wider system benefits because of improved health and wellbeing was highlighted by NHS Greater Glasgow and Clyde:

"There is a wide range of evidence internationally that social connectedness is required for good health. Anne’s Law would reduce social isolation, poor mental health and associated effects on physical health. This creates a more efficient and effective service as there are less care needs for staff to manage and residents, carers and staff are happier"

Changes to powers and functions of the Care Inspectorate

90. A number of proposals have been made in recent years to enhance and strengthen the powers currently available to the Care Inspectorate, as the independent regulator and scrutiny body for social care services under the Public Services Reform (Scotland) Act 2010 (“the 2010 Act”). These proposals would enable the regulator to speedily 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 Bill makes provision for two changes which require primary legislation.

Enhanced enforcement powers

91. Section 42 of the Bill amends the 2010 Act to give the Scottish Ministers power to set out circumstances in which the Care Inspectorate can move directly to proposing to cancel a care service’s registration without first issuing an improvement notice, including on the basis of previous enforcement action.

92. It is not anticipated that the enhanced criteria to propose to cancel a service’s registration would impose any additional costs or resource requirements on the Care Inspectorate, care providers or any other organisation. The change is not expected to lead to any increase in enforcement cases, but it will enable the Care Inspectorate to cancel a service’s registration more quickly, therefore better protecting social care users.

Additional joint inspection powers

93. Section 43 enables the Healthcare Improvement Scotland (HIS) to assist the Care Inspectorate to carry out inspections and the option to charge the Care Inspectorate a reasonable fee determined by HIS for any assistance provided by it. HIS could be asked to provide additional expertise to contribute to an inspection led by the Care Inspectorate, for example, advice on infection prevention and control in care homes. Any request for assistance from HIS is expected to be in exceptional circumstances only, such as during a pandemic. Should the request be for short-term assistance with a small number of inspections then this may be delivered within HIS’ existing resources. In the unlikely scenario that HIS assistance is requested for a larger number of inspections or over a longer time period HIS may request payment to cover additional staff costs they incur. Experience during the Covid pandemic suggests that costs might be between £1000 and £1500 per inspection, if required. No costs for this provision have been included in table 1 because it is not possible to predict when, or whether, such exceptional circumstances might arise.

This document relates to the National Care Service (Scotland) Bill (SP Bill 17) as introduced in the Scottish Parliament on 20 June 2022

NATIONAL CARE SERVICE (SCOTLAND) BILL

FINANCIAL MEMORANDUM

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