

SCOTTISH CARE

BRIEFING: NATIONAL CARE SERVICE (SCOTLAND) BILL (SP BILL 17)

AUGUST 2022

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BACKGROUND/CONTEXT

Following recommendations from the [Independent Review of Adult Social Care](#) which concluded in 2021, the Scottish Government have indicated their intention to establish a National Care Service and for this to be functional by 2026.

The Scottish Government's vision for the National Care Service is that it will:

- enable people of all ages to access timely, consistent, equitable and fair, high-quality health and social care support across Scotland
- provide services that are co-designed with people who access and deliver care and support, respecting, protecting and fulfilling their human rights
- provide support for unpaid carers, recognising the value of what they do and supporting them to look after their health and wellbeing so they can continue to care, if they so wish, and have a life beyond caring
- support and value the workforce
- ensure that health, social work and social care support are integrated with other services, prioritising dignity and respect, and taking account of individual circumstances to improve outcomes for individuals and communities
- ensure there is an emphasis on continuous improvement at the centre of everything
- provide opportunities for training and development, including the creation of a National Social Work Agency providing national leadership, oversight and support
- recognise the value of the investment in social care support, contribute to the wellbeing economy, make the best use of public funds, and remove unnecessary duplication.

The first major policy step towards making this happen got underway on 20 June 2022, when legislation was introduced to Parliament in the form of the [National Care Service \(Scotland\) Bill \(SP Bill 17\)](#).

PROCESS & PROGRESS

The National Care Service (Scotland) Bill is a legal document and therefore is written in a way to be compliant with law. This is reflected in the language and detail contained within it. There is also an accompanying [Explanatory Notes](#), [Policy Memorandum](#), [Financial Memorandum](#), [Delegated Powers Memorandum](#) and a number of Impact Assessments.

In line with standard Parliamentary process for new legislation, the Bill will pass through three stages before it becomes an Act of Law. It can be amended and changed at various points during this process.

The Bill is currently at Stage 1, which is focused on general principles. It will be considered and consulted on further by the Health, Social Care and Sport Committee of the Scottish Parliament. This includes a public consultation element, inviting written submissions by 2nd September 2022. The Committee can then take verbal evidence from contributors, before writing a report on the Bill.

A vote on whether the Bill should proceed to Stage 2 will then be undertaken by the whole Scottish Parliament. This will conclude Stage 1 and will likely be completed by early 2023.

If the Bill passes the Stage 1 vote, there is then an opportunity for MSPs to suggest changes to the Bill's contents. It is at this stage (Stage 2) that more detailed, 'line-by-line' scrutiny takes place and amendments can be made.

After this stage, Scottish Parliament will then consider the Bill again and further amendments can be made. A vote will take place on whether to pass the Bill to Stage 3.

If agreed, the Bill will be passed and following a four-week period, will be submitted for Royal Assent after which it becomes an Act of the Scottish Parliament. It is currently estimated that all stages will be concluded by summer 2023.

ENGAGEMENT & INFLUENCE OPPORTUNITIES

The consultation on Stage 1 of the Bill is currently open until 2nd September 2022, and participation is encouraged in two ways:

- Call for Views – for general questions about the Bill, questions about the Financial Memorandum and the option to provide more detailed comments on individual sections of the Bill. It is primarily aimed at groups and organisations who are looking to input their views on the Bill. A direct weblink to the call for views is available here: <https://yourviews.parliament.scot/health/national-care-service-bill>
- Your Priorities digital consultation - an opportunity to ask questions or to highlight specific hopes or concerns about the Bill. Respondents can also rate specific provisions in the Bill (agree, disagree, don't know) and make brief comments about them. The Your Priorities digital consultation offers an opportunity for individual members of the public to give their views about the Bill. More details can be found here: <https://engage.parliament.scot/community/5052>

Scottish Care will be responding to the Call for Views and undertaking engagement with members about the Bill. This includes an online session on Wednesday 24th August, with details available on the Members Area of the Scottish Care website. We also encourage

members to consider undertaking their own engagement and to submit their own responses to the consultation.

The Bill doesn't include significant detail about how plans will work in practice. This is partly due to the way in which Bills require to be developed as legal documents, but also in the case of this Bill to allow for more detailed decisions to be made at later stages and to be informed by the planned co-design process.

The Scottish Government has indicated its intention to undertake a codesign process in the development of a National Care Service. It plans to work together with stakeholders, interested parties and the general public to understand what plans and services are needed and translate this into detailed secondary legislation, policy and practice to take forward later on. It will include the launch of a Design School and has indicated that this work will get underway in Summer 2023 but loosely, that this will occur during Stage 1 of the Bill and invitations to participate will be issued in due course. The Scottish Government has published further papers which provide more information about how it plans to co-design the National Care Service through engagement and collaboration with stakeholders. These can be found here – <https://www.gov.scot/policies/social-care/national-care-service/>

Stage 2 of the Bill will also present opportunities for more detailed amendments through engagement with MSPs, who can take forward suggested changes. Individuals and organisations can contact their MSPs to discuss these changes and lobby for them to be tabled in the Bill's amendment process. Scottish Care will seek to engage with appropriate MSPs at this stage and provide additional materials to support members and colleagues to do this also.

In shaping the national direction for the development of the National Care Service, the Scottish Government has established a [Social Care Covenant Steering Group](#) including people with living and lived experience of social care with the intention of building trust into the process. Scottish Care and its members are not currently represented on this group. The Scottish Government has indicated that membership will be flexible as the NCS programme develops and we will seek appropriate opportunities to provide representation within this group.

The Scottish Government has also held a number of NCS Key Stakeholder Reference Group meetings to provide progress updates and support understanding around the development of the Current Operating Model, Total Operating Model and Programme Business Case production for a National Care Service. Scottish Care has been part of these meetings. Future plans and scope for these meetings are not finalised at present.

SCOTTISH CARE MESSAGING

Scottish Care contributed to early consultation processes regarding the development of the National Care Service in 2021. Our responses can be accessed below:

- [Response 1043616198 to A National Care Service for Scotland - Scottish Government - Citizen Space \(consult.gov.scot\)](#)
- [Annes-Law-Consultation.pdf \(scottishcare.org\)](#)

We have also shared our position publicly through public messaging and media responses since the Bill was published. Scottish Care's Care Futures work, including the [What If & Why Not?](#) report and [Coileanadh](#) resource have also been a core part of our strategy for influencing the future direction of social care in Scotland, recognising existing intentions to develop a National Care Service albeit before further detailed plans around this were available. A summary of points made is included below:

Scottish Care welcomes the announcement that the National Care Service Bill has been published. We are pleased to note the degree to which human rights are front and central both to the delivery of care and support and the structures which enable support to happen. The emphasis on fair work and commissioning, training opportunities and prevention and re-enablement are elements that we have outlined in our *What If and Why Not* report, so we are pleased to see many of these points echoed in the Bill.

There are both opportunities and challenges in the development of the National Care Service. As an organisation, Scottish Care and our members are committed to playing a constructive and creative part in the creation of a National Care Service for Scotland. We believe this representation of significant systemic change presents an important and exciting opportunity to make the changes required around governance, accountability, resourcing and partnership. We look forward to engaging with members on this Bill and working with the Scottish Government and other partners to help shape the future of social care.

What will be important is that the creation of such a service does not become an exercise in additional bureaucracy and processes but truly provides a vehicle for collaboration, transformation and bridging the many implementation gaps identified in the Independent Review of Adult Social Care.

A critical part of creating a national care service is – as Scottish Care's *Coileanadh* report argues - the need to 'develop a commonly accepted 'hallmark' of non-negotiable 'conditions' so that everyone is held to account for upholding these and working to ensure that these are supported. This would give assurance and confidence to all people involved, both in terms of quality and recognition.

Any model of social care has to be rooted and focussed on the needs of the person and not rescuing the fractures of the system. There is an opportunity in the consultation in the next few months to articulate and substantiate the vision of a distinctive social care mindset. One that moves us from talking about people being 'treated' to 'supported' and not saying 'putting' someone in a care home or 'maintaining' someone at home. A social care mind-set involves shifting the balance of power that clinical models are believed to hold in relation to decision-making and recognising the unique contribution of social care. In all the talk of a national service there is a risk that we try to ape and mirror the NHS. Social care is not health care. It demands and involves a different vision and perspective, one rooted in autonomy and control, personal independence and choice. The National Care Service cannot simply be the National Health Service for social care. Social care has value and importance in its own right not just as an adjunct to acute health care. As *Coileanadh* states: 'At the moment value is largely from a system-oriented perspective e.g., relieving pressure on hospitals, prioritising settings of support such as the drive for people to remain in their own home and a focus on 'beds', 'placements' and 'packages' as forms of measurement.'

The National Care Service offers a real opportunity to fundamentally address many of the challenges in social care, if we get it right. Most of this comes down to the insufficient valuing of and investment of social care. The National Care Service has to deliver for everyone, including care home residents, families and those who provide and deliver social care services. It needs to be inclusive and deliver fairness for all.

One thing we are clear on is that intervention must be made sooner than the implementation of the National Care Service. Social care is a sector which is paid by the government less than half of what it costs them to deliver the same service. This is having a profound impact on people who access care and support, unpaid carers, care staff and providers. This inability to pay a fair rate for care means that people are going without care and at crisis ending up in hospital. Quite frankly, if social care falls, so will our NHS.

The vision of a National Care Service is in danger of not happening because of the desire of local authorities to retain much of their existing control and influence. The Independent Review of Adult Social Care after extensive engagement told us that the system is broken. We have known this for a long time. The significant and systematic changes that need to take place where we have the creation of a National Care Service but with local accountability cannot be negotiated away between national and local government. The voice of those who matter most – those who use supports, who deliver unpaid care and those who professionally provide that care cannot be drowned out by a desire to resist change. The pain of the pandemic demands us to build a new future not to simply tinker with the models of the past.

DETAILS OF THE BILL

Official documentation related to the National Care Service (Scotland) Bill:

- Bill as introduced (Stage 1) - <https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/national-care-service-scotland-bill/introduced/bill-as-introduced.pdf>
- Explanatory notes - <https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/national-care-service-scotland-bill/introduced/explanatory-notes-accessible.pdf>

This section summarises the three sections of the Bill as well as the Financial Memorandum, in terms of their relevance for Scottish Care's stakeholders. We encourage reading of the Bill for full details.

Part 1 – The National Care Service

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—
 - is essential to the realisation of human rights,
 - enables people to thrive and fulfil their potential, and
 - 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
 - promote the dignity of the individual, and
 - 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 Bill allows for the establishment of a National Care Service (NCS) and enables responsibility for social work and social care support to be transferred by Scottish Ministers from Local Authorities to the NCS. It makes Ministers responsible for these services in the same way that they are for the NHS. Their responsibility relates to:

- Ensuring the NCS is designed to improve the wellbeing of the people of Scotland
- Designing a service which meets the principles
- Making arrangements to monitor and improve the quality of NCS services.

The Bill means that care under the responsibility of the NCS can be delivered nationally or locally, with new 'care boards' having local responsibilities. These care boards will plan community health and social care services and be responsible for their delivery. The number of care boards is still to be determined, but it is envisaged that there will be a number of local care boards covering all of Scotland (for example, this could be 14, 32 or another number depending on feedback) as well as special care boards for national services, such as complex or specialist provision.

Services under the NCS will require to meet standards set and checked by Scottish Ministers.

The Bill requires care boards and Scottish Ministers (if delivering NCS services nationally) to have strategic plans for how they will deliver frontline care and support services in ways that best reflect the principles. These must include their arrangements for providing the NCS or elements of it, their objectives and vision, budget projections and an ethical commissioning strategy. These must be consulted on with community planning partners and the public before publishing and be revised at least every 3 years. Local care boards' strategic plans must be approved by Scottish Ministers.

An ethical commissioning strategy must set out a care board's arrangements for providing services and how those arrangements have been designed to ensure they best reflect the NCS principles, including Fair Work.

There will be a number of regulations and directions attached to the National Care Service. Regulations include who should be on a care board and which services will move from local authorities and health boards to the NCS. Regulations must be approved by Parliament. Directions are set by Scottish Ministers and don't require to be approved by Parliament but will dictate instructions to care boards and public bodies. What is included in regulations and directions will be determined through planned co-design work.

A new part of Government will be formed, staffed by civil servants, to provide oversight, leadership and accountability for the NCS. This will likely incorporate community health services too.

Scottish Ministers must prepare 'the National Care Service charter' and make it publicly available. The charter is to contain a summary of the rights and responsibilities in relation to the National Care Service of—

- the individuals to whom the National Care Service provides services,
- 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),
- 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,

It must also contain 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. In creating this charter, the Bill specifies that particular regard for the views of those who access NCS services and those who provide them is important.

Ministers will also be able to direct that any social care function within the remit of the NCS is delivered by another care board or by the Scottish Ministers themselves in the event of an emergency or service failure (in practice, this would be through the new part of Government that will form the NCS at national level). In relation to contractors to the NCS, Scottish Ministers can make a court application for an emergency intervention order to take over the premises or running of a service if it is deemed that its failure or imminent risk of failure creates significant harm to wellbeing or safety.

The Bill also enables Ministers and care boards to:

- conduct and support relevant research;
- provide workforce development, training and related financial reimbursement;
- provide financial assistance to voluntary organisations and others involved in social care;
- make a compulsory land purchase or buy buildings that are needed to deliver NCS services.

Part 2 – Health & Social Care Information

The Bill allows Scottish Ministers to establish a scheme for sharing information across the National Care Service and the NHS, with the intention of improving service effectiveness and efficiency. This will be in the form of an electronic social care and health record. The intention is that this will provide a nationally consistent, integrated and accessible record

which can be used, with appropriate permissions and safeguards, by all who provide health and social care and therefore reduce duplication of information. It would also serve as a means of providing statistics to support planning, improvement and intelligence. The creation of this record does not require primary legislation so detail in the Bill is minimal but the intention is that secondary legislation will enable information sharing and set out consistent data and digital information standards. These will determine how information should be processed and stored.

Part 3 – Reforms Connected to Delivery & Regulation of Care

The Bill introduces a right to personalised short breaks for carers, placing duties on local authorities to provide support for these breaks to happen without being subject to eligibility criteria. Local carers strategies must also promote a variety of support providers and diversity of support options, in line with the Self-directed Support Act 2013.

The Bill incorporates 'Anne's Law', which gives visiting rights to people living in care homes for adults, regardless of wider circumstances such as lockdowns or infectious disease outbreaks. It gives Scottish Ministers powers to require care home providers and public health teams to comply with any direction regarding visits by or visits to care home residents, and to vary or revoke these directions. It intends to remove practice variation around visiting, including stopping any blanket bans on visiting. Whilst guidance and updated National Care Standards exist to promote named visitors already, this sets these requirements into legislation.

The Bill amends the Public Contracts (Scotland) Regulations 2015 in order to support not-for-profit organisations to tender for social care service provision. Ministers can change the definition of what types of organisations can bid for NCS services and in certain circumstances, the list of bidders for a contract can be limited to those who meet a particular description, such as only for voluntary and third sector organisations.

The Bill gives Scottish Ministers the ability to strengthen the Care Inspectorate's enforcement powers to cancel the registration of a care service without requiring an improvement notice to be served first where the Care Inspectorate deems the service or provider not to be in a position to make or sustain improvements. This is intended to enable quicker action to protect people in instances of poor quality provision. It also authorises Healthcare Improvement Scotland to assist the Care Inspectorate in undertaking inspections. Joint inspections were undertaken by the two organisations during the pandemic in relation to infection prevention and control and the intention is to remove barriers to this collaboration should it be needed in the future in exceptional circumstances.

Financial Memorandum

The Financial Memorandum (FM) that accompanies the Bill outlines that the framework and co-design approach planned around NCS development creates less predictability around costs and related timescales. It therefore provides a number of estimations and notes that decisions around costs as establishment and implementation of the NCS progresses will need to be based on 'rigorous, evidence-based options appraisals, value for money, where benefits and quality are paramount, and the resources available to ensure affordability.'

The FM does not cover the following areas, highlighting that these are subject to wider policy reform processes that do not form part of the NCS Bill:

- 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.

It states as part of the purpose of making Scottish Ministers responsible for social care, that this will enable '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.'

The FM sets out anticipated estimated costs of establishing and running the NCS from 2022-23 through to 2026-27 at present, when the NCS is planned to be operational. The financial memorandum predominantly focuses on funding for care boards and on the national establishment and running costs of the NCS, including national staff costs and infrastructure. It includes:

- Consideration of the practical costs of employment transfer of local authority staff to care boards, including pay, terms & conditions.
- Care boards will have a statutory duty to carry out transferred social care 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.
- Costs of providing services that could be transferred to care boards, including adult social care, have been projected forward using inflation 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.

In relation to commissioned services, the FM also states: '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'.

In terms of health and social care information, the FM notes the need for investment in infrastructure, staffing, training and development to support digital and data systems but doesn't specify costs, details or who the required funding will be aimed at.

The FM does not identify particular costs through the Bill of implementing Anne's Law and states that these can't be separated from changes already introduced through 'Open With Care' and changes to the Health & Social Care Standards. It expects there to be costs

associated with awareness raising, formal training, updating visiting policies and for printing leaflets and other administration but doesn't specify these and anticipates that these costs will be absorbed within the usual costs of updating training and other materials.

It does estimate costs to the Care Inspectorate of implementing Anne's Law, stating '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'. These Care Inspectorate costs also incorporate a predicted increase in complaints handling over a 2-year period, related to heightened public interest in care home visiting.

Workforce

Information and implications relating to the social care workforce are largely missing on the face of the Bill, predominantly because the stated ambitions for change relating to the workforce are identified as not requiring legislative instruments to implement. Details are included within the Policy Memorandum.

CONSIDERATIONS & QUESTIONS

This section outlines Scottish Care's main areas for further interrogation following analysis of the Stage 1 Bill. These are very much open to expansion, amendment and addition based on feedback from members and colleagues. It will also be important to reflect any particularly positive elements of the Bill in submissions.

Whilst providing the foundations for a NCS and specifying the intention to limit detail in order that this can be informed by co-design work and consultation, this leaves a significant information gap which creates considerable uncertainty around many elements of the NCS. This leaves considerable space for discussion and planning to be shaped in an unhelpful way that is not evidence-based or fully informed, and allows for easy 'scapegoating' for current and previous challenges without articulating realities around responsibilities and processes. This has been made especially clear through some of the questions and comments shared at Scottish Government-run information sessions related to the Bill. The lack of clear timescales around the initiation of co-design processes and details of how people can get involved are adding to these concerns. There remains significant concerns about the degree of real understanding that exists regarding what social care is, who delivers it and how it is planned and funded currently.

It feels overall that the Bill raises a lot more questions than it answers and as we know, it is the 'how' and 'why' that is most important for effecting change and understanding what this means for different stakeholders. This direction largely seems missing at this stage, and there needs to be clarity and assurance as to how co-design will be truly inclusive for all parties and stakeholders. Whilst there is a correct focus on people who access support and those who work in the sector, where does the role of providers sit who are equally crucial to achieving success and positive outcomes?

Many aspects of the Bill raise questions regarding the intent behind them – whilst explicitly stating the ambition to improve outcomes for people and to be citizen-led, many of the

proposed changes point to a potential ambition to shape the social care sector around certain parts of the sector to the exclusion of others (predominantly the independent sector) without justification or evidence for this approach. There is very limited mention of inclusion and engagement with the sector itself or the workforce in decision making or planning processes. This is particularly evident in procurement changes, which seem to seek to limit 'private' sector tendering. The term 'third sector' is used without an apparent clear sense of who or what this refers to, often completely excluding mention of the independent sector (which includes third sector providers) as the largest provider of social care services. Plans to move local authority staff into care boards and retain a commissioner/commissioned relationship with other providers seems to suggest a continued sense of 'us and them' without real appreciation of or equality across all social care partners.

Language used around aspects such as Anne's Law are also unhelpful in nature. Whilst supportive of the intention, we have concerns about the paternalistic approach of services 'obeying' legislation as opposed to a collaborative, partnership-based approach to improving services and promoting human rights which is the grounds and culture upon which an NCS should be developed and will be key to its success. There seems to be a sense of treating providers and services such as care homes as needing told what to do, largely by other bodies, and a need to make them 'compliant' rather than treating them as experts in their fields and partners with a contribution to make, with support to do this as required.

The big questions of how we can be assured people's rights are strengthened and that services will be improved by a National Care Service also remain largely unanswered. The Bill focuses on systems and structures – the establishment and running of national elements of the NCS and of care boards – which risks repeating previous experiences of reform processes focusing on processes and bureaucracy rather than meaningful change. Whilst the co-design processes seek to avoid this, there is limited clarity on how structural changes will conclusively address many of the fundamental challenges in social care.

It seems like some areas are lacking ambition as well as sense of reality – for example, reference to continued market shaping to ensure it 'remains vibrant and stable' doesn't address how the extreme shortfalls in funding and ineffective approaches based on driving down costs have already completely destabilised the sector. One of the principles of the NCS is that services provided must be financially stable but how does this relate to and change current accountability (or lack thereof) in terms of the funding and sustainability of independent sector services?

The introduction of care boards raises questions as to how they will operate differently and deliver the radical changes required. The intention is for these to replace Integrated Joint Boards (except in Highland where there will be two bodies, given their Lead Agency model) over time. The experience of the independent sector in terms of inclusion and partnership through IJBs varies significantly. Will these care boards represent a similar experience with a new name? For instance, there is no designation of providers and the independent sector as essential contributors and consultees in the development of strategic plans, for national or local care boards. Are we creating one big statutory body?

Their name is also a missed opportunity to reinforce what Scottish Care has long highlighted about the fundamental strengths of social care – 'Social Care Boards' or 'Care & Support Boards' are two suggested ways in which the relational nature of the sector (and not a version or server of the NHS) can be built into the ethos and actions of these structures.

The Bill doesn't cover the following elements, noting that these are for consultation & co-design to then incorporate into secondary legislation as required:

- The number of care boards and the geographic areas they will cover
- The membership of the boards and their relationship with the national NCS structures
- The duties, functions and services they will provide, both directly and commissioned from other bodies
- Workforce, employment and contractual arrangements (including transfer of staff from local authorities)
- Maximising opportunities for collaboration and co-operation between care boards and other bodies, including local authorities, NHS boards and independent and third sector bodies

Ethical commissioning is an important vehicle for making changes to planning and procurement processes but there is limited detail about what this means in practice or how a genuinely ethical approach to commissioning will be introduced and assured. The Bill only uses this term as a way of indicating that commissioning needs to reflect NCS principles, which doesn't go far enough as a way of describing this process or detailing how the right skillsets will be developed to implement it as a universal approach.

The introduction of a consistent and accessible electronic care record could be a useful mechanism but only if it is done so properly, which prioritises citizen control of their own data and truly enables appropriate information sharing including with the independent sector.

Section 14 requires the Scottish Ministers to establish a service for receiving complaints about services provided by the National Care Service and passing them on to be dealt with by the person that the provider of the service thinks is best placed to deal with them. The Scottish Ministers need not provide the service directly. It also includes that Ministers can impose requirements and sanctions related to complaints about any social service (not just those provided by the NCS). Reform should be centred on removing unnecessary complexity or confusion in relation to navigating health and social care and this could risk duplication, not least with the role of the Care Inspectorate.

There appears to be very little detail about what the Care Inspectorate's role will be in relation to the NCS and what oversight and monitoring it will have of it. The role of Healthcare Improvement Scotland (HIS) in supporting Care Inspectorate inspections (at a chargeable rate) is outlined as only being for exceptional circumstances but it is not entirely clear what the criteria or circumstances (other than a pandemic) would be and it raises questions as to what assurances there are that sufficient and relevant expertise exists within HIS to effectively support a diverse sector in what could ultimately be a vast array of situations. It points to a continued sense of 'health knows best'.

The section on procurement is one of the most problematic, given the ability for procurement to be limited by sector. Other than vague reference to supporting the third sector, there is no evidence, rationale or examples provided in accompanying documents as to why this is necessary and in what circumstances it would be utilised.

NEXT STEPS

Key areas for discussion:

- **NCS process & structure**
- **Care boards**
- **Commissioning & procurement**
- **Care record**
- **Anne's Law**
- **Care Inspectorate & enforcement powers**
- **Finance**

Key questions for discussion:

- **Will the NCS Bill support the achievement of consistency & quality for social care?**
- **What opportunities does the Bill present?**
- **What are the key areas of concern?**
- **What are the financial implications?**
- **What other impacts will it have on the independent sector?**

CONTACT

To discuss this Briefing in more detail, please contact:

Becca Young – Policy & Research Manager, Scottish Care

becca.young@scottishcare.org