

NATIONAL CARE SERVICE (SCOTLAND) BILL

BRIEFING FOR STAGE 1 READING

The purpose of this briefing is to highlight the main failings/omissions in the National Care Service (Scotland) Bill (NCS Bill) before the Stage 1 debate in the Scottish Parliament and to indicate the changes we believe must be made.

The NCS Bill was introduced in 2022. After being met with overwhelming concerns from stakeholders the Scottish Government agreed to pause it before the Stage 1 reading to allow further consultation. During that pause it reached an agreement in principle with Cosla on the need for significant alterations. However the Scottish Government has now decided to proceed with the Bill as originally drafted. We believe this is without precedent. The Scottish Parliament and its committees has therefore been asked to address these failures at Stage 2 rather than Stage 1 as should be the case. The most sensible option of scrapping the Bill altogether and starting again has been rejected. Whether it is even possible or not for the scale of revision required to create a final piece of legislation which is fit for purpose is possible via the proposed legislative process is beyond our expertise. It is not clear to us that it is even possible to make this legislation fit for purpose given the legislative approach taken by the Scottish Government.

For this reason we can only condemn the process so far and comment on the final outcome which Common Weal hopes to see for this legislation. We strongly supports care remaining the responsibility of local authorities, believe this will help reduce the set-up costs of a NCS and believe the Scottish Government's agreement with COSLA is a step forward. We continue to have serious concerns about the proposed tripartite structure for

the NCS. We don't believe Care Boards should be based on the current Integrated Joint Board structure which has failed to improve how resources are used and overseen the collapse in care services. Instead, each Local Authority in Scotland should set up a local Care Board which would function as a committee of that authority. This would retain local democratic control and allow further devolution to local communities where care users, unpaid carers, staff, the third sector could become more involved.

We are very concerned, however, that the agreement on the need to change the proposed structure of the NCS and the implications this has for parliamentary processes will distract stakeholders from what we regard as other equally serious weaknesses in the NCS Bill. This briefing will therefore cover what we regard as the *other* main failings/gaps in the draft NCS Bill in the belief that these also deserve to be considered during the Stage 1 debate and must inform its outcome.

In order to improve care for all (as the establishment of the NHS has done with health) and to create a National Care Service worthy of the name, we believe the NCS Bill should include/make provision for the following as a matter of principle:

1. A clear statement of purpose which sets out the reason for creating the NCS in the first place. This should be at the start of the bill and is so important we have suggested a wording:

"The purpose of the National Care Service is to promote a caring society, support those who provide care informally through caring relationships and to provide care directly where this is needed, from womb to tomb".

This purpose encapsulates the need for preventive work, the importance of unpaid care and recognises that care for children should not be separate from the NCS and that care issues are intergenerational. "From womb to tomb" includes care for prospective parents, for newborn children and onwards through all stages of life. Specific age or need demographics – such as children or those in need of compulsory

measures of care – should not be split off from or served outwith the NCS though NCS provision can and should be dedicated towards such groups where this makes sense.

2. The principles at the start of the NCS Bill, while acknowledging the importance of human rights, are otherwise very weak. We believe the following need to be added:
 - a. A statement that care provision should be free at the point of need like healthcare provided by the NHS. This should result in care services being open to all and not means tested or rationed based on eligibility criteria as happens at present. It would also put low level care and support services onto a statutory footing and encourage the design of services that are preventive rather than reactive. The importance of preventive services is at present acknowledged in the principles (as it was in the Scottish Government's response to the Adult Care Review) but without creating any obligation on the NCS to provide such services.
 - b. A statement that care services should be not for profit, like most NHS provision and as the Scottish Government committed to do for children's services in the Promise. This would stop money being extracted out of care services as at present, enable increased investment in the workforce and help change how services were managed, for the public good, not private gain. Any transition to not-for-profit care services would need to be phased in over time.
 - c. A commitment that the NCS should be responsible for the systematic collection of information on unmet need. This is essential to inform resource allocation and enable service development based on need (as happens in the NHS).
3. Most of the existing principles need to be developed/amended in order to make

them fit for purpose at Stage 2 but (g) on Fair Work is so important that it deserves debate at Stage 1. The final wording for this should be agreed with the Trade Unions but must include requirements – currently absent – to establish national terms and conditions for all staff, to create mechanisms that ensure and support national collective bargaining and to ensure that all staff are appropriately supported and trained.

4. Clauses 2 and 3 which cover the role and responsibilities of the Scottish Government will require to be completely amended as a result of the agreement with Cosla. In our view the main role of the Scottish Government should be to ensure the NCS is appropriately resourced, as with the NHS, hence the importance of data on unmet need. Other Scottish Government roles not currently described in the NCS Bill should be to review the legislation affecting social work and social care, to ensure it supports the principles and effective operation of the National Care Service, and to take an overview of governance arrangements (rather than manage the service directly as proposed at present).
5. Rights. The NCS Bill is extremely weak at present in respect of rights, committing to a rights-based approach but not setting out who will be responsible for delivering those rights or making them enforceable. A starting point for improvement would be to amend the scope of the draft NCS charter to include the responsibilities of local authority care boards, the rights and responsibilities of staff and the responsibilities of Scottish Ministers. The NCS Bill includes two poorly thought-through provisions that might be described as creating new ‘rights’. If the NCS provided care based on need, there would be no necessity for specific rights for carers (clauses 36-39). Clause 40 on visits to care homes replicates similar bureaucratic processes to the ones that created the problems during the Covid pandemic and includes no new enforceable rights as care home relatives were calling for in Anne’s law.

6. Resources. The NCS bill contains no provisions for how resources will be determined or allocated, the assumption being that in a NCS wholly controlled by Scottish Ministers, resources would be wholly decided by them too. The creation of a NCS should be an opportunity to create a system where the resources required are properly assessed, transparently decided (through a negotiation process between local authorities and the Scottish Government) and fairly allocated. As an absolute minimum there should be one funding stream for the NCS, like the NHS. Otherwise the postcode lottery, most of which is created by the way the Scottish Government disburses money, will continue.
7. The section on health and social care information and data (Part II Clauses 36-37) takes a top-down managerialist approach and gives Scottish Ministers enormous powers to regulate how information is shared, including the introduction of criminal penalties for staff who fail to follow the regulations. That should have never been included in the draft NCS bill. In our view health and social care information should not be viewed in isolation but as part of a suite of public services that includes social security, other council services, registered social landlords etc. What is needed to encompass all of this is a Scotland-wide programme of data and information system reforms based on the creation personal data stores designed to deliver person-centred services. These would enable people who so wish to share their information across a suite of public services, third sector, housing and other providers and front-line teams, and not just those included in the NCS. If amended in this way, Part 2 of the NCS Bill would not only enable improvements in care services but could be used to initiate a programme of joined-up person-centred services across Scotland and, with that, enable efficiencies.
8. Regulation of care services (clauses 42 and 43). The NCS Bill as drafted tinkers with some regulatory processes – which were shown to be unfit for purpose during the Covid pandemic – but leaves the roles

of the Scottish Social Services Council and Care Inspectorate unchanged. It also fails even to mention the proposed National Social Work Agency that would form part of the NCS and whose role could include setting further standards. This is a recipe for further duplication and a lost opportunity. At the very least the current improvement and workforce planning duties of the SSSC and CI should be transferred to the NCS. Were that to be agreed there would then be an opportunity to amalgamate the SSSC and CI into a new slimmed down body whose focus was on regulation of providers (private and voluntary providers, unlike local authorities, are not inspected at present), services and staff. Unfortunately, none of this was considered by the Independent Review of Social Care Regulation which reported last year

9. There is no section in the current NCS bill on transitional arrangements. While the nature of these will obviously depend on the final bill, this should not be left entirely to the discretion of Scottish Ministers. To take one example, establishing a budget for the NCS (which would then be allocated to local authorities/care boards based on need). Currently financing of care services is directed through Education and Skills (mainly children), Health and Social Care (NHS contribution to adult care), Deputy First Minister (Local Government), Social Justice (asylum seekers) and Justice (Criminal Justice Social Work). This funding needs to be brought together, so the gap between need and resources can be properly considered, but also needs to take account of different levels of expenditure due to variations in Council Tax.
10. The NCS bill includes very few proposals to amend/repeal other social care/social

work legislation (there are at least 25 different Acts of Parliament) and nothing to consolidate it (as happened in England with the Care Act). This is partly a consequence of the NCS Bill lacking any detail of how the service might operate. If the NCS, however, is to meet the aspirations for better care services, staff need to be empowered to work in a more relationship-based way (as acknowledged by the Scottish Government in the Promise). That implies a radical review of the legislative framework which has tied both social work and social care staff in bureaucracy and made it difficult, and sometimes impossible, to offer people the help they really need.

There are many more detailed changes that Common Weal believe need to be made to the bill which we have not mentioned in this briefing because such amendments would normally be what would be considered as part of the Stage 2 process.

Common Weal's Care Reform Group have drafted a comprehensive set of proposals for amending the bill, together with a policy memorandum setting out in more detail their justification for this which are available on request from Craig Dalzell:

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Their vision for a NCS, *Caring for All*, is available at:

<https://commonweal.scot/policies/caring-for-all-a-national-care-service-for-scotland/>

Craig Dalzell would be happy to answer questions on this briefing or direct these to people who can.